

K v K (2009)

[2009] EWHC 132 (Fam)

29/01/2009

Barristers

Private: David Williams QC
Hassan Khan

Court

Family Division

Summary

Although the court had jurisdiction to stay or suspend the effect of a forthwith return order made in Hague Convention proceedings by allowing an abductor, who was the primary carer, a short amount of time to take specified steps to settle her affairs before complying with the order, it would not be appropriate to delay execution of the order to await a decision of the foreign court because to do so would open the floodgates to applications for delayed return orders in almost every primary carer case.

Facts

The court was required to determine whether it had jurisdiction to stay or suspend execution of a forthwith return order made in proceedings under the Hague Convention on the Civil Aspects of International Child Abduction 1980. The applicant father (F) commenced proceedings in the High Court under the Hague Convention for the summary return of his child to Poland, from where he had been removed by the respondent mother (M). M's case was that F had consented to the removal. She had commenced proceedings in Poland seeking orders allowing her to remain with the child in England. Whilst maintaining her defence of consent, M agreed to the making of a forthwith return order on F's application, but asked that it be stayed or suspended on certain undertakings until the decision of the Polish court was known. F submitted that the court's discretion was not engaged because it had not been invited to find that a defence under the Convention was made out; therefore, M's application to suspend or delay the return order could not be entertained and general welfare considerations remained within the remit of the Polish court.

Held

(1) The approach to a return was that it had to occur promptly so as not to frustrate the policy of the Hague Convention, *M (Children) (Abduction: Rights of Custody), Re* (2007) UKHL 55, (2008) 1 AC 1288 followed. (2) It was the practice of the court in England and Wales to regulate the implementation of forthwith return orders based upon the Convention's encouragement of the amicable resolution of issues, particularly where the abductor was the primary carer. (3) On a principled approach to Convention policy in the execution of the court's jurisdiction and the reasonable flexibility that should be permitted to the court in the exercise of its inherent jurisdiction, there was a jurisdiction to implement a forthwith return order in such a way that specified, practical steps could be identified and provided for by way of

undertakings and directions, M (Minors) (Child Abduction: Undertakings), Re (1995) 1 FLR 1021 CA (Civ Div) followed, M and J (Children) (Abduction: International Judicial Collaboration), Re (2000) 1 FLR 803 Fam Div considered. (3) On the facts of the instant case, it was appropriate to allow M a limited amount of time to settle her affairs in England before returning with her child to Poland. However, it would not be appropriate to take the exceptional course of delaying execution of the order to await a decision of the Polish court, as to do so would open the floodgates to applications for delayed return orders in almost every primary carer case.

Permission

Lawtel 