

Re N (Children) (2015)

AC9601862

13/08/2015

Barristers

Jacqueline Renton

Court

Court of Appeal (Civil Division)

Practice Areas

International Children Law

Summary

It was imperative that the question of joining children as parties to proceedings under the Hague Convention on the Civil Aspects of International Child Abduction 1980 was considered overtly by the court at the earliest stage. Every young person was entitled to participate and have access to justice: the issue was as to how, not whether, that should be done.

Facts

The applicant children applied to be joined as parties to their father's appeal against an order that they be returned to the care of the respondent mother in Australia, and/or for permission to bring an appeal in their own right.

The mother had issued proceedings under the Hague Convention on the Civil Aspects of International Child Abduction 1980 alleging that the father had wrongfully retained the couple's four children, who were aged 13 to 8, in the UK. The judge had granted her application for their summary return, and the father was granted permission to appeal against that decision. Neither the parents nor the court below had considered whether the children should have been made parties to the proceedings, and they had not been represented. The two eldest children presented evidence in support of their application showing that they wished to live in the UK with their father and objected to returning to Australia. Their solicitors recognised them as Gillick-competent children. The father supported the children's application.

Held

The relevant question was whether, as a matter of case management, the separate representation of children would add enough to the court's understanding of the issues to justify such intrusion and expense, *M (Children) (Abduction: Rights of Custody)*, Re [2007] UKHL 55, [2008] 1 A.C. 1288 applied. The reason for that question was that every young person was entitled to participate and have access to justice: the issue was as to how, not whether, that should be done. That question had never been asked overtly in the court below: it should have been. The participation of children should be considered overtly by the initial court. A CAFCASS report of meeting between the children and the judge might be sufficient

to achieve that. In the instant case, there was no doubt that party status and representation should have been considered in the court below, even if a CAFCASS report or meeting was then considered sufficient. It was imperative that the issue of joinder was considered at the earliest stage of Hague Convention proceedings, *M (Children) (Child's Objections: Joinder of Children as Parties to Appeal)*, Re [2015] EWCA Civ 26, [2015] Fam. Law 252 followed. In the circumstances, it was appropriate to join the children as parties to the proceedings and permit them to bring their own appeal, which would be listed together with the father's. The two eldest children were of an age and understanding to instruct a solicitor without a litigation friend, and the younger children were given permission to be represented by their solicitors as litigation friends. The father's appeal was adjourned to allow the children to prepare and present their case properly.

Permission

Lawtel 