

Re B (A Child) (1980 Hague Convention Proceedings) (2014)

[2014] EWCA Civ 375

27/03/2014

Barristers

Mark Jarman KC

Court

Court of Appeal Civil Division

Practice Areas

International Children Law

Summary

Whenever care proceedings had a foreign element, there was a need for the parties and the court to consider the basis for jurisdiction and for there to be a record in an order of the court's approach to it. Where there were both care proceedings and proceedings under the Hague Convention on the Civil Aspects of International Child Abduction 1980, it was likely that input from the local authority would be extremely valuable in the Hague proceedings

Facts

The appellant mother (M), who was English, appealed against a decision to return her 10-year-old daughter (B) to France to live with her father (F), who was French.

B was born in France, where M and F had both lived. When they separated she lived with M in France, and had regular staying contact with F. B was habitually resident in France until M wrongfully removed her to England, where they initially stayed with M's brother (U). M had increasing mental health problems, and she and B moved from U's home into temporary accommodation. They were later evicted and B was removed from M's care by the local authority and placed with U under interim care orders. M had hospital treatment and then moved to supported accommodation. B was attending a local school near U's home. About 15 months after M removed B from France, F applied under the Hague Convention on the Civil Aspects of International Child Abduction 1980 for her return. M resisted the application on the basis of B's objections to being returned and on the basis, under art.13(b), of grave risk that the return would expose her to physical or psychological harm or otherwise place her in an intolerable situation. The local authority did not take part in the final Hague hearing. The judge did not accept M's art.13(b) argument; she accepted that B objected to being returned and had attained an age and a degree of maturity at which it was appropriate to take into account her views but, exercising her discretion, determined that a return should nonetheless be ordered. M's appeal was supported by the local authority and by U.

M submitted that the judge's approach to the discretionary stage of the process was erroneous because she considered only two options for B, namely living with M or with F, omitting to consider whether it was in her best interests to live with U; and the judge had failed to take into account or give proper weight to the various relevant factors and had arrived at a wrong decision.

Held

(1) Although welfare considerations were important in a judge's discretionary decision in the context of a child's objections in art.13, welfare was not paramount. The judge was not making the ultimate welfare decision for the child but deciding whether to return her to the country of her habitual residence from which she had been wrongfully removed, in order that the courts of that country could make that decision. M's arguments seemed at times not to recognise that if the parents were unable to agree as to what arrangements would serve B's welfare in the longer run, the issues would be determined in due course in the French courts and were not the subject of the instant proceedings. The judge's exercise of her discretion had properly taken into account the material factors and she had arrived at a decision that was open to her. She had dealt appropriately with the art.13(b) issue and was right to reject M's argument that B would be placed in an intolerable situation by being returned to France (see paras 37-52 of judgment). (2) There had been two problems with the care proceedings. First, it was not clear that the jurisdiction issue had been addressed. By virtue of Regulation 2201/2003 art.1, art.8 and art.10, jurisdiction in relation to proceedings such as this was retained by France, as the Member State where B had been habitually resident immediately before she was wrongfully removed. The English courts could make decisions only within art.20, which catered for urgent cases where provisional protective measures were necessary. Therefore, there had been jurisdiction to grant the interim care orders. The case served to underline the need for the parties and the court to consider the basis for jurisdiction whenever a case had a foreign element and for there to be a record in an order of the court's approach to it, E (A Child) (Brussels II Revised: Vienna Convention: Reporting Restriction), Re [2014] EWHC 6 (Fam), [2014] Fam. Law 425 considered. Additionally, F had not been served with notice of the care proceedings because the local authority had been unable to trace him (paras 11-12). (3) The local authority regretted its decision not to participate in the final Hague hearing apart from filing a position statement. The court would not lay down a hard and fast rule but it was likely that input from the relevant local authority would be extremely valuable in many such cases and indispensable in some (para.54).

Permission

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