

H v H (Abduction: Acquiescence)

[1996] 2 FLR 570

19/07/1996

Barristers

Private: Marcus Scott-Manderson QC

Court

Court of Appeal

Facts

The parents were members of the Orthodox Jewish faith. The family were living in Israel when the mother, without warning to the father, removed the children to England. Each parent then invoked the jurisdiction of their local rabbinical court. The mother also obtained orders from the county court in England. In April 1996 the father invoked the Hague Convention and in May 1996 the father sought a return order. The issues before the court were:

- (1) Were the children habitually resident in Israel at the date of their removal? If so,
- (2) Had the father subsequently acquiesced in the removal of the children? If yes,
- (3) Should the court in its discretion make a return order?

The judge ruled that the answer to the first issue was yes and to the second no. The third issue therefore did not arise. The judge directed the immediate return to Israel under the Hague Convention of the children. The mother appealed.

Held

Held - allowing the appeal -

- (1) In order to establish acquiescence, the abducting parent must be able to point to some conduct on the part of the aggrieved parent which was inconsistent with the summary return of the child.
- (2) Where the conduct relied on was active, little if any weight was accorded to the subjective motives or reasons of the party so acting. Where the relevant conduct was inactive, some limited inquiry into the state of mind of the aggrieved parent and the subjective reasons for inaction may be appropriate.
- (3) Once acquiescence had been established, the court retained a discretion to grant or refuse an order for immediate return under the Convention.
- (4) Although the father had omitted to take summary proceedings until authorised by his Beth Din to do so, that was irrelevant when it came to a consideration of the objective inferences to be drawn from the fact that he took active steps towards a settlement for many months without making any overt

statement that he was insisting upon the summary return of the children.

(5) The father's conduct had been influenced by faith and conscience but this was not a factor which could be taken into account by the judge in exercising his discretion, which depended upon a weighing of the objective considerations set out in *W v W (Child Abduction: Acquiescence)* . These pointed overwhelmingly in favour of allowing the substantive proceedings to continue in England.

Per curiam :

Recourse to the courts, or to the conciliation procedures, of religious authorities did not carry the automatic stamp of acquiescence by an aggrieved parent in the wrongful abduction of a child from a country of habitual residence. What was important was that the aggrieved parent should make it plain that such recourse was being adopted as a step to, or parallel with, the Convention's remedy of summary return, and not in substitution for it.

Permission

Lawtel 