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

JRG v EB [2012]

[2012] EWHC 1863 (Fam)

05/07/2012

Barristers
Private: David Williams QC

Court
Family Division

Practice Areas
International Children Law

Summary
Application by father under the Hague Convention in respect of his three sons, alleging that they were wrongfully retained in England, following an order by the French court granting residence to the father. Court declined to adjudicate the application.

Facts
This case was an application by the father of three children (J, B and N) under the Hague Convention alleging that the children had been wrongfully retained in the UK by their mother. Previously, on 4 April 2012, the French Tribunal de Grande Instance had heard cross-applications for residence by both parents and had awarded residence to F.

By Article 21(1) Brussels II Revised, "a judgment given in a Member State shall be recognised in the other Member States without any special procedure being required". By Art. 21(3) "any interested party may, in accordance with the procedures provided for in Section 2 of this Chapter, apply for a decision that the judgment be or not be recognised". The procedure for registration of a judgment on the exercise of parental responsibility is set out in FPR 2010, r.31.8 and PD31A. The registration process is purely administrative.

Article 33(1) BIIR provides that "the decision on the application for a declaration of enforceability may be appealed against by either party". The grounds upon which a challenge may be mounted are narrow, and set out in Article 23. Mostyn J comments in this judgment that there is a wealth of authority from the Court of Appeal and the ECJ that demonstrates that in only the most exceptional circumstances will the policy of BIIR be subverted by a refusal to recognise and enforce an order relating to parental responsibility made in another member state.

Had the father in this case applied to register the French order, this would have undoubtedly been granted, and any appeal by the mother would most likely have concluded by now and without success. Instead, the father had applied under the Hague Convention, notwithstanding Art 60 of BIIR which makes

it clear that this Regulation takes precedence over conventions including the Hague Convention.

The mother had raised various defences to the Hague Convention proceedings, none of which would be available to her in an appeal against registration of the French order. If she were to succeed, there would be nothing to stop the father immediately registering to enforce the French order which would then override any decision under the Hague Convention.

Held

Mostyn J therefore declined to adjudicate on the Hague Convention application. This was in recognition of the primacy of the French Court (the children clearly being habitually resident in France), the precedence of BIIR over the Hague Convention, the clear route laid down for recognition and enforcement of the French order, the likelihood of what would happen even if the mother did successfully defend the Hague application, and the overriding objective in family proceedings to deal with cases in a way that minimises expense and allots an appropriate share of the court's resources.

Instead, the application was adjourned to allow the father to register the French order, the court inviting the Senior District Judge to deal with this application personally as soon as it was lodged, and listing the apprehended appeal by the mother in the High Court.

In this judgment, Mostyn J stresses that the process of registration/appeal is the appropriate method to deal with a dispute of this nature over an order from another member state and that Hague proceedings should be avoided in such circumstances.

Permission

Family Law Week