

C v H (Abduction: Consent) (2009)

[2009] EWHC 2660 (Fam) (2010) 1 FLR 225

05/03/2009

Barristers

Michael Gratton KC

Court

Family Division

Summary

In order to establish the defence of consent within the meaning of the Hague Convention on the Civil Aspects of International Child Abduction 1980 where the father's rights of custody had been breached by the removal of his child from its habitual residence by the mother, it was necessary for the mother to establish the positive and unequivocal consent of the father; neither the father's status as a minor nor the purported giving of consent by the paternal grandparent were relevant.

Facts

The applicant father (F), a Spanish national, sought the return of his two-year-old son (C) to Spain following his removal by his British mother (M) to the United Kingdom. F and M were both minors aged 17. Immediately prior to his removal to the UK, C was habitually resident in Spain. F and M were not married and, according to M, the relationship had been in difficulty for some months prior to C's removal. It was accepted that, as a matter of both Spanish and English law, F had rights of custody within the meaning of the Hague Convention on the Civil Aspects of International Child Abduction 1980 and he had been exercising those rights up to the date of C's removal. The evidence suggested that during an argument between F and M, the latter had made it clear that she would return to the UK with C if the relationship finally broke down. She also gave evidence that on the evening before the removal of C to the UK, F had said nothing to her and had been too upset to speak. F's parents had then driven M and C to the airport the following day. M contended that F had, during the course of previous arguments, expressed his agreement to her taking C back to the UK in the event of relationship breakdown and that such agreement was sufficient to establish consent for the purposes of the Hague Convention when that situation later arose. M also submitted that she and C had left Spain with the blessing of F's parents, who had assisted them in travelling to the airport, so that their consent was effectively given if required as a consequence of F's minority. F disputed M's account and denied having consented to C's removal.

Held

HELD: (1) F's minority at the time of C's removal and the possibility that the paternal grandmother might have given consent on his behalf were completely irrelevant for the purposes of an application under the Hague Convention. The only circumstance in which words of consent given by a paternal grandparent could be relevant would be if that grandparent was acting as agent for the parent; there was nothing to

suggest that that was the situation in the instant case. (2) The burden of establishing that F had given positive and unequivocal consent to C's removal rested with M. The discussions between the couple concerning M's return to the UK in the event of the termination of their relationship were insufficient to establish future consent. Accordingly, it was impossible for M to assert that express consent had been given and she had therefore failed to establish that F had given positive and unequivocal consent to C's removal from Spain. It followed that an order for C's summary return to Spain was appropriate.

Application granted

Permission

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