

Re KP (A Child) (2014)

[2014] EWCA Civ 554

01/05/2014

Barristers

Teertha Gupta KC
Private: David Williams QC
Mark Jarman KC
Michael Edwards

Court

Court of Appeal Civil Division

Practice Areas

International Children Law

Summary

A judge, when meeting a 13-year-old child subject to proceedings under the Hague Convention on the Civil Aspects of International Child Abduction 1980, had failed to confine her role to passively hearing what the child had to say and had strayed into evidence-gathering. The Court of Appeal drew together the themes common to the authorities concerning the circumstances and manner in which a child subject to such proceedings should be heard.

Facts

The appellant mother (M) appealed against a decision (A (Abduction: Child's Objections to Return), Re [2013] EWHC 3381 (Fam), [2014] Fam. Law 403) to return her child (K) to Malta.

K was Maltese, 13-and-a-half years old and had lived in Malta with M and her father (F) until M brought her to England without F's knowledge or consent, and they then lived with K's maternal grandfather in England. F issued proceedings in England under the Hague Convention on the Civil Aspects of International Child Abduction 1980. By the time of the hearing M accepted that she had wrongly removed K and that the court should summarily order K's return unless an exception under the Convention was established. M relied on K's objections to being returned and on art.13(b). A CAFCASS officer interviewed K, who described Malta and F in negative terms and said she would refuse to return. The officer did not identify information indicative of a risk of grave harm to K, but expressed concern about the strength of K's stated refusal to return. At the hearing the judge met with K for over an hour. She asked her 87 questions. The CAFCASS officer's view was that there should be no order for return, but the judge decided that there should be. She concluded that K was confused and had no cogent or rational grounds for refusing to return; that the art.13(b) ground was not made out, and that it was in K's interests to return. K supported M's appeal.

M submitted that the judge had erred in obtaining and relying on evidence from K received during their meeting to support her rejection of the clear and consistent evidence of the CAFCASS officer and in doing so had significantly contravened the Guidelines for Judges Meeting Children who are Subject to Family Proceedings (April 2010).

Held

(1) The 2010 Guidelines indicated that there was a clear distinction between a judge and a young person meeting and communicating without the aim of evidence-gathering, and a meeting that included that aim. That guidance did not conflict with the authorities. Care was needed to distinguish between the two processes. Where a child was to provide evidence upon which the court would rely, any process had to respect the rights of the parties under the European Convention on Human Rights 1950 art.6 and had to accord with the overriding objective in the Family Procedure Rules 2010 r.1.1 (see paras 50-51 of judgment). The courts' understanding of how best to "hear" a young person within the court setting in a Hague Convention application was still developing. The appropriate channel would differ from case to case. It was right that the Guidelines were merely that. The court did not intend to say anything that could set current practice in stone or prevent further development of good practice. Drawing together the themes common to the authorities: (a) there was a presumption that a child would be heard during Hague Convention proceedings, unless that appeared inappropriate, D (A Child) (Abduction: Rights of Custody), Re [2006] UKHL 51, [2007] 1 A.C. 619 applied; (b) "hearing" the child involved listening to his or her point of view, D followed, C v W [2007] EWHC 1349 (Fam), [2007] 2 F.L.R. 900 applied; (c) the means of conveying a child's views to the court had to be independent of the abducting parent, D followed; (d) the three possible channels were a report by a CAFCASS officer or other professional, which was usually enough, face-to-face interview with the judge, especially where the child asked to see the judge, or, less commonly, the child having full party status with representation, D followed; (e) a meeting was an opportunity for the judge to hear what the child might wish to say, and for the child to hear the judge explain the nature of the process and in particular why, despite the child's views, the court's order might direct a different outcome, C v W applied; (f) a meeting might be appropriate when the child asked to meet the judge, but there would also be cases where the judge of his or her own motion should attempt to engage the child, J (Abduction: Children's Objections), Re [2011] EWCA Civ 1448, [2012] 1 F.L.R. 457 applied (paras 52-53). None of the authorities went further than the Guidelines by suggesting that a judicial meeting might be used to obtain evidence from the child or to go beyond hearing from the child what he or she wanted to volunteer. Where a child's evidence might prove determinative, it might be adduced by an appropriate process into the full proceedings by witness statement, CAFCASS report, or where the child was a party by cross-examination of the adult parties and closing submissions, LC (Children) (International Abduction: Child's Objections to Return), Re [2014] UKSC 1, [2014] 2 W.L.R. 124 followed (para.54). (2) Although the judge had understood that the meeting with K was not for gathering evidence, her conduct of it fell on the wrong side of the line. Her questioning went beyond the passive role required, and she should not have regarded the meeting as an opportunity for K to make representations or submissions (para.56). The material the judge gleaned from the meeting went to the heart of her analysis and influenced her decision to order K's return to Malta, so her decision had to be set aside (paras 58-59).

Permission

Lawtel 