

FB v IB [2014]

[2014] EWHC 759 (Fam)

12/03/2014

Barristers

Cliona Papazian

Court

High Court (Family Division)

Practice Areas

International Children Law

Summary

Judgment in Hague Convention proceedings brought by father who contended that he had not consented to the children's relocation from the USA to England. Declining to exercise inherent jurisdiction to order the return of the children, the court made residence orders in respect of both children in favour of the mother.

Facts

This judgment concerns Hague Convention proceedings brought by the father who contended that he had not consented to the children relocating from the USA to England.

The mother is a British national and the father was born in Pakistan but is a US national. The parties met online and were married in 2003. There are two children of the marriage, M born in 2005 and S born in 2006. Both children were born in New York and have dual British and American nationality. During the marriage, the father had at least one other relationship with another woman; one such relationship resulted in the birth of a child who was born in 2006.

The mother complained that the father was abusive and there were difficulties in the relationship. In 2010 she applied to the court for non-molestation orders and the parties separated. In 2011 they entered into a consent order, which permitted the parents to relocate with the written consent of the other. The mother's case was that in July 2011 she and the father drafted a letter of consent, which permitted her to relocate to England with the children. The mother said that this document was signed by both parties and witnessed at the offices of a public notary. The father denied that he consented to the relocation and that he signed the document. The father asserted that the signature was a forgery.

On 20th July 2011 the mother and the children travelled to the England on open-ended tickets. The father went with them to the airport. He said that he thought they were returning to England because the maternal grandfather was unwell. When the mother and the children returned to England, they stayed initially with the maternal grandparents but then moved to their own accommodation in Bedford.

In February 2012 the mother and children travelled to America for a 10-day holiday but returned to England. That was the only time the children saw their father until he came to England to take part in proceedings. In 2013 the mother travelled to the US alone and the father claimed they reached an agreement that the mother and children would return permanently. The mother agreed that there was some discussion about a return to New York but she would have to see a significant number of changes before she would contemplate coming back.

The father said that until August 2013, when he booked return tickets for the mother and children, he had provided a 'rolling consent' for the children to remain in England. When they did not return to America in August 2013, he claimed they were wrongfully retained. He initiated Hague Convention proceedings seeking a return order. The mother's case was that she did not agree that she or the children would return to America and did not accept that there was any unlawful retention.

The court heard oral evidence from the parents, a friend of the mother, G, by video link from New York, and a handwriting expert. When considering the issue of habitual residence the court found that, were it not for the orders for the New York court, there could be little real argument that the children had acquired a habitual residence in Bedford as a matter of fact and applying the decisions of the Supreme Court in *A v A and Anor (Children: Habitual Residence)* [2013] UKSC 60 and *In the matter of KL* [2013] UKSC 75. The court found that there was a considerable amount of integration by the children into their social and family environment. The reasons for the removal and the intention of the parents were matters which the court must factor in when considering the question of habitual residence.

The court did not accept the father's evidence, finding it inconsistent, evasive, combative and avoidant. The court found that he had signed the consent and it was notarised. Further that the father had manufactured a 'retention' by claiming to buy tickets for a return flight that was never agreed. Even if the court had accepted the father's evidence, applying the formulation of European Law set out in the case of *A v A* at paragraph 54 by Lady Hale [paragraph 51 of the judgment] the judge said it was likely that she would have concluded that the children were habitually resident in the UK since August 2013.

Held

The judge considered the case of *Re M (Abduction: Zimbabwe)* [2008] 1 FLR 251 and found that it could not be assumed that the US was a better forum for the resolution of parental dispute. The court found that it was not in the children's best interests to return to New York and declined to exercise the court's inherent jurisdiction to order the return of the children. The court made residence orders in respect of both children in favour of the mother.

Permission

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