

EF v MGS [2011]

[2011] EWHC 3139 (Fam)

18/11/2011

Barristers

Jacqueline Renton

Court

Family Division

Practice Areas

International Children Law

Summary

Application under the 1980 Hague Convention for return of a child to Spain in which the central issue was whether the child, P, was habitually resident in Spain.

Facts

The parties, P's parents, were not married but had lived in a settled relationship for 18 years prior to separating in July 2011. Both parents and P were Spanish citizens and had hitherto mainly resided in Spain. In 2008 the father's employers offered him the opportunity to work in Portsmouth on a fixed term contract of almost two years. The parents agreed to take the opportunity and the mother took a leave of absence from her employment before the family came to England, where they remained. In April 2011 the father was offered a further two year contract and the mother reluctantly agreed.

In July 2011 the parents' relationship broke down and the mother returned to Spain with P. The mother contended that the father had subsequently agreed for P to return to his school in Spain, relying on that agreement as evidencing consent to a change of P's habitual residence. In mid-August 2011 the mother brought P to England and left him with the father, intending to collect him in early September. However, in the mother's absence the father obtained a prohibited steps order preventing the mother from removing P. M responded with her application under the Hague Convention.

Held

It was common ground that if P was habitually resident in Spain, then the retention was wrongful. The question therefore was whether P was habitually resident at the time of the retention in August 2011. Holman J was clear that the family had ceased to be habitually resident in Spain by July 2011, relying on factors such as the agreement for the father to extend his working contract, selecting a school for P and the mother extending her leave of absence in Spain and increasing her employment in England. His Lordship was not satisfied that the father had consented to P returning to Spain thereafter, and therefore any unilateral action by the mother could not change P's habitual residence. The mother's application was therefore dismissed.

Permission

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