

Re C (A Child) (2012)

[2012] EWCA Civ 1144

11/07/2012

Barristers

Michael Gration KC

Court

Court of Appeal (Civil Division)

Practice Areas

International Children Law

Summary

Where a father had obtained an order by consent under the Hague Convention on the Civil Aspects of International Child Abduction for the return of his 15-year-old daughter from England to Canada and soon after the order was made the daughter changed her mind and became firmly opposed to going back to Canada, the Court of Appeal allowed her appeal against the order and remitted the matter to the Family Division so the issues could be fully investigated.

Facts

The appellant 15-year-old child (C) appealed against a decision made by consent to return her to Canada.

C's father (F), the first respondent, was Canadian and lived in Canada. Her mother (M), the second respondent, was British. They had all been living in Canada until M took C, along with other siblings, from Canada to England on holiday and decided not to go back. F applied under the Hague Convention on the Civil Aspects of International Child Abduction for C's return. C was initially opposed to returning to Canada, but by the time of the hearing she wanted to return, so the judge made a consensual return order without investigating the issues. Shortly afterwards, C began to state clearly and firmly that she had changed her mind and would not go back to Canada. The matter returned to the judge, who gave C permission to appeal because he did not have the power to set aside his order.

C submitted that her case was so plain that the court should not only allow her appeal but should dismiss F's originating application. M supported C's appeal, as did the third respondent guardian, who submitted that ordering C's return to Canada would be pointless as it would lead to a successful application for relocation. The guardian further submitted that C was a fragile child who had had troubles in Canada, including a lifestyle of drinking and drug taking, and she would suffer if put through further litigation or returned to Canada without M's support. F submitted that the case was not at all cut and dried and it should be remitted for what would be its first full hearing.

Held

The order that C sought was not just a strong order; it was a very rare one for the Court of Appeal to make. It could only make it if it could demonstrate that the outcome on any remission was so plain that it would be almost abusive to put the parties and the trial judge through the process and therefore would be a futile and sterile direction. The pursuit of further litigation was likely to be at the expense of C's wellbeing. It was not for the Court of Appeal to judge the prospects of a successful outcome for F. In practical terms it was extremely unlikely that an order for C's return would be enforceable if she remained in her current emotional state. The prospect for her future was on any evaluation fragile unless both her parents combined to work together to help her through the next three or four years of adolescent vulnerability. If they only litigated, and drew her into the arena of litigation, her prospect of fulfilling her ambition of graduating from school would be diminished. The Court of Appeal could order mediation, but it would have to be child-inclusive. Already F had refused it when it was offered. Therefore, mediation would probably prolong the case. Further, mediation would be considerably impeded if F was on the other side of the world. Unless mediation could get F, M and C under one roof and with no time pressure its prospects were not sufficient to justify the inevitably delay it would cause. Reluctantly, the court concluded that F had demonstrated that there were issues that would make it impossible to declare that the outcome was so obvious that remission was rendered pointless. It would be wrong to deny F the process of trial as there had not been one. However, the court urged the parents to seize what could be the last opportunity to talk to each other about the near crisis C was in. The case would be remitted to the Family Division with a request that it be heard at the earliest possible date (see paras 5, 9-14 of judgment).

Permission

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