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Re H & Ors Sub Nom H V H (Child Abduction: Acquiescence) (1997)

(1998) AC 72 : (1997) 2 WLR 563 : (1997) 2 All ER 225 : (1997) 1 FLR 872 : Times, April 17, 1997 : Independent, April 15, 1997

10/04/1997

Barristers
Private: Marcus Scott-Manderson QC

Court
House of Lords

Summary
Important decision by the House of Lords as to proof of acquiesence by a wronged parent in international child abduction cases reversing the Court of Appeal.

Facts
Father's appeal against Court of Appeal decision allowing the Mother's appeal from an order of Sumner J directing the immediate return to Israel under the Hague Convention of three very young children aged 3, 2 and 16 months incorporating undertakings by the father to start appropriate family proceedings in Israel and, pending their determination, to provide the mother and children with accommodation and support there. Both parents were Orthodox Jews and were parties to an arranged marriage which was not a happy one. They were living together in Israel when the mother, without warning or the father's consent, removed the children to England on 9/11/95. The Court of Appeal decision was based upon active acquiesence by the father.

Held
HELD: For the purposes of Article 13 of the Hague Convention on the Civil Aspects of International Child Abduction 1980 the question whether the wronged parent has acquiesced in the removal and retention of the child depends upon his actual state of mind. The court is primarily concerned not with the question of the other parent's perception of the applicant's conduct but with the question whether the applicant acquiesced in fact. The subjective intention of the wronged parent is a question of fact for the trial judge to determine in all the circumstances of the case, the burden of proof being on the abducting parent. The trial judge in reaching his decision will no doubt be inclined to attach more weight to the contemporaneous words and actions of the wronged parent than to his bare assertions in evidence of his intentions. But that is a question of the weight to be attached to evidence and is not a question of law. There is only one exception. Where the words or actions of the wronged parent clearly and unequivocally show and have led the other parent to believe that the wronged parent is not asserting or going to assert

his right to the summary return of the child and are not inconsistent with such return, justice requires that the wronged parent be held to have acquiesced. In the present case the judge found that in fact the father had never acquiesced in the retention of the children in this country. The requirements of his faith required him to pursue his claim in the Beth Din. The only question therefore was whether this was one of those exceptional cases when, by his actions, the father has led the mother reasonably to believe that, contrary to the father's true intentions, he was not seeking the summary return of the children. To establish this the mother would have to show that the father's actions were clearly and unequivocally inconsistent with his pursuit of his summary remedy under the Convention. As the facts were far from satisfying this test, the appeal would be allowed. The Court of Appeal misdirected itself in law.