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

Re A (Children) (2013)

AC9101290

23/07/2013

Barristers
Private: Marcus Scott-Manderson QC
Private: David Williams QC
Cliona Papazian

Court
Court of Appeal (Civil Division)

Practice Areas
International Children Law

Summary
There was no error in a judge's decision to refuse a father's application to return his children to Norway where the children objected in light of a single incident of violence between the father and mother, which had led to their separation and the mother's resettlement with the children in the United Kingdom.

Facts
The appellant father (F) appealed against a decision refusing his application under the Hague Convention on the Civil Aspects of International Child Abduction 1980 for the return to Norway of the children of his marriage to the respondent (M).

F and M had been living in Norway with their two children. In 2008 there was an incident, witnessed by the children, of violence against M by F, which led to their separation. After they had separated, their third child was born. M moved to the United Kingdom with the children. F applied for the return of the children to Norway. The two older children objected in strong terms, and the judge refused the application.

F submitted that (1) the judge had misdirected herself in failing to consider all the relevant authorities; (2) the judge had misdirected herself in confusing the children's antipathy to him with their antipathy to Norway; (3) the balancing exercise conducted by the judge was flawed in that she placed too much weight on the 2008 episode, entirely overlooking that there had been nothing else in the history to found or explain any objection to return on the part of the children.

Held
(1) F's criticism of the judge could not be made good. The judgment was a careful, comprehensive, reserved judgment, which contained a review of the law regarding the topic of children's objections. When she applied the law to the facts, she particularly directed herself to the comments of Sir Mark

Potter in R (A Child) (Abduction: Child's Objections), Re [2009] EWHC 3074 (Fam), [2010] 1 F.L.R. 1229 regarding the four-stage test identified by Ward L.J. in T (Children) (Abduction: Child's Objections to Return), Re [2000] 2 F.L.R. 192. Having done that exercise, she emphasised that it was a quite exceptional case, in that the one incident in 2008 had affected the relationship not only between F and M but also between F and the children. That, and the children's emotional response, especially that of the oldest child, who had a sense of himself as his mother's protector and of how exposed they would be if they were returned to Norway, whatever protective measures there were there, had clearly profoundly affected the CAFCASS officer's view. Therefore, despite there having been no repetition of that type of incident, and the fact that there were protective measures available in Norway, it had plainly been open to the judge to treat the one incident as the foundation for her conclusion, W (Children), Re [2010] EWCA Civ 520, [2010] 2 F.L.R. 1165, K (A Child) (Abduction: Case Management), Re [2010] EWCA Civ 1546, [2011] 1 F.L.R. 1268, R (A Child) and T (Children) considered. (2) F's submission that the children's objection was to him not to Norway was answered by the CAFCASS officer's evidence. She made it plain that the very upset reaction of one of the boys was to the possibility that he would be sent back to Norway, not to live with F. (3) F's submission that the judge had impermissibly found the children's objection proved when there was nothing in the history but a single episode was not persuasive. That did not carry the consequence that the two boys' objections were not rooted in reality. On the contrary, that episode had severed the parent-child relationship, and made the case more not less compelling. (4) The judge's explanation for her conclusion was impeccable, and there was no basis for considering her analysis to be flawed.

Appeal dismissed

Permission

Lawtel