

Re H (A Child) & The United Mexican States (Intervener) (2013)

AC9501919

23/01/2013

Barristers

Henry Setright KC
Teertha Gupta KC
Private: Hassan Khan

Practice Areas

International Children Law

Summary

A judge had not erred in dismissing a mother's application for the summary return of her daughter to Mexico from the United Kingdom. The presence of the father's signature on a Mexican court order which provided for the child to remain living in Mexico did not lead to retrospective recognition that the child was habitually resident in that country for the purpose of the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.3

Facts

The appellant mother (M) appealed against a decision not to summarily return her six-year-old daughter (C) to Mexico.

M had come to the United Kingdom from Mexico, where she married the respondent father (F), who was from the UK. C was born in 2006, and during 2008 the family went on holiday to Mexico. F returned to the UK believing that M and C would follow. M, however, had no such intention and F took all possible steps to have C returned, including making an application for a summary return order under the Hague Convention on the Civil Aspects of International Child Abduction 1980. That was issued, but M defeated all efforts by F to secure C's return, in disregard of her responsibility to engage in proper processes. F also issued an application in wardship and obtained an order from a judge for C's return. M evaded all process and location until late March 2012 when C was located. M was arrested and C put in social care pending the resolution of the proceedings. The court directed that the trial of the outstanding application for summary return should take place if mediation did not result in settlement. The mediation resulted in an agreement which provided for C to remain in Mexico with frequent and generous contact granted to F in the UK. The family travelled to the UK on March 31, 48 hours after the judge's order. Shortly afterwards, F reneged on the agreement, relying upon the historic wardship order. M applied pursuant to the Convention for C's summary return. That was refused.

M submitted that the judge had erred (1) in refusing C's summary return as she had failed to accept the inviolability of the parents' agreement enshrined in the Mexican court order, which, as a consequence of

F's signature, led to retrospective recognition that C was habitually resident in Mexico since 2008 for the purposes of art.3 of the Convention, and if the signature was not effective, then the interval of 48 hours was enough to make C habitually resident; (2) failing to scrutinise the protective measures available to her when finding that the art.13(b) defence was made out.

Held

(1) It was plainly not established that C was habitually resident in Mexico on March 31, 2012. There was no force in the submission that a mere signatory or the presence of two days could lead to retrospective habitual residence. (2) It was equally not established that the judge was wrong to uphold the art.13(b) exception. She had demonstrated that she was fully conscious of the measures that would be employed if C was returned to Mexico by stating that the usual safeguards would be inadequate to prevent a further disappearance. (3) (Obiter) (McCombe, L.J. dissenting) The application for a wardship order made over three years before the Mexican conference could not possibly be said to override the agreement. M and F were not negotiating welfare issues; the question was whether there should be an order for summary return. There was no useful purpose in a wardship application where the two countries were both signatories to the Convention and proceedings were still live. (4) (Per McCombe, L.J.) A wardship order might have been able to override F from consenting to the agreement. The fact that it was an old order did not necessarily preclude that. However, that point was only made as an alternative to the other grounds of appeal and so no concluding view should be expressed on its effect.

Permission

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