

Re D (Children) (2006)

(2006) 2 FLR 305; [2006] EWCA Civ 146

25/01/2006

Barristers

Henry Setright KC

Court

Civil Division

Summary

A mother had established a defence to proceedings seeking the return of her children to Venezuela. The judge had been entitled to rely upon evidence that the children were likely to be fearful of their safety and that of their mother if they were returned.

Facts

The appellant father (F) appealed against a decision that the respondent mother (M) had established a defence to proceedings seeking the return of their children following their unlawful removal from Venezuela. The parents had lived with the children in Venezuela, and following the breakdown of their marriage M had unlawfully removed the children to the instant jurisdiction. However, she was ordered to return to Venezuela with the children, which she complied with. Whilst in Venezuela M obtained permission to bring the children to England for a vacation. In the meantime she was the victim of a serious violent attack in which she was shot. After she recovered, M left Venezuela with the children, purportedly for the vacation for which she had obtained permission. However, she never returned. F subsequently issued proceedings under the Child Abduction and Custody Act 1985, seeking the return of the children. Those proceedings were dismissed on the grounds that M had established a defence under the Hague Convention on the Civil Aspects of International Child Abduction 1980 Art.13(b). F argued, inter alia, that the judge had failed to evaluate the whole of M's evidence given that it had been clear that she had not been entirely frank as to her motives for not returning to Venezuela.

Held

HELD: The judge had been insufficiently critical when exonerating M, and had failed to sufficiently deal with M's motives and conduct upon her departure from Venezuela. However, even if F had established at trial that M's motivation at the point of departure was to effect a permanent unlawful removal of the children, that was clearly outweighed by the events that had led to M being shot. The real issue was the effect that a return order would have had upon the children. The judge had been entitled to rely upon evidence that the children were likely to be fearful of their and their mother's safety if they were returned. In the exceptional circumstances of the case the judge had been entitled to find that M had established a defence to an order for return under Art.13b.

Permission

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