

## B v B [2014]

### [2014] EWHC 1804 (Fam)

21/05/2014

#### **Barristers**

Christopher Hames KC

#### **Court**

High Court (Family Division)

#### **Practice Areas**

International Children Law

#### **Summary**

Order for the summary return of a 9 year old girl to Lithuania Mother's Article 13 defences rejected and safeguards put in place to support return.

#### **Facts**

The father applied for the summary return of A, a 9 year old Lithuanian girl, pursuant to the Hague Convention on the Civil Aspects of International Child Abduction 1980.

A's parents are Lithuanian citizens, who were married and divorced in Lithuania. Court orders provided for A to live with her mother and have contact with her father. In December 2013, the mother brought A to England to live permanently.

There was a dispute about whether the father had rights of custody pursuant to the 1980 Convention. The mother claimed that she had been told by a lawyer and a judge that she had an unrestricted right to remove A from the county; however, the expert evidence before the court from a Lithuanian solicitor confirmed that the non-resident parent's permission is required to take a child abroad permanently.

The mother also argued that the father consented to her and A moving to England so she could seek employment. The father disputed this and stated that although they spoke about the mother moving to England; he had understood that A would stay with him until she found work and further arrangements had been made. The court concluded that consent must be clear and unequivocal. This can be shown by consent in writing, an admission of consent, or an oral agreement between the parties which is corroborated by third-party evidence or by the conduct of the parties.

Mostyn J concluded that on the evidence available, the mother did not satisfy him that the father had consented. The father's conduct supported his contention, as he reported the matter to the police and made an application for A's return promptly. The judge also noted that the mother's actions were not consistent with a consensual arrangement, as her activities were "shrouded in secrecy" and she did not supply the father with contact details.

The mother also advanced an Article 13 defence that A objected to returning to Lithuania. A's views were the subject of a report from the Cafcass High Court Team. The Cafcass Officer's evidence was that although A expressed a desire not to return to Lithuania, there was a significant lack of substance to her objections. Mostyn J concluded that A's objections did not meet the threshold for a sufficiently mature objection to return for the specific limited purpose of allowing the matter to be considered by the Lithuanian courts. This defence was therefore rejected.

Finally, the mother claimed that A would be exposed to an unacceptable or intolerable risk of physical or psychological harm if A was ordered to return. Mostyn J rejected this defence, as there were sufficient safeguards that could be put in place to guard against any potential risk.

### **Held**

The court therefore concluded that A was removed in breach of the father's rights of custody and that she should be returned forthwith. It was noted that the Convention does not specify a time period for return; however, the judge concluded that it was reasonable to give the mother three weeks to return. This would allow her to put her affairs in order, prepare A for the return, and instruct a lawyer in Lithuania to assist her to consider whether to seek an urgent interim hearing in Lithuania to consider whether she could stay in England during the course of court proceedings in Lithuania. If no such order was granted in Lithuania, she must return with A to Lithuania by the date specified.

A number of protective measures were put in place, including that A would remain in the custody of her mother and there would be no contact with the father until there is a further order for contact by the Lithuanian courts. Further, the father was prohibited from molesting the mother or going within 100 metres of her property.

### **Permission**

Family Law Week 