

Re C (A Child) (2013)

AC9401262

24/01/2013

Barristers

Henry Setright KC
Private: Hassan Khan

Court

Court of Appeal (Civil Division)

Practice Areas

International Children Law

Summary

Where a mother alleged that she had only consented to a court order under duress from her legal adviser, it was wrong for a judge to revoke that order without adequately investigating the allegations of duress by giving full consideration to the legal adviser's response to the detailed complaints made about his conduct.

Facts

The appellant father (F) appealed against a decision to revoke a summary return order to which the respondent mother (M) had originally consented.

F and M had lived in Turkey with their child. When M came to the United Kingdom with the child, F instigated proceedings for a summary return order under the Hague Convention on the Civil Aspects of International Child Abduction 1980. M instructed solicitors, who in turn instructed a barrister (J) to appear on her behalf. M then consented to the return order, and a date for return to Turkey was set. However, she failed to comply with the order. She withdrew her instructions to her solicitors and asserted in several written statements that J had subjected her to extreme pressure, amounting to duress, and that it was only because of duress that she had consented to the order. J was given a general, verbal indication of the complaints made against him, but he was not given all M's written statements, which contained her specific complaints. Without hearing oral evidence from J or receiving a response from him to M's allegations, the judge decided that his advice to M that she had no defence to the abduction proceedings had been pivotal to her consenting to the return order. She said that J's advice was too dogmatic, and held that as M's consent was not fully informed, it was appropriate to revoke the return order.

Held

J might have had a general indication of the allegations against him, but it was plainly essential that he saw the complaints made against him in their fullest written form. M's complaints were serious and

carried the risk of J's professional conduct being criticised. It was an elementary point that there could not be an adequate investigation of the central issue of duress without J having the opportunity to respond to the complaints. M was not entitled to be released from the consent order unless she made good the case upon which she relied, and the judge could not possibly find that her case was made good without giving full consideration to J's response to the detailed complaints made about his conduct.

Permission

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