

Re D (A Child) [2011]

[2011] 2 FLR 464 : [2011] Fam Law 571: [2011] EWHC 471 (Fam).

08/03/2011

Court

Family Division

Practice Areas

International Children Law

Summary

Father applied for an order for the interim return of his 4 year old daughter after wrongful retention by the mother in Poland. Order granted.

Facts

An English father and Polish mother lived together in England for six years. At the end of a holiday in Poland in 2010, the mother refused to return to England with their 4 year old daughter, whom she had, without consulting the father, registered for temporary residence in Poland. The mother also applied to limit the father's paternal responsibility.

On the father's application under the Hague Convention, the Polish court refused to return the child, despite accepting that she was habitually resident in England and wrongfully retained, on the basis of an Article 13b defence of risks to the child posed by the father's alcohol consumption and failure to keep her safe. The father issued proceedings in the High Court seeking her return. The matter came before Theis J on a hearing at which the mother did not attend and was not represented. She had provided statements and indicated through her advocate and to the Guardian that she did not have funding, could not get time off work, and, despite accepting jurisdiction and that she may need to issue an application for leave to remove, wanted the matter to be transferred to Poland, or for the Guardian to conduct her enquires in Poland.

Held

The judge considered the provisions of Article 11 (6-8) Brussels IIR as well as recent CJEU case law. She noted that there was nothing which indicated that the court could not order a summary or interim return of the child under Article 11(8) prior to a final determination of custody issues.

She then noted that if the court decided to order the return of the child pursuant to Article 11(8), the regulations provided that such return should be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with Article 42(2).

She considered whether such an order would be in the child's best interests. The father's evidence suggested that his drinking was not as extensive as alleged, and that he had played a significant role in his daughter's care prior to her retention in Poland. She concluded that, on the basis that the father offered undertakings concerning alcohol use, an order for return should be made to give the opportunity to undertake a proper welfare enquiry and for CAFCASS to see the child. She issued a certificate for the return of the child pursuant to Article 42(2) and also made directions for the CAFCASS officer to see the mother and to see contact in Poland.

Permission

Family Law Week 