

M (A Child) [2010]

[2010] EWCA Civ 1295

14/10/2010

Court

Civil Division

Practice Areas

International Children Law

Summary

Child Abduction: Appeal of order for return of a 4 year old child to Estonia. Appeal dismissed with amendment by way of slip rule to duration of the order. Matter to return to a Family Division judge for implementation.

Facts

The subject child was a 4 year old girl. Her parents cohabited in Estonia briefly until their relationship foundered in 2009. The child continued to reside with the mother and contact arrangements were agreed with the father. When this arrangement became difficult he obtained an order for contact from the Estonian court. In May 2010, the mother, her new husband and the child came to the UK. This was viewed as an abduction by the father who engaged the central authority in Estonia who engaged the central authority in London who issued proceedings under the 1980 Convention leading to a final hearing on 24 September 2010. Estonia and the UK as member states are both bound by Regulation Brussels II bis.

It was the mother's case that her arrival in the UK was for the purposes of a summer holiday no more. She challenged the label of abduction but offered no shield to an order for a peremptory return. No defence within the strict limits of exceptions that are recognised under Articles 12 and 13 was even asserted let alone made good, and the judge's order was compassionate to the mother to the extent that the judge allowed her an extra week to get ready for return.

In the event the mother had made no arrangements to travel back to Estonia. Without legal advice the mother appealed with only a bare appellant's notice without grounds of appeal and skeleton.

Held

The Court of Appeal (Thorpe, Stanley Burnton, Tomlinson LJ) held that:

1. No pertinent submissions were made by mother in respect of the order below.
2. The order at first instance was not well drafted since it failed to specify, in the event of the mother's failure to return to Estonia, a time when the mother should render the care of the child to the father in the UK to facilitate the travel back to Estonia. The problem of implementation would be dealt with by a

judge in the Family Division within the next hour.

3. Any ne exeat provision in relation to the child after her return to her habitual residence should be made by the Estonian court, not by a UK judge. To the extent that this was included in the first instance order, this would be amended by the slip rule by limitation to the effect that the order run only for a very brief period pending the first return to the court in Estonia which was already seised with the welfare issues.

Permission

Family Law Week 