

TF v PJ [2014]

[2014] EWHC 1780 (Fam)

10/04/2014

Barristers

Henry Setright KC
Christopher Hames KC
Michael Gration KC

Court

High Court (Family Division)

Practice Areas

International Children Law

Summary

Application by mother to revoke an order for summary return of a child to Italy on the ground of material change in her circumstances. Original order set aside.

Facts

In these Hague Convention 1980 proceedings, the mother applied to revoke an order for summary return to Italy on the ground of material change in her circumstances since the original order was made. At the final hearing before Ms Russell QC (as she then was) the mother was ordered to return the child to Italy. Thereafter, the mother was unsuccessful in seeking to overturn the order before the Court of Appeal. The mother asserted that there had been a dramatic change in her mental condition, and she had had a total psychiatric and psychological collapse since the order of the Court of Appeal.

The central issue in the mother's current application was whether the judge had the power to set aside an order made by a judge of equivalent jurisdiction in family proceedings.

The matter came before Mostyn J who reviewed the authorities dealing with the setting aside of orders in civil and financial proceedings, and considered the CPR and FPR 2010. After also considering the Supreme Court case of *Re L and B (Children)* [2013] UKSC 8, Mostyn J came to the following conclusions: the power of the court extended to Hague Convention proceedings given that these proceedings were about children, and their welfare was a primary consideration. In addition, the power is not confined only to procedural or case management orders made under the rules, but also applies to final orders.

Held

The learned judge further stated:

"The only relevant circumstances thus far identified where the rule can be invoked are where there has been non disclosure or a significant change of circumstances.... It applies in ancillary relief proceedings,

... and it applies, in my judgment, to all children proceedings whether they are care proceedings, whether they are private law children proceedings or whether they are proceedings under the Hague Convention.”

He emphasised the importance of “consistency in the application of identical words to situations across the board”, and thus concluded that rule 4.1(6), FPR 2010 empowers the court of equivalent jurisdiction, “provided that either non-disclosure or a significant change of circumstances is demonstrated” to make an order revoking the original order.

On the facts of this case, Mostyn J considered that the psychiatric evidence obtained since the original hearing (and the appeal to the Court of Appeal) disclosed such a material change of circumstances that it represented “a sea change” in the relevant evidence appertaining to the mother’s mental health. Although there were other factors which amounted to material changes, the judge was of the opinion that the psychiatric evidence alone justified a finding of material change of circumstances. The original order was set aside.

Permission

Family Law Week 