

C (Children) (2010)

[2010] EWCA Civ 1610

17/12/2010

Court

Civil Division

Practice Areas

International Children Law

Summary

A judge's decision to grant an open-ended adjournment to permit further investigations where children had been wrongfully removed from a different jurisdiction and brought to that of England and Wales conflicted with the latter's convention requiring the children to be returned to the jurisdiction from which they had been wrongfully removed.

Facts

The appellant father (F) appealed against a decision of the judge relating to the wrongful removal of his children by the respondent mother (M). F, M and their children had previously all resided in Ireland. M conceded that she had wrongfully removed the children from Ireland. The only obstacle to the children's summary return was M's Hague Convention art.13(b) defence. That was driven by M's flight from Ireland with her children and required further investigation from the relevant agencies. Police from the instant jurisdiction were invited to investigate the matter as if they were responsible rather than as agents for the Irish authorities. Proceedings were issued, and M's case was put by way of submissions rather than statements. The judge ordered M to file a statement to affirm the submissions made. F's application to respond to was refused. An adjournment was ordered so that the police could conduct further investigations. On appeal, F sought to adduce his response and two affidavits from his solicitors.

Held

On its face, the judgment had been impeccable as the judge had directed himself by reference to the relevant authorities and had looked at the purpose of the convention and had regard to his obligations under art.4. However, there was the distinct impression that he had been tempted to pursue child welfare. The open-ended adjournment of the case to allow police investigations to be completed did not pay sufficient regard to the objective of the convention, or to the fact that the primary responsibility of the investigation lay with the Irish authorities. It also conflicted with the convention of the instant jurisdiction, which required the children to be returned to the jurisdiction from which they were wrongfully removed. The judge had been swayed by the assertion that return to Ireland meant a return of M and the children to the marital home, or that M and the children would be in close proximity to F. Accordingly, it was appropriate to permit the admission of fresh evidence, namely F's response and the two affidavits from F's solicitors, and to remit the case for trial at a final hearing.

Permission

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