

Re J (Children) [2012]

[2012] EWCA Civ 1511

07/11/2012

Barristers

Henry Setright KC
Private: David Williams QC
Christopher Hames KC

Court

Court of Appeal (Civil Division)

Practice Areas

International Children Law

Summary

Applications for permission to appeal (1) an order under the Hague Convention for return of children to Spain and (2) the refusal to grant the children party status within proceedings to enforce the order.

Facts

The parties were involved in a long running private law dispute in which there had been proceedings both in England and Wales and Spain since 2008. The most recent application was by the father under the Hague Convention for the return of the children to Spain after they had been brought to England and Wales by the mother. That was heard by Hedley J on 8 October 2012 who granted the application for return. The mother then failed to hand the children over at the time directed by Hedley J. A further hearing consequently took place before Roderic Wood J on 15th October when he refused the mother's application to stay implementation of the order and "brought in all available domestic resources ... to ensure the vigorous enforcement of the order" (paragraph 3). The mother then absconded and she and the children had to be located following a search involving press assistance, after which she was arrested and the children taken into foster care. The following day the father attended to pick up the children, but in the event, following a "sad scene", only two of the children went with him and returned to Spain, and two remained in England (paragraph 6).

On 18th October, Roderic Wood J released the mother from custody and refused an application for party status, made on behalf of the two children who remained in the UK.

The mother sought permission to appeal the order for the return of the children to Spain and the two children who remained in the UK sought permission to appeal the order refusing them party status. The ground for the mother's application was that there was fresh evidence which rendered the judgment flawed. Thorpe LJ commented that there was nothing in the fresh evidence which undermined Hedley J's judgment and refused permission to appeal (paragraphs 9 and 10).

Held

Thorpe LJ also noted that welfare issues had been determined by the Spanish court which had directed the mother to bring the children to hearings but she had not done so. Thorpe LJ therefore queried the purpose of ongoing Hague Convention proceedings in England and Wales. He did, however, comment that the frustrated endeavour to enforce the order might have been avoided if the process had been approached with greater sensitivity and the children involved in the enforcement proceedings. He invited the parties to canvass with the judge the possibility of him seeing the children to explain to them the “reality and also the inevitability of their return to Spain” (paragraph 16).

Permission

Family Law Week 