

Ciccone v Ritchie (No 2) [2016]

Ciccone v Ritchie (No 2) [2016] EWHC 616 (Fam)

21/03/2016

Barristers

Alex Verdan KC
Henry Setright KC
Private: David Williams QC
Jacqueline Renton
Michael Gratton KC

Court

Family Division

Practice Areas

International Children Law
Private Children Law

Application for permission to withdraw proceedings under the 1980 Hague Convention. Application granted.

MacDonald J was concerned with the mother's application for permission to withdraw her application under the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

On 21 December 2015, the mother issued proceedings under the 1980 Hague convention for the return of the child (aged 15 ½) to New York. On 23 December 2015, the mother also commenced proceedings in the Supreme Court of New York and on that day, an order was made for the child to be returned to New York. However, the child did not thereafter return. On 2 March 2016, although the judge in New York declined to vacate the order for the child to return, she also declined to issue a warrant for the father or make any orders for the child to be removed from his school in England.

The mother applied for permission to withdraw the proceedings in England, which was welcomed by the child (who was a party to proceedings), as he wished for there to be an end to all litigation between his parents in respect of him.

The issues for the court to determine were:

- i. whether permission is required to withdraw an application under the 1980 Hague Convention and, if so, the test for permission
- ii. if such an application is withdrawn, to what extent is the court able to give procedural directions in respect of any potential future applications

iii. what arrangements should be made in respect of the child's passport at the conclusion of proceedings, and

iv. whether the judgment (and a previous judgment) should be reported and, if so, in what form.

As to permission, the court concluded that FPR 2010 r29.4 applies to applications under the 1980 Hague Convention. The plain meaning of the rule is that permission is required for applications under Parts 10 to 14. The phrase "any other Part where the application relates to the welfare or upbringing of a child" was to be read disjunctively and applied only to the words "to any other Part" and not to the words "under Parts 10 to 14". Applications under the 1980 Hague Convention were governed by Part 12 and therefore required permission to withdraw.

The test to be applied was based on the matters set out in the overriding objective at FPR 2010 r1(2), including the need to deal with cases expeditiously and fairly, proportionality, saving expense and ensuring appropriate sharing of court resources. When applying the overriding objective, the mother was given permission to withdraw her application.

In considering whether the court could or should make any anticipatory directions in respect of potential future proceedings, the only direction given was that any such application be reserved to MacDonald J. As to the child's passport, which was being held by the child's solicitor, it was directed that this should be released to the child for the purpose of travel over Easter. Thereafter, the passport could either be held by the child's solicitor, or the judge noted there was no reason why the child himself couldn't retain his own passport pending determination of any issues by the New York court.

In respect of publication of the judgments, the applicable principles when deciding whether or not to publish a judgment pursuant to the President's guidance as set out in *H v A (No 2)* [2015] EWHC 2630 (Fam) were repeated. MacDonald J balanced the competing Article 8 and Article 10 rights and concluded that the previous and instant judgments should be published, subject to limited redaction. Due to the exceptional circumstances of the case, in particular how much information was already in the public domain and that it would not be possible to produce an anonymised version that would prevent jigsaw identification, the court also determined that the judgments should be published without being anonymised.

The court noted that the proceedings arose as a result of a temporary breakdown in trust and urged the parents to resolve the disputes without the need for further litigation.

Permission

 Family Law Week