

Re S (Abduction: Hague and European Conventions) (1996)

(1997) 1 FLR 673

18/12/1996

Barristers

Baroness Scotland KC

Court

Civil Division

Summary

Child taken to Ireland by maternal grandmother and aunt following mother's death. Orders obtained by aunt in Irish court and interim care and control order made in favour of father in English High Court. Requirements of Hague and European conventions.

Facts

An appeal by a father and a cross-appeal by grandmother and aunt from a finding that a child was habitually resident in England and refusal to dismiss wardship proceedings. The parents of baby "E" were not married and in July 1995 the mother, an Irish citizen, obtained an interim residence order. After the parents separated, the mother regularly went to and from the Republic of Ireland. In March 1996 the mother died and the father initially took over the care of the child until the arrival of the maternal grandmother and sister from Ireland. On 11 March 1996 the maternal grandmother and sister returned to Ireland with baby E without informing the father. On 13 March 1996 the father was granted an interim care and control order for the child and the grandmother was ordered to return the child to the jurisdiction. On the same day in Ireland, the aunt obtained an ex parte order making her the guardian of E, granting her custody and prohibiting the father from removing E from Ireland. In October 1996 the High Court found that neither the Hague Convention (as enacted by Child Abduction and Custody Act 1985) nor the European Convention (as enacted by Child Abduction and Custody Act 1985) applied to the case.

Held

The child was habitually resident in England and the interim care and control order granted to the father retained the child's residence. (2) The Court which made the decision as to the child's welfare should be that of his habitual residence. It did not matter the child was an Irish citizen. The wardship order therefore stood. (3) As soon as the child was made a ward of court, the grandmother and aunt wrongfully retained the child contrary to Art.3 of the Hague Convention. (4) The interim care and control order gave the father rights of custody for the purposes of the Hague Convention. (5) The child was unlawfully removed from the jurisdiction contrary to Art.12 of the European Convention. Appeal allowed.

Permission

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