

SP (Father) v EB (Mother) & Anor (Rev 1)

[2014] EWHC 3964 (Fam)

26/11/2014

Barristers

Teertha Gupta KC
Mark Jarman KC

Court

Family Division

Practice Areas

International Children Law

Summary

The return to Malta of a 14-year-old girl who had been wrongfully removed to England would not be ordered as she objected to the return, it risked exposing her to harm or placing her in an intolerable situation, and it would violate her right to a family life.

Facts

The applicant father (F) sought an order that the first respondent mother (M) should return the second respondent daughter (D) forthwith to Malta pursuant to the Hague Convention on the Civil Aspects of International Child Abduction 1980 art..12.

F, M and D were Maltese. D, who was 14 years old, had always lived in Malta until M took her to England without F's knowledge after M and F separated. M accepted that her removal of D had been wrongful but argued that: within the meaning of art.13, D objected to being returned; within the meaning of art.13(b), there was a grave risk that her return would expose her to harm or place her in an intolerable situation; and within the meaning of art.20, D's right to a family life would be violated if she were returned.

Held

D had been in England for 18 months, but it could not be argued that she was settled in her new environment, within the meaning of art.12, as F's application for the return order had been made before the 12-month period for settlement had been reached. Although K's 18 months in England could not be taken into account under art.12, it could nevertheless be taken into account in relation to the three defences under art.13, art.13(b) and art.20. In relation to art.13, D was of sufficient age and maturity to voice an objection that was capable of being taken into account and she was well justified in objecting to what could be a lengthy return where her whole present life including, most importantly, her education would be turned upside down. In relation to art.13(b), as D had established a whole new life over a prolonged period in England, including the adoption of an educational path in which she was prospering, it was likely to be intolerable and seriously harmful for a return to be ordered where F had not even

commenced the welfare proceedings that would ultimately decide her future. In relation to art.20, a return would violate D's right to family life for the same reasons (see paras 15-17, 20-22 of judgment).

The return to Malta of a 14-year-old girl who had been wrongfully removed to England would not be ordered as she objected to the return, it risked exposing her to harm or placing her in an intolerable situation, and it would violate her right to a family life.

Permission

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