

P v P (Minors) (Diplomatic Immunity: Jurisdiction) (1998) sub nom Re P (Diplomatic Immunity: Jurisdiction) (1998)

(1998) 1 FLR 1026 : Times, March 25, 1998

11/03/1998

Barristers

Henry Setright KC

Court

Court of Appeal

Summary

A declaration would not be granted to the effect that children had been wrongfully removed from the UK within the meaning of Art.3 Hague Convention where the same issue would have to be determined in foreign proceedings so that the declaration would serve no purpose and might even delay those foreign proceedings contrary to the interests of the children.

Facts

Appeal of the mother from the decision of the Right Honourable Sir Stephen Brown (P) made 22 January 1998 whereby Sumner J's declaration that the removal of the children from the UK was a wrongful removal within the meaning of Art.3 Hague Convention, was set aside. The father was a US diplomat who had been posted to the UK together with his wife, a German national, and children, who held dual US/German nationality. Following marital problems the wife commenced divorce proceedings in the UK. In July 1997 the mother applied for a prohibited steps order to prevent the removal of the children from the UK by the father which was granted by Sumner J. In August 1997 the US government and the father issued a summons to dismiss the English proceedings on the basis of immunity from jurisdiction and Sumner J's order was set aside. On 8 August 1997 the father was posted back to the US and was accompanied by his wife (under protest) and children. The mother then petitioned the court in Virginia for the return of the children to the UK on the basis that the children had been wrongfully removed from the UK within the meaning of Art.3 Hague Convention. On 7 November 1997 the mother made an application in the High Court for a declaration to this effect. The order was granted ex parte with liberty for the father to apply to have the order set aside. On a preliminary issue the President held that there was state immunity under the State Immunity Act 1978 and dismissed the application for the declaration. The mother appealed.

Held

HELD: (1) Although the mother's submission (that the President's decision on state immunity was wrong but that his decision on diplomatic immunity was right) and the father's submission (that the President's

decision on state immunity was right but that his decision on diplomatic immunity was wrong) were both arguable it was not necessary to make a final determination of the issue. (2) This was because even if the court determined that it had jurisdiction the decision would not be binding on the court in Virginia which might take a different approach to the application of the Hague Convention. (3) The court bore in mind that a declaration was a discretionary remedy and that the application in the High Court was ancillary to the proceedings in Virginia. (4) In any event if the declaration was granted it would only delay the US proceedings and that was contrary to the interests of the children. (5) This was not to say that it would never be appropriate to make a declaration where father and mother were of different, non British nationalities.

Permission

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