

Re H, R and E (Children) [2013]

[2013] EWHC 3857 (Fam)

02/09/2013

Barristers

Alistair G Perkins

Court

High Court (Family Division)

Practice Areas

International Children Law

Summary

Application by father under the Hague Convention for the summary return of three children to the Netherlands. Arts 13a and 13b of the Convention argued by mother. Return order made.

Facts

The father applied under the Hague Convention for the summary return of three children to the Netherlands. In opposing the return the mother argued that the father consented to the removal of the children pursuant to Article 13a of the Convention; that subsequent to the removal the father acquiesced to their living in this jurisdiction pursuant to Article 13a; and thirdly that the children would be at grave risk of harm and/or would be placed in an intolerable position if the court were to order their return to the Netherlands pursuant to Article 13b of the Convention.

In a review of the authorities in relation to acquiescence and/or consent the court confirmed that acquiescence is a subjective state of mind, it is a pure question of fact and the burden of proving it is on the abducting parent. The court said that judges should be slow in inferring acquiescence from attempts to reconcile or agree a voluntarily return. Furthermore consent needs to be clear and unequivocal although this can be inferred from the circumstances of the case. *H v H (Abduction: Acquiescence)* [1997] 1 FLR 872; *D v S (Abduction: Acquiescence)* [2008] 2 FLR 293; *K (Abduction: Consent)* [1997] 2 FLR 212; *P-J (Abduction Habitual Residence : Consent)* [2009] 2 FLR 1051; and *TB v JB (Abduction : Grave Risk of Harm)* [2001] 2 FLR 515 approved.

Held

The court held that there was no evidence of anyone speaking directly to the father about the removal. Taken at its highest the maternal family's evidence was that the father would have known about the plan to move to the UK at a time when there were discussions between the families regarding reconciliation. Waiting two months after becoming aware of the removal to try and affect reconciliation was reasonable. The court found nothing in the father's conduct which could amount to acquiescence.

In respect of risk of harm the mother asserted that she had been physically and sexually abused by the father during the relationship. The court found that the mother had lied about the sexual abuse and there was insufficient evidence to support a finding of physical abuse. However the court proceeded on the basis of the mother's case in respect of the physical abuse for the purpose of the judgment. On either party's case there had been no contact between the parents from February and September 2012 when the mother moved to the UK. The father offered undertakings to regulate his behaviour towards the mother and the court was satisfied, based on the mother's ability to call upon the assistance of the Dutch courts and police and the father's undertakings, that there was no grave risk of harm.

Finally in the event the court had been wrong in its conclusion under Article 13b and the question of discretion arose, the court confirmed that it would unhesitatingly conclude it was manifestly in the best interest of the children to return to the Netherlands where they had lived all their lives prior to September 2012. Accordingly it was ordered that the children should be returned to the Netherlands.

Permission

Family Law Week 