

Re E (Abduction Article 13B Deferred Return Order)

[2019] EWHC 256 (Fam)

13/02/2019

Barristers

Christopher Hames KC

Mark Jarman KC

Michael Edwards

Court

Family Division

Practice Areas

International Children Law

Father's application for an order requiring the return of his daughter to Spain, pursuant to the Hague Convention.

In the course of the proceedings, the Court had to determine two issues, namely:

- (i) Whether the child was habitually resident in Spain immediately before her abduction; and
- (ii) If so (and therefore if the Hague Convention is engaged), whether any party who opposed the return of the child could establish that such a return would give rise to the situation described in Article 13(b) of the Hague Convention.

Both the Mother and the Guardian argued that the summary return of the child to Spain would create a risk of physical or psychological harm and/or place the child in an intolerable position.

The background to this case is lengthy and complex, with both parents accusing the other of various forms of abuse, the Mother having been arrested for absconding from the Spanish jurisdiction (in the face of proceedings ongoing therein) and the significant and difficult emotional presentation of the child. Whilst within this jurisdiction, the child had lately been cared for by the Local Authority (latterly under an ICO).

The judgment of Knowles J contains a very helpful summary of the applicable law in respect of habitual residence. Having considered the complicated background to this case, Her Ladyship concluded, on fine balance, that the child was habitually resident in Spain at the relevant time. The child had achieved some degree of integration in a social and family environment by attending nursery even if this was erratic. She was medically insured and received treatment including regular check-ups from medical staff. She had contact with other children outside the nursery environment although this was more often when her

father was present. Though there was a move to another address in May 2017, her residence in Spain was stable in that she did not return to this jurisdiction and remained living in the same Spanish town throughout.

The Court then considered the issue of Article 13(b) of the Hague Convention. Again, the judgment contains a helpful and detailed summary of the applicable law. The Mother argued that Article 13(b) was engaged and therefore opposed a return of the child to either the father's care or into Spanish state care. The Guardian supported this. The father conceded that Article 13(b) was engaged on the evidence.

However, the Father submitted that the risks of return to Spain could be ameliorated by delaying the child's return for a relatively short period of time so that (a) suitable arrangements could be made to safeguard her well-being in the father's care and (b) re-introducing direct contact with a view to her being placed in the father's care. In the alternative, the Father argued that an order for the child's return could be stayed or deferred for a much longer period whilst the reintroduction of contact was progressed alongside a variety of assessments of the type which might be contemplated by the local authority if care proceedings were live.

Having carefully considered the arguments put forward by the father, alongside the assessments carried out by a consultant child psychologist, the judge found the Article 13(b) defence made out and as such declined to order a return of the child. The Father's application under the Hague Convention was therefore dismissed.

To read the judgment, please click [here](#).

Permission

 **Family Law Week**