

ET v TZ [2013]

[2013] EWHC 2621 (Fam)

06/08/2013

Barristers

Robin Barda

Court

High Court (Family Division)

Practice Areas

International Children Law

Summary

Application by mother under Brussels II Revised seeking a declaration of enforcement of a Polish order granting her interim residence in respect of her son. Declaration made.

Facts

Two applications were brought by the mother of an eight year old boy. The first application had been initiated in Poland pursuant to the Hague Convention, and had been brought before the English Courts for emergency relief. The second application was made pursuant to Arts 23-29 of Brussels II Revised, in which the mother sought a declaration of enforcement of a Polish order which had granted her interim residence.

The mother and B had returned to Poland from England after the parties' separation in 2008. There had been contact between the father and child, but in 2010, the father had removed the child from the mother's care, a step described by the court as kidnap. The mother had subsequently obtained the interim residence order, but the father had failed to return the child, and had later travelled to England with him, illegally, and without the consent of the mother. There had been enforcement orders, summonses and a warrant for the child's return in Poland. The Polish courts had gone so far as to remove the father's parental responsibility.

The court found that it had to consider the enforcement issue first. The father argued pursuant to Art 23(a) and (b) of Brussels II, that the judgment should not be recognised, on the basis that it was contrary to public policy and that the child's voice had not been heard. The court reviewed the authorities relating to the Art 23 objections, in particular the guidance of *Re S (B 2: Recognition: Best Interests of the Child) (No. 1)* [2004] 1 FLR 571, and *Re L (Brussels II Revised) (Appeal)* [2013] 1 FLR 430, in which it was held by Munby LJ, that Art 23(a) contained a very narrow exception and the bar was set very high:

"Recourse to the public policy clause in Article 27(1) of the Convention can be envisaged only where recognition or enforcement of the Judgment delivered in another contracting state would be at variance

to an unacceptable degree with the legal order of the state in which enforcement is sought in as much as it infringes a fundamental principle. In order for the prohibition of any review of the foreign judgment as to its substance to be observed the infringement would have to constitute a manifest breach of a rule of law regarded as essential in the legal order of the state in which enforcement is sought or a right recognised as being fundamental within that legal order.”(para 37).

Held

The court found that it had to ask whether the situation was so obviously and extremely abusive so as to qualify as the exceptional case. In the present case, it was held that it was not, and therefore the necessary declaration of enforcement was made.

Permission

Family Law Week 