

F v J [2010]

[2010] EWHC 2909 (Fam)

13/08/2010

### **Barristers**

Private: Marcus Scott-Manderson QC  
Teertha Gupta KC

### **Court**

Family Division

### **Practice Areas**

International Children Law

### **Summary**

Application under the Hague Convention 1980 for the summary return of two children abducted from Germany. Issues as to the representation, and party status of, children. Exercise of discretion in cases where siblings express distinctive wishes and feelings.

### **Facts**

The mother wrongfully removed two children, B born in 1996 and R born in 1998, from Germany to England. R was assessed by a psychologist who concluded his functioning was 12-18 months below his chronological age. The father sought the summary return of both children.

B was competent to instruct directly an experienced children's solicitors acting as her litigation friend. R was represented by a CAFCASS officer. B was not permitted to attend the hearing but the judge saw B to explain the reasons she was not allowed to attend.

B expressed the view to her solicitor that she did not want to return to Germany. She feared that the mother would reunite with a violent partner (not the father). The judge was satisfied that B had 'a clear and unequivocal objection' to returning to Germany and that she was of an age and degree of maturity at which it was appropriate to take account of her views. The judge was satisfied too that R had clearly indicated he did not want to return and that he had attained a degree of maturity whereby it was appropriate to take account of his views. The judge found that, on the facts of the case, splitting the siblings would place them in an intolerable situation (and thus the article 13(b) gateway was crossed).

The judge then considered the exercise of his discretion 'in the round'. The judge concluded that in B's case the preponderance of the factors identified by Baroness Hale in *Re M (Abduction: Zimbabwe)* [2007] UKHL 55 pointed against a summary return. Whilst R's objections seemed to the judge to be less clear, less strong and less authentically his own, considered alongside B's objections, he found that to return R alone would place him in an intolerable position. He therefore reached the clear decision not to return

either child to Germany.

Two issues arose regarding the status of B and R within the proceedings. The judge noted that:

- a. There is a 'lacuna' in the Family Proceedings Rules regarding the powers to permit B to directly instruct her own solicitor. The judge expressed the hope that the Family Procedure Rule Committee would find time to review the matter.
- b. It is preferable that a child should, time and resources permitting, be seen by the CAFCASS High Court team before any decision is taken as to party status.

## Permission

Family Law Week 