

Re M (A Child) (2014)

[2014] EWCA Civ 1519

25/11/2014

Barristers

Brian Jubb
Cliona Papazian

Court

Court of Appeal

Practice Areas

International Children Law

Summary

A judge had erred by inferring from a child's expression of a preference for staying with his father in England, an objection to his immediate return to Hungary.

Facts

The appellant mother (M) appealed against a decision that her child (K) should not be summarily returned to Hungary, his country of habitual residence, even though the respondent father (F) had wrongfully retained him in the UK. F cross-appealed against the finding of wrongful retention.

M and F were Hungarian and K was their only child. After their divorce, F had residence of K with weekly contact to M for eight years. When F moved to the UK to seek work, K remained in the care of the paternal grandmother under a Hungarian court order and contact with M continued. In 2013, F returned to Hungary and remarried. With M's agreement, F obtained an order for sole custody on the basis that he worked and remained in Hungary. However, F left for the UK and K followed him shortly afterwards. M applied for K's summary return pursuant to the Hague Convention on the Civil Aspects of International Child Abduction 1980. K was interviewed for 45 minutes by a CAFCASS officer through an interpreter but he had been in a very distressed and emotional state. The judge below found that K, now aged 14, had been wrongfully retained in the UK. However, she found that it was appropriate to take account of K's views as he had attained sufficient age and maturity and she determined that he clearly objected to being separated from F and returned to Hungary. That sufficed for a defence under art.13.

M submitted that the judge had erred by inferring from K's expression of a preference to stay with F, an objection to his immediate return to Hungary, whereas the evidence from his CAFCASS interview was that he had not objected to returning to Hungary.

Held

There was insufficient material to allow K's stated preference to be with his father in England to be

translated into an art.13 objection to being returned to Hungary. Not only had K not said that he did not want to go back to Hungary but, crucially, such a conclusion could not be inferred from his interview, where he had been unclear whether such a return would mean separation from his father. Additionally, what K had said had to be considered against the backdrop of a young man in an invidious position who was experiencing conflicting loyalties. The court had been wrong to make an order for K's summary return without determining his views on a return to his country of habitual residence. Brussels II(R) Regulation 2201/2003 art.11(2) required a court considering art.13 of the Convention to give a child the opportunity to be heard and the case was remitted to be listed for urgent directions, M (Children) (Abduction: Rights of Custody), Re [2007] UKHL 55, [2008] 1 A.C. 1288 followed (see paras 43, 46-48, 50 of judgment).

Appeal allowed

A judge had erred by inferring from a child's expression of a preference for staying with his father in England, an objection to his immediate return to Hungary.

Permission

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