

# J v J (Relinquishment of Jurisdiction) (2011)

**[2012] 1 FLR 1259 : [2012] Fam Law 399; [2011] EWHC 3255 (Fam)**

28/11/2011

## **Barristers**

Henry Setright KC  
Ruth Kirby KC  
Michael Gration KC

## **Court**

High Court (Family Division)

## **Practice Areas**

International Children Law

## **Summary**

In circumstances where the machinery in Regulation 2201/2003 had been ineffective, resulting in a delay of 18 months during which time no welfare inquiry in relation to the two young children involved had taken place, the court relinquished its superior jurisdiction in favour of Austria, and made a welfare-based decision for transfer of the children to the Austrian court.

## **Facts**

The court had before it a case involving two young children (X and Y) who had been removed from the United Kingdom to Austria by the respondent mother (M).

The instant court, which had jurisdiction under Regulation 2201/2003, had made an order in September 2010 in relation to parental responsibility in respect of X and Y, pending a hearing to determine their welfare interests. The order provided that M should return them to the UK by October 2010 and should afford the applicant father (F) reasonable contact. It stated that M should continue to be the primary caregiver, and that X and Y should remain together. The court also explained to F that proceedings which he had initiated in Austria under the Hague Convention on the Civil Aspects of International Child Abduction 1980 were totally misconceived. The court explained to F the steps he should take to have the judgment registered and enforced in Austria. F failed to take the necessary steps, and instead reinstituted the Hague Convention proceedings. Those proceedings were adjourned twice, before being refused. In August 2011, with the permission of the Austrian court, contact took place between F and X. F did not return X to M afterwards, but instead brought him back to the UK. From that date until the date of the instant hearing, F and X had been living in the UK, while M and Y lived in Austria. F had been ordered to serve on M an affidavit or witness statement explaining the steps he had taken to have the previous order recognised and enforced in Austria, and the reasons for the delay since the order being made. No satisfactory explanation had been given.

## Held

(1) X and Y had been separated for over three months, and any contact they might have had via Skype had been extremely limited and unsatisfactory. Moreover, they had not been looked after together by M. The whole basis of the court's previous order was that M was the primary caregiver. It was extremely unsatisfactory that no steps had been taken for 18 months to arrange a welfare inquiry either in the instant court or in Austria. The delay and legal manoeuvring could not go on any longer, and it was incumbent upon the court to take decisive action to ensure that an appropriate forum determined the welfare issues in relation to X and Y. Given that F had taken no steps to do what the court had asked him to do, and what the Regulation contemplated, and in circumstances where there was no prospect of the Austrian authorities returning M and Y to the UK any time soon, the only possible step was to make an order in the best interests of X for the summary return of him to Austria, and to discharge all existing English orders on the basis that Austria was the better place within terms of [art.15](#) to determine the welfare interests of X and Y (see paras 15-18 of judgment). (2) There had been no reported case where the instant court had relinquished its superior jurisdiction in favour of another EU state and made a welfare-based decision for transfer of a child to another EU court in circumstances where the machinery in the Regulation had been ineffective, either because of a failure of the judicial administration in the second state, or because of a failure of one of the parties to engage that machinery. In those circumstances, it was appropriate to grant F permission to appeal to the Court of Appeal (paras 22-24)

## Permission

Lawtel 