

A v T [2011]

[2011] EWHC 3882 (Fam)

09/12/2011

Barristers

Jacqueline Renton KC

Court

Family Division

Practice Areas

International Children Law

Summary

Hague Convention / Brussels II Revised proceedings where there had been a written agreement entitling the mother to leave Sweden to return to the UK with the children should she choose to do so.

Facts

The case concerned two children aged 4 ½ and 2. The mother was English and the father Swedish. They met in 2002 and lived initially in England before moving to Sweden in 2004, where they married. The mother was, however, very unhappy living in Sweden and shortly after she became pregnant for the first time, the parties entered into a written agreement, according to the terms of which the mother was entitled to leave Sweden with the children on a permanent or temporary basis should she ever choose to do so.

Thereafter the mother remained unhappy with life in Sweden and the parties discussed moving to the UK, although this never happened. In February and March 2011 the mother drew up further documents, which the father signed, which, by their terms, gave her permission to remove the children indefinitely and without limitation.

Later in 2011 the parties' relationship broke down and in June the mother travelled to the UK with the children. The father visited in July and after his return later that month the mother wrote to him indicating her intention to remain permanently in the UK with the children.

Thereafter, the mother issued divorce proceedings in England and the father initiated divorce and custody proceedings in Sweden. The mother then started wardship proceedings in England, before the father approached the Swedish Central Authority and applied for the return of the children pursuant to the Hague Convention. Following that step, the other proceedings in both countries were stayed. In the Hague proceedings, the mother relied on the defences of consent and acquiescence.

Held

Baker J considered the evidence and the authorities, particularly *Re PJ (Abduction)* [2009], now the

leading decision on the interpretation of the consent defence. The father relied heavily on *Re L (Abduction) (Future Consent)* [2008], arguing that the previous consent to a permanent removal was suspended/modified by the subsequent temporary removal. Baker J rejected the argument, finding that the 2006 agreement was clear and unequivocal, that the father had given his consent which he had never withdrawn; on the contrary, he had reaffirmed it on a number of occasions. It did not follow from *Re L* that in every case where a mother takes children out of the jurisdiction for a limited period, a clear and unequivocal agreement as to permanent removal is automatically superseded. Accordingly the mother's consent defence was made out (although the acquiescence defence would not have been). In all the circumstances of the case Baker J exercised his discretion to refuse to order a return.

Permission

Family Law Week 