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# Re S (A Child) (Abduction: Hearing The Child) sub nom AM v AS (2014)

## [2014] EWCA Civ 1557

04/12/2014

**Barristers**
Henry Setright KC
Teertha Gupta KC
Francesca Dowse
Michael Gration KC

**Court**
Court of Appeal (Civil Division)

**Practice Areas**
International Children Law

**Summary**
An order made under the inherent jurisdiction of the court for the summary return of a seven-year-old child to Russia was set aside where no consideration had been given to the child's wishes and feelings or to her welfare. The impact on the child of the decision that the court had to make and of the options that the decision comprised raised an imperative that she be heard.

**Facts**
The appellant mother (M) appealed against an order made under the inherent jurisdiction of the court for the summary return of her child (S) to Russia.

M and the respondent father (F) were Russian nationals. S was aged seven at the date of the instant hearing. M and F separated and M formed a relationship with another man (B) with whom she lived in Moscow. M and F agreed that S would live with M and would have significant staying contact with F. B, a political activist, travelled to the UK and claimed asylum because of problems with the Russian authorities. M and S joined B in the UK. M was pregnant with B's child. After the birth, she and S remained in the UK with B. F applied for a residence order in Russia. M applied for an order under the Children Act 1989 that F should not remove S from her care. F made a successful application for S's return to Russia. However, at that hearing no consideration was given to S's wishes and feelings or to her welfare. It appeared that an assumption had been made that the matter had been addressed at previous hearings. The issue was whether there were general principles that applied in proceedings taken in the inherent jurisdiction of the High Court.

**Held**
Children had to be afforded effective access to justice so that the State did not infringe their rights under

the European Convention on Human Rights 1950 art.6 and art.8. Under Regulation 2201/2003 (B2R) art.11(2), the requested court of a Member State had to ascertain a child's wishes and feelings when considering any application for return. Although that provision only applied to cases concerning two Member States, its significance and application to cases under the Hague Convention 1980 was settled in D (A Child) (Abduction: Rights of Custody), Re [2006] UKHL 51, [2007] 1 A.C. 619, in which the principle that the child was to be heard was said to have universal application and to be consistent with international obligations under the United Nations Convention on the Rights of the Child 1989 art.12, D (A Child) followed. An example of the seriousness with which that issue was to be taken when B2R was engaged was to be found in F (A Child) (Abduction: Child's Wishes), Re [2007] EWCA Civ 468, [2007] 2 F.L.R. 697, in which it was also suggested that the question might not be limited to EU cases, F (A Child) considered. The policies that were relevant to Hague Convention and European abduction cases were not to be imported into the inherent jurisdiction to the exclusion of the obligation to hear the child, which was both an integral part of the welfare evaluation and the guarantee of the child's effective access to justice. Therefore, as a matter of principle, there was an obligation on the High Court sitting in its inherent jurisdiction in relation to an abduction application to consider whether and how to hear the child concerned. Whether S was of an age and understanding to be heard was a question of fact to be decided. Her age alone would not have suggested that she lacked the autonomy to have a perspective on her welfare or whether she should have access to a court making a determination about her. It would be wrong for the court not to be appraised of S's views other than through M and F. The impact on S of the decision that the court had to make and of the options for S that the decision comprised, including separation from her mother and/or her stepfather and stepbrother, raised an imperative that she be heard. The order therefore had to be set aside to allow an evaluation of the welfare factors intrinsic in each of the options and their benefits and detriments. The matter was remitted for directions and hearing before a different judge of the Family Division (see paras 13, 17-20, 25, 28, 31, 38-40 of judgment).

An order made under the inherent jurisdiction of the court for the summary return of a seven-year-old child to Russia was set aside where no consideration had been given to the child's wishes and feelings or to her welfare. The impact on the child of the decision that the court had to make and of the options that the decision comprised raised an imperative that she be heard.