

# H (A Child) [2012]

## [2012] EWCA Civ 913

28/05/2012

### Barristers

Teertha Gupta KC  
Andrew Powell

### Court

Court of Appeal

### Practice Areas

International Children Law

### Summary

Appeal by father against order in child abduction proceedings. Appeal allowed on the basis that the order was made as a result of a series of misunderstandings about the litigation history.

### Facts

This is an appeal against an order of Mostyn J made following a two day hearing. The appeal purported to raise legal questions as to whether a child habitually resident in another jurisdiction and wrongfully retained in this jurisdiction could remain on the basis that by intervening delay or by acts or omissions on the part of the applicant parent had resulted in a shift of jurisdiction or acquiescence.

The parties had agreed that the Afather would have primary care of their child in Malta. During a period of contact in England the mother made an application to Leeds County Court and obtained a time limited prohibited steps order and residence orders. It was subsequently, erroneously, believed that those orders remained in force and also that the father had issued child abduction proceedings. Those perceived proceedings were transferred by HHJ Heaton to the High Court and listed for hearing before Mostyn J.

### Held

The Court of Appeal held that there had been a series of misunderstandings about the litigation history which resulted in Mostyn J delivering a judgment on a case that had never been before him and which was the product of misunderstanding, mismanagement and misinformation. His order would be set aside.

In relation to submissions about the child's habitual residence the Court considered the provisions of Articles 10 and 17 of the Regulations Brussels II Revised and Thorpe LJ held that:

- (i) 'In a case where there has been a wrongful retention in this jurisdiction the court must of its own motion decline to entertain an application which offends the primary responsibility of another European State'; and
- (ii) 'It is absolutely plain that an abductor is prevented by the provisions of Article 10 from successfully

asserting a change of habitual residence as a consequence of the wrongful retention’.

**Permission**

Family Law Week 