4PB, 6th Floor,
St Martin's Court,
10 Paternoster Row,
London, EC4M 7HP
T: 0207 427 5200
E: clerks@4pb.com
W: 4pb.com

D (Children) [2011]

[2011] EWCA Civ 1294

09/08/2011

Court
Civil Division

□□□The two subject children (ages not recorded in the Court of Appeal's judgment) had lived with their father in France since August 2009 when their mother voluntarily came to live in England. Prior to August 2009 the children had resided in France in their mother's primary care. The mother wrongfully retained the two boys following Easter holiday contact in the UK. The father swiftly applied for their return. The mother raised a number of objections, the most significant being that the elder child objected to a return to France and was of sufficient maturity for those views to be taken into account. A CAFCASS Officer interviewed the elder child and was impressed by his maturity.
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□□□At the final hearing the father's primary position was that the children should return to his care in France; failing that, the children should return but remain in the mother's care. The father did not want the children to be separated. The judge found that the elder child had sufficient maturity to express an opinion and objected to a return. She exercised her discretion to refuse the return order. The father appealed.
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□□□Thorpe and Black LLJ allowed the appeal. The judge had failed to address the father's secondary case (that the children should return but in their mother's care). She had been led into misunderstandings of fact which tainted her discretion. Black LJ expressed her 'utmost sympathy' with the judge. The difficulties which arose stemmed from: first, the hurried nature of the CAFCASS report leading to factual errors and a failure by the officer to balance the factors in favour of a return; secondly, the change(s)s during the hearing in the mother's position on whether she would return with the children; thirdly, the mother's opposition to contact with the father which only became apparent after the judgement. The 'principled outcome' was a return of the children in the care of their mother.
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□□□Appeal against a decision to refuse a return order where one child objected to return and had sufficient maturity. Appeal allowed.
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Permission

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