

FE v YE (2017)

[2017] EWHC 2165 (Fam)

25/08/2017

Barristers

Henry Setright KC
Brian Jubb
Jacqueline Renton

Court

Family Division

Practice Areas

International Children Law

Judgment of Mostyn J considering the effect of an asylum claim by the subject children on an application under the 1980 Hague Child Abduction Convention.

The question posed by Mostyn J at the outset of this judgment is whether an asylum claim by the subject children halt an application under the 1980 Hague Child Abduction Convention?

The subject children in this case were twins, aged 7. The Israeli mother removed the twins (and daughter, who later returned home voluntarily) from their home in Israel to the UK (via Thailand) in July 2016. Initially the mother made an application for asylum, listing the children as dependents. Later she made asylum claims for the children in their own right. The father issued the Hague proceedings in January 2017. The Home Secretary intervened in the proceedings. It was agreed that the Hague proceedings would not be heard until the Home Secretary had issued her decision on the asylum claims, which she did on 4 August 2017.

The asylum claims of the mother and the children were refused. The Home Secretary argued that while an asylum application was pending (i.e. an application that has not exhausted all rights of appeal) a return order could not be implemented.

In this judgment, Mostyn J sets out the relevant legislation regarding asylum claims and provides a review and explanation of the basis for the 1980 Hague Convention legislation.

Having reviewed the relevant legal principles, Mostyn J accepted that where a grant of asylum has been made by the Home Secretary it is impossible for a court later to order a return of the subject child under the 1980 Hague Convention. Equally, he states, it is impossible for a return order to be made while an asylum claim is pending (including all rights of appeal).

Mostyn J held that, even where there is a pending appeal on the asylum claim, it is both possible and

desirable for the court to hear the return application under the 1980 Hague Convention but to provide that no return order shall take effect until, at the earliest, 15 days after the promulgation of the decision by the tribunal.

Mostyn J summarily addressed the facts of this case and the mother's defences at paragraphs 27-36. The mother's principal complaints were levelled against members of her own family, stating that she had been grossly mistreated by her father and her brothers. In coming to his decision, Mostyn J made reference to the Home Secretary's analysis of the mother's case in the asylum claim (which had a very considerable overlap with the mother's defences in the Hague proceedings). His Lordship concludes that the mother's fears had no objective foundation and, moreover, he was not satisfied that the mother had a genuine subjective fear. Further, Mostyn J determined that even if the mother's claims were true then there were safeguards in existence which would entirely neutralise the risks and dangers pleaded by her.

Having rejected the mother's defences, Mostyn J ordered that the children be returned to Israel, but that (as above) the order was not to take effect until 15 days after the promulgation by the First-tier Tribunal of its decision on the appeal by the mother and the children against the refusal of asylum. If the appeal were allowed, the order would be stayed. If dismissed, but the mother demonstrates an intention to appeal on a point of law, then the case would be returned to Mostyn J to determine whether the return order should be further stayed or implemented.

Permission

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