

Re F (Abduction: Consent) [2014]

[2014] EWHC 484 (Fam)

25/02/2014

Barristers

Jacqueline Renton

Court

High Court (Family Division)

Practice Areas

International Children Law

Summary

Application under the Hague Child Abduction Convention to return a child to Denmark

Facts

The father, a Bosnian national met and lived with the mother, a Slovakian national in Denmark. They had a child in 2008 and in 2013 the mother brought him from Denmark to the UK via Slovakia and the Czech Republic.

The father made an application under the Hague child abduction convention for the child to be returned to Denmark approximately 8 months after the child arrived in the UK.

The mother opposed the application for the child to be returned on the basis that the father had consented to the child moving to England, failing which, that the father had acquiesced. The father denied both propositions.

Mr Justice Peter Jackson considered whether the father had consented, reminding himself that the authorities required such consent to be clear and unequivocal. He found that the father was never asked for his consent and that he had never given it. He based his decision on the fact that the probabilities were strongly against it and also that he preferred the evidence of the father to the mother on this.

His Lordship considered the House of Lords Guidance in relation to acquiescence (*Re H (Abduction: Acquiescence)* [1997] 1 FLR 872 at 884). Having heard the parents give evidence, he did not find that the father had acquiesced.

The mother raised a defence under Article 13(b), arguing that the child was integrated in England and referring to the father's abusive behaviour and his criminality. She also relied on the lack of family support in Denmark and her need for income and accommodation.

Held

Mr Justice Peter Jackson was referred to *Re E (Children)(Abduction: Custody Appeal)* [2011] UKSC 27 and *Re S (A Child)(Abduction: Rights of Custody)* [2012] UKSC 10. He considered whether a return to Denmark would be likely to expose the child to grave harm or place him in a situation that he should not be expected to tolerate. He found this not to be the case. He assessed the mother as a reasonably robust and determined person with wider family support, albeit not in Denmark. He was satisfied with the undertakings the father offered which were enforceable in Denmark. Mr Justice Peter Jackson accepted that a return to Denmark would bring significant disadvantages to the child in disrupting his current arrangements, but these did not engage Article 13(b) and had to be weighed against the advantage of seeing his father and his future being determined in the jurisdiction of his habitual residence.

Accordingly, an order for return was made.

Permission

Family Law Week 