

Re S (Wardship) (2010)

[2011] 1 FLR 305 : [2010] Fam Law 1074 ; [2010] EWHC 1669 (Fam)

25/06/2010

Barristers

Teertha Gupta KC

Court

Family Division

Practice Areas

International Children Law

Summary

Where it was alleged that a parent had been left stranded abroad and thereby separated from her child, she would be hampered by not being able to attend court hearings concerning the child's welfare and the court made a plea for the relevant authorities to consider how they might assist her in returning to the jurisdiction, such as by using public funds to pay her travel costs and giving her leave to enter the jurisdiction for the purposes of the proceedings.

Facts

In proceedings concerning a six-month-old ward of court (S) the court was required to determine whether the father (F) had deliberately abandoned the mother (M) and forcibly separated her from S. F was a British citizen of Pakistani origin. M was a Pakistani citizen who had entered the United Kingdom to live with F's family following her arranged marriage to him. M alleged that she had been badly mistreated by F and his family. When S was less than two months old, M travelled to Pakistan with F and his father while S remained with his paternal grandmother. A one-way ticket had been purchased for M but return tickets had been bought for F and his father. M claimed that she had refused to travel to Pakistan without S but that she had been drugged and forcibly removed. F maintained that M had gone willingly because of marriage difficulties. A few days after arriving in Pakistan, he returned to the UK, leaving M in Pakistan with her family. He took her passport containing her spousal visa, which was the only right by which she could legally re-enter the United Kingdom. He also claimed that he had divorced her by talak whilst in Pakistan. During earlier hearings, the judge had made it clear that F had a continuing obligation to produce M's passport and invited him to fund the cost of her return to the UK, pointing out that to deprive S of his mother's care was emotionally abusive. However, F and his family refused to assist.

Held

The speed of F's sudden decision to end the marriage and return to the UK had been astonishing unless there had been a deliberate plan to leave M behind. His family's determination not to assist M's return, notwithstanding the court's comments about S's emotional needs to have his mother, was a clear

indicator that there had been a deliberate intention to separate M from S. That was a callous way to treat a young mother and a young baby and was abhorrent. Although M was able to obtain a new Pakistani passport and travel to the British High Commission in Islamabad shortly before the hearing, the High Commission refused to grant a duplicate spousal visa to enable her to re-enter the UK, or any other document to enable her to do so. That resulted in M being required to give her evidence by video link, thereby increasing the costs of the hearing, which were to be borne by the Legal Services Commission. In view of those wasted costs it would have been an appropriate and proper use of public funds for the Legal Services Commission to have funded M's return (see paras 59-63 of judgment). (2) The Foreign and Commonwealth Office, the UK Border Agency and the British High Commission in Islamabad had been aware of the case and the date of the hearing. It was therefore most unfortunate that M had been refused a duplicate of her spousal visa or at least special leave to enter for the purposes of the proceedings. S would remain a ward of court for the foreseeable future and future hearings concerning his welfare would be best conducted with his parents available in court to give clear instructions to their legal teams. Although video links were valuable, they were second best when hearing evidence and M would be hampered if she were not able to attend the welfare hearing in person. The court made an urgent plea to the immigration authorities to allow M to enter the country for the duration of the proceedings. It made a further plea to the ministers concerned to consider what arrangements could be put in place to assist mothers in similar circumstances to enter the country in order for them to attend hearings relating to the welfare of their children (paras 64-67).

Permission

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