

Re S (Children) (Child Abduction: Asylum Appeal) (2002)

(2002) 1 WLR 2548 : (2002) 2 FLR 465 : [2002] EWCA Civ 843 : Times, June 3, 2002

28/05/2002

Barristers

Henry Setright KC

Court

Court of Appeal

Summary

The protection afforded to children as dependants in asylum claims under Art.33 Geneva Convention on the Status of Refugees 1951 and s.15 Immigration and Asylum Act 1999 did not create an exception to the court's exercise of discretion in wardship proceedings.

Facts

A Mother's appeal from the decision of Bennett J dated 26 April 2002 concluding that the protection afforded to children as dependants in asylum claims under Art.33 Geneva Convention on the Status of Refugees 1951 ('the Convention') and s.15 Immigration and Asylum Act 1999 did not create an exception to the court's exercise of discretion in wardship proceedings. The mother arrived in the country in June 2001 with her two children. On 2 October 2001 she claimed asylum naming the children as dependants. On 9 January 2002 the Secretary of State for the Home Department refused asylum but granted the mother exceptional leave to remain for four years. On 15 January 2002 the mother lodged an appeal from the secretary of state's refusal. In the meantime the father had issued an application in the Family Division seeking the return of the children to India. In making that application the father had accordingly invoked wardship proceedings and the children were made wards of court. The judge acceded to the father's application and ordered the return of the children to India. On this appeal the mother argued that s.15 of the 1999 Act prohibited the removal of the children. Further, the mother argued that Art.33 of the Convention was a general rule of law binding contracting states. The father argued that s.15 only bound the executive, namely the immigration authority, and created no extension to the court's duty in wardship proceedings.

Held

HELD: (1) The terms of s.15 were directed to the executive and imposed a negative duty to forward the law and practice in immigration cases. It was not to be read as creating an exception to rights under Art.12 Hague Convention on the Civil Aspects of International Child Abduction or the duty of the court in wardship proceedings. (2) Since s.15 was a domestic state expression of Art.33 it was said by the mother

that it had general effect and bound the judge. That however was based on a premise that s.15 was as wide in terms as Art.33. The importance of Art.33 did not however lead to a construction that s.15 was any wider than its terms suggested. The proper scope of Art.33 did not drive the construction of s.15. (3) Accordingly, the judge was correct to conclude that his discretion exercised in the father's wardship proceedings was not overridden by Art.33.

Permission

Lawtel 