

AVH v (1) SI (2) SIV (By Her Guardian Judith Bennett-Hernandez) (2014)

[2014] EWHC 2938 (Fam)

04/09/2014

Barristers

Sam King QC

Court

Family Division

Practice Areas

Public Children Law

Summary

A 15-year-old was returned under the Hague Convention on the Civil Aspects of International Child Abduction 1980 to her mother's custody in Mexico despite her objections. Her desire to remain and be educated in England was taken into account given her age and maturity, but other welfare considerations, including the instability of her father's home, pointed clearly to her return to Mexico.

Facts

The applicant Mexican mother (M) applied for the return of her daughter (S) from the custody of the respondent British father (F).

M and F had divorced and M had returned to Mexico with their three children. Four years later the youngest child, 15-year-old S, returned to England without M's knowledge or consent and with F's clandestine assistance. S felt that she could not receive appropriate schooling in Mexico and wanted to remain and be educated in England. Shortly after S arrived in England she saw F's brother assault his wife and called the police. That caused a rift between S and F's family and she was not then welcome in F's home, but returned following intervention by social services. S nevertheless maintained that she wished to stay in England.

Held

(1) S had been wrongfully removed or retained and the court was obliged to order her return forthwith under the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.12 unless one of the exceptions under art.13 applied. Only one potential exception was engaged, namely S's objection to returning. Her views about her education were passionately and genuinely held and she was not reproducing the views of either parent. She appeared to be articulate, bright, determined, confident and resourceful. The strength and conviction of her views was clear, K (A Child) (Abduction: Case Management), Re [2010] EWCA Civ 1546, [2011] 1 F.L.R. 1268 followed. S was probably a more able student in Mexico that she gave herself credit for and her decision to switch schools, educational systems

and countries, without discussion with M, suggested a degree of impulsivity. The rationality of her lack of planning in relation to a school placement in England and her dismissal of alternative Mexican schools was questionable. However, there was sufficient rationality in her view to amount to an objection in Convention terms and, given her age and maturity, it was appropriate to take account of her views, R (A Child) (Abduction: Child's Objections), Re [2009] EWHC 3074 (Fam), [2010] 1 F.L.R. 1229 applied (see paras 22-23, 31-34 of judgment). (2) The court was concerned with the extent to which S's views were at odds with other welfare considerations such as the lack of an English school place for her when term had already started; the lack of research by her or F into whether English secondary schooling was suitable; the likelihood of being held back an academic year and being educated with younger peers; the availability of a new scholarship to a bilingual Mexican school; and the instability of F's home. S's ability to engage constructively in the education for which she yearned would have been compromised if she was not able to live in, and rely on, a settled and secure home, M (Children) (Abduction: Rights of Custody), Re [2007] UKHL 55, [2008] 1 A.C. 1288 followed. While taking account of S's views, the relevant considerations pointed clearly to her return to Mexico. Any future return to England had to be carefully planned, managed, structured and discussed by both parents (paras 38-45).

A 15-year-old was returned under the Hague Convention on the Civil Aspects of International Child Abduction 1980 to her mother's custody in Mexico despite her objections. Her desire to remain and be educated in England was taken into account given her age and maturity, but other welfare considerations, including the instability of her father's home, pointed clearly to her return to Mexico.

Permission

Lawtel 