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Re F (A Child) (Application for Child Party Status) (2007)

[2007] 2 FLR 313; [2007] EWCA Civ 393

27/03/2007

Barristers
Henry Setright KC
Private: Marcus Scott-Manderson QC

Court
Court of Appeal

Summary
A child's application for intervener status in an international child abduction case was refused where no exceptional circumstances had been proved. Although the court had an obligation to hear the child and to have proper respect for the child's rights under the European Convention on Human Rights 1950 Art.6 and Art.8, that could be achieved without joining the child as a party to the proceedings.

Facts
The applicant child (D) applied for intervener status in relation to a dispute between D's mother (M) and father (F) as to her country of residence. F, a Spanish national and M, a national of the United Kingdom, had lived together in Spain with D. After their separation M brought D to the UK. After nine months F applied for D's return under the Hague Convention on the Civil Aspects of International Child Abduction. The judge ordered D's return to Spain. At no point during the proceedings was D's evidence put before the judge. The case was remitted following M's successful appeal on the basis that the judge had failed to discharge her obligation under Regulation 2201/2003 to give D an opportunity to be heard. D submitted that the instant case involved a standard inter-European wrongful retention where there were arguments that could and should have been run at the trial but which were not raised; and that the focus had been too much on the risk of harm to her and not sufficiently on the intolerable situation to which she would be returned. D also submitted that the intolerability lay not so much with what was to be found in Spain but what would be lost to her in England.

Held
HELD: D had not addressed directly the high test imposed by the instant court for any application seeking party status on behalf of a child. The Brussels II Revised Regulation, which governed the return of children wrongfully removed or retained in Art.11, introduced a number of refinements to the Hague Convention. In effect it raised the bar for a successful Art.13 defence in that it placed particular emphasis on the capacity of the requesting state to protect the returning parent and also introduced a complex mechanism that allowed the court of the requesting state to embark on a further review of the case if the requesting state refused return. Another significant innovation was the requirement to hear the child in

every case, unless that was inappropriate having regard to the child's age and understanding. The grant of permission to intervene was exceptional, H (A Child) (Child Abduction), Re (2006) EWCA Civ 1247, (2007) 1 FLR 242 applied, and party status had only been granted in those cases in which there had been some element of state intervention within the affairs of the family. D had failed to demonstrate that the instant case was sufficiently exceptional. Manifestly, D, having been within the instant jurisdiction for a considerable time, was going to have concerns and desires to maintain the close knit community, family links, school friends and school. All that was absolutely predictable. If the court granted D's application it would, in effect, be acknowledging that the existing line of authority in the instant court was at an end, with serious consequences for the future conduct of proceedings under the Regulation; risking the magnification of representation in almost every case and complicating the processes of trial in what was essentially a summary process. It was an obligation to hear the child and to have proper respect for the child's rights under European Convention on Human Rights 1950 Art.6 and Art.8 but that could be achieved without joining the child as a party to the proceedings.

Application refused