

J v (1) C (2) B (2015)

[2015] EWHC 2047

15/07/2015

Barristers

Jacqueline Renton

Court

Family Division

Practice Areas

International Children Law

Summary

The court ordered the return to France of a nine-year-old boy who had been wrongfully removed by his mother to England. The defences of settlement, objection, risk of harm and interference with family life put forward by the mother were not established.

Facts

A father applied for an order requiring the respondent mother to summarily return their nine-year-old son (B) from the UK to France pursuant to the Hague Convention on the Civil Aspects of International Child Abduction 1980.

B's parents were French nationals who met on the French island of La Reunion in 1996 and lived together there and in mainland France until 2007. They had never married. In December 2010, the mother left La Reunion with B without the father's knowledge or consent; the father had not seen him since then. After leaving, the mother moved extensively between jurisdictions, finally moving to England in January 2014. She had remained in England since then and moved in with her current partner (P) in June 2014. She alleged that from 1998 the father was frequently verbally and physically violent to her, and that he was physically violent to B. She conceded that she had wrongfully removed B from French jurisdiction, but defended the proceedings on the grounds that he was now settled in England and Wales, he objected to returning to France, he would be at grave risk of being exposed to physical or psychological harm or would otherwise be placed in an intolerable situation if returned to France, and that to return him to that jurisdiction would be in breach of the right to respect for family life for the mother, B and P. The mother conceded that not only had she not facilitated any form of contact, but that she had left all pictures of the father in La Reunion, never talked to B about him, and considered P to be in effect B's father.

Held

(1) The concept of "settlement" for the purposes of art.12 involved three elements, namely physical settlement, emotional settlement and psychological settlement. It denoted more than mere adjustment by a child to his or her new surroundings, and the court was concerned just as much with the position in

the future as with the present, C (A Child) (Child Abduction: Settlement), Re [2006] EWHC 1229 (Fam), [2006] 2 F.L.R. 797 considered. The mother had deliberately tried to conceal B's whereabouts from the father from the point she removed him from La Reunion, and had sought to remove the father from B's contemplation. While B's attendance at school, at church and at football club implied a degree of physical settlement, the evidence did not demonstrate a physical element of relating to and being established in a community and an environment, or an emotional and psychological constituent denoting security and stability. Likewise, the evidence did not demonstrate that the present situation for B imported stability when looking into the future. Taking a broad and purposive construction of what amounted to "settled in its new environment", the mother had failed to establish the defence of settlement (see paras 46-53 of judgment). (2) The evidence did not demonstrate that B objected to returning to France within the meaning of art.13 and accordingly the defence of objection was not made out, M (Children) (Child's Objections: Joinder of Children as Parties to Appeal), Re [2015] EWCA Civ 26, [2015] Fam. Law 252 applied. His expressed views amounted to no more than a preference for England based on his wish to learn the language. In any event, it was doubtful that B had attained an age and degree of maturity at which it was appropriate to take account of his views. Moreover, the evidence tended to suggest that B had been primed to an extent in respect of his objections (paras 55, 57-58). (3) There was no evidence that a return to France would raise anxieties in the mother that would lead to B being placed in an intolerable situation. If it was true that the father had subjected her to a sustained campaign of domestic violence, which extended to B, then that would give rise to a grave risk that B would be exposed to harm or otherwise placed in an intolerable situation. In order to protect B pending determination of the allegations, the minimum safeguards required were that he should remain in the care of his mother, with undertakings and injunctions in place preventing the father from assaulting or molesting the mother, and the supervision of any contact between him and his father. Those measures would appropriately mitigate the putative risks for the purposes of evaluating the art.13(b) defence (paras 61, 63-64, 66). (4) The art.20 defence was not made out. While family life existed between B and P, and between the mother and P, and a return to France would interfere with that family life if P did not travel with the mother, that interference was necessary and proportionate (paras 83-84).

Application granted

Permission

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