

De L v H [2009]

[2009] EWHC 3074 (Fam); [2010] 1 FLR 1229

03/12/2009

Barristers

Private: David Williams QC
Charles Hale KC

Court

Family Division

Practice Areas

International Children Law

Summary

The child had been the subject of a series of Hague Convention proceedings, following abductions by both parents. Eventually the Portuguese mother was given custody of the child; the British father was given staying contact over the holidays. When the child was 12 he failed to return to the mother's care in Portugal, remaining with the father. Some 8 months after he was supposed to return, the mother sought the child's summary return under the Convention, alleging wrongful retention. The father raised the defences of acquiescence and the child's objections to a return. It emerged that the father had informed the mother during the summer holiday that the child was claiming to have destroyed both his passports, because he did not wish to return to Portugal; the father had requested the mother's assistance in obtaining fresh passports, but the mother had refused to cooperate. About 6 months after the child should have returned, the father had discovered the child's British passport, which had been hidden rather than destroyed, however the father had chosen not to return the child, on the basis that the mother appeared to have accepted that the child would remain in England. The mother had chosen not to communicate with the child in England for several months. The child, now 13, was represented by a guardian; at the child's request, the judge had a lengthy conversation with the child in the presence of the Cafcass officer. The child throughout expressed strong clear objections to a return to Portugal, claiming to have lost faith in the Portuguese courts.

Held

There had been no wrongful retention at the end of the summer holiday, as at that stage the father had been unable to return the child without travel documents, and the mother, not the father, had had the power to obtain replacements. There had been wrongful retention from the stage at which the father had stopped attempting to arrange the child's return, about a month later. The mother's inaction for several months did not amount to acquiescence. It was difficult to envisage a case in which simple refusal by a custodial parent to assist the non-custodial parent in fulfilling the latter's responsibilities to return a child from abroad could be held to amount to acquiescence in the child's non-return. However, it was clear that the child objected to a return to Portugal, and that he was of an age and maturity at which it was

appropriate to take account of his views. In the court's discretion, the order for return was refused.

Permission

Family Law Week 