

M (Children) (2017)

[2017] EWCA Civ 891

29/06/2017

Barristers

Private: David Williams QC

Private: Hassan Khan

Court

Court of Appeal

Practice Areas

International Children Law

A father's appeal in private law proceedings to enforce an interim contact order made in Estonia in June 2015. The appeal was dismissed as the court did not have the power to order the local authority or CAFCASS to supervise contact.

A British mother and her four children moved from Estonia to live in England in 2013. The Estonian father of the two youngest children remained in Estonia and, in 2015, he obtained an interim contact order from the Estonian court which allowed him to spend 4 hours' professionally supervised contact each month with his two children in England. Previously, the father had applied, under the 1980 Hague Convention, for the return of his children to Estonia. In reliance upon Article 13(b) of the Convention, the mother alleged the father had sexually assaulted her oldest child and physically assaulted her second child. In those proceedings, the judge found the mother had not proven grave risk or intolerability under Article 13(b). Nevertheless, the judge refused to order the children's return as he found they did not wish to go back.

The father applied to enforce the interim contact order under what is known as 'Brussels IIA' (Council Regulation (EC) No 2201/2003) Article 41(1). The relevant provisions require that the interim contact order is to be treated and enforced as if it were an order made in this jurisdiction and that the substance of the decision should not be tampered with.

However, the relevant local authority's children's services refused to supervise contact having determined that it was not safe or in the children's best interests to do so. The judge determined that he lacked the power to order the local authority or Cafcass to supervise contact and so was unable to enforce the order as it was drafted.

This position was supported by the Court of Appeal. That court determined that, as it could not direct a government agency to supervise contact in private law proceedings under domestic law, then it could not circumvent domestic laws when enforcing a judgment from a Member State. In particular, the Court

found that neither section 16 nor sections 11A-P Children Act 1989 provided the power to order a local authority to supervise contact. Further, it was determined that it would be inappropriate to use the inherent jurisdiction to require the provision of supervision.

The three Court of Appeal judges dismissed the appeal as there was 'no practical way to enforce the Estonian judgment'.

Permission

 **Family Law Week**