

B-G v B-G (2008)

[2008] 2 FLR 965; [2008] EWHC 688 (Fam)

08/04/2008

Barristers

Private: Marcus Scott-Manderson QC

Court

Family Division

Summary

Children were not returned to their father in France despite being wrongfully removed and brought to the United Kingdom by their mother as it was clear from the evidence that the father had since acquiesced in their removal and had given the mother the clear and unequivocal impression that he had so acquiesced.

Facts

The applicant father (F) applied for an order for the immediate return of his two children (C) to France. F and the respondent mother (M) had been habitually resident in France but their marriage deteriorated and M removed C and brought them to the United Kingdom. It was accepted that C were wrongfully removed from France without F's knowledge. F consulted solicitors to obtain legal advice as to what remedies were available to secure C's return. However, there were, on F's solicitors' file, attendance notes and instructions which showed that F, despite initially pressing for C's return, felt that his moving back to the UK would be a better course of action. The issues to be determined were whether F had, by the time of the issue of the instant proceedings, acquiesced in the removal of C from France to the UK in accordance with the Hague Convention on the Civil Aspects of International Child Abduction art.13(a) and, if so, whether an order should be made returning C to France.

Held

HELD: (1) On the basis of the attendance notes and the oral evidence of the parties, it was plain that by the time he issued the instant proceedings F had acquiesced in C's removal from France and their remaining in the UK, and had given M the clear and unequivocal impression that he had so acquiesced, H v H (Child Abduction: Acquiescence) (1998) AC 72 HL applied. (2) It was not in C's interests and would not be a proper exercise of the court's discretion to order them to return. C had been in the care of M for a year and a half, and were settled, happy and developing well.

Application refused