

Re C (Abduction: Residence and Contact)

[2006] 2 FLR 277

14/10/2005

Barristers

Joanne Brown KC

Court

Family Division

Facts

The father, who lived in California, applied under the Hague Convention on the Civil Aspects of International Child Abduction 1980 (the Hague Convention) for the return of his daughter, S, aged 11. The mother applied for a residence order. S had twice been unlawfully abducted by her mother, who was Irish, since the breakdown of the marriage. The second abduction had occurred after the mother had consented to return with S to California. Following the second abduction, the mother had managed to escape detection for 4 years until S was traced to Liverpool. The concealment had involved the assumption of false identities, including S taking over the name and birth date of a child who had died, and the case had attracted considerable publicity, particularly in Ireland, where the father had appeared on television to discuss the case. He had also set up a website about S and in California had lobbied so vigorously for a change in the law relating to cases where there was a risk of child abduction that the resultant legislation was named after him. He had also obtained a custody order in California and probably, though it was unclear, a warrant for the mother's arrest. Since the discovery of S in Liverpool, attempts at supervised contact had foundered with the father complaining that he felt like a convict or leper despite him being the person who had been wronged.

Held

Held - granting a residence order in favour of the mother -

(1) It was inconceivable that, notwithstanding the wrong done to the father and the mother's deceptions, and notwithstanding the existence of the Californian custody order, any English court would have returned the child to California for a custody trial there, or that it would have summarily transferred residence there. To have done so, after such a lengthy period of separation between the daughter and her father, would have been contrary to her wishes and best interests. Accordingly, it was necessary to focus instead on the mother's application for residence and the father's application for contact. While philosophical objections could be raised to this approach, the court was obliged to give paramount consideration to the daughter's best interests (see paras [18], [19]).

(2) The courts were obliged by s. 6 of the Human Rights Act 1998 not to act in a way that was incompatible with Art 8 of the European Convention for the Protection of Human Rights and Fundamental

Freedoms 1950 (the European Convention). In practice, this meant taking all necessary steps to facilitate a reunion between the father and the daughter as could be reasonably demanded in the special circumstances of the case. The father should have concentrated on enforcing his right to demand a facilitation of a reunion with the daughter rather than pursuing futile proceedings under the Hague Convention (see para [24]).

(3) The effect of the European Convention was almost as though there was a presumption in favour of normal contact and that the burden was on the mother to prove by clear evidence that there should not be such normal contact, in particular that there must be clear and compelling evidence that the daughter's best interests would be prejudiced by unsupervised contact. While some of the father's conduct, such as his involvement with the Irish press, was reprehensible, it was also understandable in view of what he had suffered. Moreover, the daughter's own wishes were for normal, unsupervised contact with her father (see paras [28], [32], [38]).

(4) Accordingly, the court granted a residence order in favour of the mother and unsupervised contact with the father, accompanied by an order that each give an assurance that they would refrain from discussing the case with the daughter. The father was also ordered to refrain from talking to the press and to endeavour to get the US warrant dismissed and to discontinue the extant US custody proceedings. Finally, the father was ordered to do what he could to procure the removal of the daughter's photographs from websites (see para [39]).

Per curiam : in cases where a child had been located after a long disappearance it was important to recognise that it might be futile to seek to remove that child from his/her settled environment. The first step should always be to seek the most expeditious reestablishment of a meaningful relationship between the child and the wronged parent (see para [43]).

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