

MK and RP (Hague Child Abduction Convention) (2018)

[2018] EWHC 1475 (Fam)

12/06/2018

Barristers

Mark Jarman
Cliona Papazian

Court

Family Division

Practice Areas

International Children Law

Successful application under the Hague Child Convention for the summary return of a child to her father in Israel.

The case concerned a 6 year old child, D, who had been brought to this jurisdiction by her mother in November 2017. The parties agreed that the child had been habitually resident in Israel prior to her removal by her mother. D's father applied for her immediate return.

The mother opposed the application and in defence argued, firstly, that the father had consented to the removal when the parties divorced around six years earlier and, secondly, that should D be returned then she would be at grave risk of psychological harm or placed in an intolerable position.

In particular, the court considered Articles 1, 12 and 13 of the Hague Convention, Re P-J (Children) (Abduction Habitual Residence:Consent) [2009] EWCA Civ 588 and the decision of the Supreme Court in Re E (Children) [2011] UKSC 27. In addition, the judge noted that if the mother's defences were proved, he retained a discretion as to D's return to Israel.

Having heard oral evidence, the judge found the father had never consented to D's removal and that the removal was wrongful and in breach of the father's rights of custody which he was exercising.

As to the risk of harm D if she was to be returned to Israel, the judge found that undertakings given by the father were appropriate. The undertakings would allow D to remain in Israel in her mother's care until the Family Court of Jerusalem determined any proceedings the mother might issue regarding D's removal from Israel. The judge stated that the evidence fell 'far short of establishing, on the balance of possibilities' that D's return would subject her to harm or an intolerable situation.

The judge ordered D's return to Israel forthwith.

Permission
Family Law **Week**