

S v DE P (2008)

[2008] 2 FLR 1918 : [2008] EWHC 1798 (Fam): [2008] Fam Law 971

14/05/2008

Barristers

Dermot Main Thompson

Court

Family Division

Practice Areas

International Children Law

Summary

The interests and welfare of three children currently residing with their mother in the United Kingdom would be best served by allowing them to remain in the jurisdiction. Accordingly, the father's application to have them returned to Argentina was refused.

Facts

The applicant father (F) applied for an order to require his ex-wife (M) to return the children (C) of their marriage to Argentina.

F and M had separated. At the time of the separation, both F and M lived in Argentina. By an agreement that was subsequently ratified by the Argentinean courts M was given sole custody of C. M later left Argentina to study in the United Kingdom. Initially, C were placed in the custody of F but, by a further agreement, C were allowed to come to the UK with M and live with her for one year. At the end of that year, M and C returned to Argentina. M applied to the Argentinean court for further permission to have C live with her in the UK and permission was granted for a further year. M and C remained in the UK even after the expiry of the one-year period envisaged by the Argentinean order and F brought the instant application. The issue for determination was whether C should be returned to Argentina for the purpose of enabling that state to make a decision as to their medium to long term welfare.

Held

C had expressed a real and compelling wish to remain in the UK. They had become committed to their schooling and their community and developed a circle of friends; they were clearly psychologically and physically settled in the UK. Ordering their return to Argentina would result in a considerable disruption to their education and life. On that basis, C's medium to long term welfare needs would be best served by their remaining in the UK, M (Children) (Abduction: Rights of Custody), Re [2007] UKHL 55, [2008] 1 A.C. 1288 applied and D (A Child) (Abduction: Rights of Custody), Re [2006] UKHL 51, [2007] 1 A.C. 619 considered.

Application refused

Permission

Lawtel 