4PB, 6th Floor,
St Martin's Court,
10 Paternoster Row,
London, EC4M 7HP
T: 0207 427 5200
E: clerks@4pb.com
W: 4pb.com

Re L (Abduction: Consent) (2007)

[2008] 1 FLR 914; [2007] EWHC 2181 (Fam)

14/09/2007

Barristers
Private: David Williams QC

Court
Family Division

Summary
The defence of consent pursuant to the Hague Convention on the Civil Aspects of International Child Abduction art.13(a) would fail notwithstanding that the consent had not been expressly withdrawn if the removing party knew or assumed that the other party, had he known the full facts, would not have continued the consent at the actual time of the removal.

Facts
The applicant father (F) applied for the summary return of his two children, aged nine and five, from the United Kingdom to the United States. The respondent mother (M) opposed such an order, relying on the defence of consent pursuant to the Hague Convention on the Civil Aspects of International Child Abduction art.13(a). F was a US citizen; M was a British citizen. They had lived in the US since their marriage in 1996. In August 2006, in the context of marital difficulties between the parties, F had sent M an email suggesting that they live together in Florida until the end of the school year in mid-2007, and if it turned out that M was still not happy she could move to the UK with the children. The email led to a family meeting, at which the agreement was confirmed. The agreement was later solemnised in a religious ceremony. In June 2007, M and F discussed M and the children's regular annual visit to M's family in the UK. It was discussed in the context of its being a holiday. M and the children departed for the UK on return tickets. In late June, M emailed F to tell him that she intended to stay in the UK with the children, as per their earlier agreement. F swiftly brought the instant proceedings.

Held
HELD: Questions of consent would always be fact-specific and would involve questions of degree; however, there was no reason in principle why a consent could not be valid if it were tied to some future event even of uncertain timing, provided that the happening of the event was of reasonable ascertainability, Tonna v Tonna (2004) EWHC 2516 (Fam) applied and Zenel v Haddow 1993 SC 612 IH (Ex Div) considered. It could not be too vague, uncertain or subjective. Putting M's case at its highest, F gave a future consent in August or September 2006 to a permanent removal of M and the children at the end of the school year in mid-2007 if she was not happy in the US. However, before M left with the children, there had been further discussions describing the proposed trip as a holiday. Return tickets were purchased. The notion of a holiday was consistent only with a return at the end of it. The

discussions in the context of a holiday had replaced or modified the wider permission which M said she had earlier received. M did not purport to act at the time of the removal on the relocation permission upon which she now relied, but rather on the permission to go for a holiday. Where a removing party knew or assumed that the formerly consenting party would not continue that consent at the time of the removal if he or she knew the full facts, the consent defence would fail even though the original consent might never have been expressly withdrawn. An order was made for the return of the children to the US.

Permission

Lawtel