

Cambra v Jones & Jones [2014]

[2014] EWHC 2264 (Fam)

09/07/2014

Barristers

Private: David Williams QC
Christopher Hames KC
Laura Morley

Court

High Court (Family Division)

Practice Areas

International Children Law

Summary

Judgment in Hague Convention proceedings, explaining why child should participate as a party to proceedings and considering the committal of mother for breach of order to return children to Spain. Application for committal dismissed.

Facts

This judgment arose during the course of a longstanding and bitterly contested Hague Convention case. Previous judgments can be found at *Cambra v Jones and Palacin* [2014] EWHC 913 (Fam); *Re Jones (No 2)* [2013] EWHC 2730 (Fam); *The Solicitor General v JMJ (Contempt)* [2013] EWHC 2579 (Fam); *Cambra v Jones* [2013] EWHC 88 (Fam), [2014] 1 FLR 5; and *Re Jones* [2012] EWHC 2955 (Fam).

Five children of a Spanish father and English mother were retained in the UK by their mother following contact in August 2012. The mother had previously retained the children in October 2008 and, following their return to Spain ordered by the UK courts, the father had obtained custody in the Spanish courts.

In August 2012, the father again commenced Hague Convention proceedings which concluded with a return order on 9 October 2012. The mother did not hand over the children as ordered and on 16 October 2012 a collection order was made. The mother then fled with the children. They were located on 17 October 2012 and the two youngest children returned to Spain with their father (the eldest child had previously returned). Jessica, then aged 15 and Tomas, then 13 refused to return.

In this application, the father applied for the mother's committal to prison for her breach of the order made in August 2013 requiring her to return the two children, Jessica and Tomas, to Spain; and for her to bring them to London to see a CAFCASS officer who had previously interviewed them and recorded their "exceptional" resistance and absolute determination to resist any steps to return them to Spain. The mother's defence was that it had been impossible for her to compel the children to return to Spain, or to

compel them to come to London. An application by Jessica to be represented and participate in the committal proceedings was granted (see *Cambra v Jones and Palacin*).

Held

Despite being strongly critical of the mother's conduct, and endorsing similar comments made by Theis J in previous proceedings, the President was not satisfied that the father had proved to the criminal standard that the mother could have ensured compliance with the orders. Contempt was not proved.

The President rejected proposals advanced on behalf of the father that proceedings for contempt should in certain circumstances impose a strict liability or a reversal of the burden of proof, or a persuasive burden on the mother in circumstances where an order had not been complied with. Permission to appeal was refused.

Permission

Family Law Week 