

M v B (2009)

[2009] EWHC 3477 (Fam)

04/12/2009

Barristers

Mark Jarman KC
Cliona Papazian

Court

Family Division

Practice Areas

International Children Law

Summary

A summary return order would not be made for children who had been wrongfully retained by one parent where their age and maturity was sufficient for consideration to be given to their genuine objections to being returned and those outweighed the countervailing factors and, in particular, the philosophy of the Hague Convention, which was that a prompt return to the requesting state should be ordered so that the appropriate home court could consider the position.

Facts

The applicant Italian father (F) sought the summary return to Italy of his two children (C) who had been wrongfully retained in the United Kingdom by the respondent English mother (M). C, who were 12 and 9 years old, had been born in the UK, but the family had later moved to Italy. There F and M's relationship deteriorated and she moved back to the UK. F applied for custody of C in Italy. M likewise applied for custody in Italy but also sought leave to remove them permanently to the UK. Before the hearing, M took them to the UK, and the Italian court suspended her maternal authority and ordered C to return immediately to Italy. F initiated Hague Convention proceedings in the UK, and the English court also ordered C to return to Italy. M complied and C stayed in Italy in F's care for five years, until they visited her in the UK during the school summer holidays, at the end of which she did not send them back. F brought the instant proceedings. C told a CAFCASS officer that they wanted to stay with M and their half-sister and half-brothers.

Held

Article 13 of the Convention provided that the court might refuse to order the return of a child who objected to being returned and who had attained an age and degree of maturity at which it was appropriate to take account of its views. When considering the child's objections, the court had to determine whether it was objecting to being returned to the country of habitual residence as opposed simply to expressing a preference for staying with the abducting parent; whether the child's views had been shaped or coloured by undue influence or pressure directly or indirectly exerted by the abducting

parent to an extent which required them to be disregarded or discounted; and what weight should be placed on those objections in the light of any countervailing factors and, in particular, the philosophy of the Convention, which was that a prompt return to the requesting state should be ordered so that the appropriate home court could consider the position, F (Abduction: Rights of Custody), Re (2008) EWHC 272 (Fam), (2008) Fam 75 applied. C were of an age and maturity for their views to be taken into account. Their objection could properly be categorised as an objection to returning to the country, given that the inevitable consequences of a return to Italy was life with F alone, and with M and their half-siblings living in a different country with only infrequent and irregular contact. There was no credible evidence that C's views had been unduly influenced by M. In light of those views, and despite C's having lived in Italy for most of their lives, with F as the primary carer for the last five years, and their schools, activities and friends being there, it would not be appropriate to order a summary return.

Permission

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