

Tomas Palacin Cambra v (1) Jennifer Marie Jones (2) Jessica Maria Palacin Jones (2014)

[2014] EWHC 913 (Fam)

31/03/2014

Barristers

Private: David Williams QC

Court

Family Division

Practice Areas

International Children Law

The court considered whether the second respondent 16-year-old girl (J) should be joined as a party to committal proceedings brought by the applicant father (F) against the first respondent mother (M). An order had been granted requiring M to return J and her brother to Spain to live with F. M had not complied with the order and claimed that they had refused to go. Both children had been joined as parties to the Hague proceedings. J wished to participate in the committal proceedings because (i) her refusal to return to Spain had resulted in the order being breached and she did not want M to be held responsible; (ii) if M were imprisoned it would impact significantly on J's education; (iii) she wanted to participate in any renewed attempt by F to enforce the order because it was unfair to continue to seek both hers and her brother's return despite their strong and long-held objections.

J was legally a child, but it had to be considered whether it would be in her best interests to shut her out from participating in proceedings which affected her profoundly and in which she was anxious to be able to participate. In [Mabon v Mabon \[2005\] EWCA Civ 634, \[2005\] Fam. 366](http://www.lawtel.com/MyLawtel/Documents/AC0108915) the court stated that "we must, in the case of articulate teenagers, accept the right to freedom of expression and participation outweighs the paternalistic judgement of welfare". It was overwhelmingly clear that J's best interests were served by allowing her to participate, Mabon followed. Quite apart from that, there were powerful arguments in favour of the view that the forensic process would be assisted by her participation as a party rather than as a mere witness. Her evidence had a standpoint incapable of being represented by either of the adult parties, [LC \(Children\) \(International Abduction: Child's Objections to Return\), Re \[2014\] UKSC 1, \[2014\] 2 W.L.R. 124](http://www.lawtel.com/MyLawtel/Documents/AC0140019) considered (see paras 13-15 of judgment).

A 16-year-old child was joined as a party to committal proceedings brought by her father against her mother following her failure to comply with a removal order. It was overwhelmingly clear that the

child's best interests were served by enabling her to participate and, quite apart from that, she had a standpoint that was incapable of being represented by either of the adult parties.</p>

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