

Re Jones (No 2) [2013] EWHC 2730 (Fam)

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21/08/2013

Court

High Court (Family Division)

Practice Areas

Private Children Law

Summary

Father's renewed application for return of his children to Spain in circumstances where two of the children had expressed objection to returning

Facts

The Welsh mother and the Spanish father married in 1995 and have five children. The marriage ran into difficulties and the parents separated in 2008. Since then there has been an enormous amount of litigation both in this jurisdiction and in Spain. The proceedings included making public the fact of the mother (and her partner) and the children going 'on the run' to avoid orders of the court requiring the children to be returned to Spain.

The father has twice made successful applications for orders for the return of the children pursuant to the Hague Convention with the second set of Hague proceedings culminating in an order of Hedley J made on 9 October 2012.

The father now sought to renew his application for the return of the children (having not succeeded when his application was before Theis J on 16/1/13 due to the expressed objection of the second and third of the children to return to Spain.)

On behalf of the mother it was argued that an order requiring her to return the children to Spain would be impossible for her to comply with because of the likely opposition from the two children and the court should not make orders where there is no prospect of an order being complied with. On behalf of the father it was argued that while there may be some scepticism as to the likelihood of an order being complied with, that it was not certain that it would not be complied with so that the court should not be persuaded not to make the order on that ground.

Held

After weighing up the arguments and considering the international obligations this country is party to, the President made an order for return and to avoid any difficulty with enforcement, he supplemented his order with injunctive provisions which provided for ongoing fixed dates for the mother to comply with the order.

Permission

Family Law Week 