

L (Grave risk of harm) (Children's objections) [2015]

[2015] EWHC 3300 (Fam)

16/11/2015

Barristers

Andrew Powell
Jacqueline Renton

Court

Family Division

Practice Areas

International Children Law

Application under the Hague Convention for the summary return of a 7 year old child to Bulgaria.
Application successful and child's return ordered.

Cobb J was concerned with a father's application under The Hague Convention for the summary return of L (aged 7 years and 8 months) to Bulgaria. L's brother (B) was aged 15 and was represented in the proceedings through a litigation friend. B was not a subject of proceedings and was being educated in England pursuant to a Bulgarian court order.

It was accepted that: L was habitually resident in Bulgaria prior to the mother bringing him to England, L's father had and was exercising rights of custody, and the core ingredients of Article 3 of the Hague Convention was established.

The issues were: whether a return of L to Bulgaria would expose him to a grave risk of harm or otherwise place him in an intolerable situation, whether L objected to returning to Bulgaria and has obtained an age and degree of maturity that meant his views should be taken account of, and whether, if either of the exceptions are made out, the judge should exercise his discretion not to return L to Bulgaria.

Background

The parents were both Bulgarian nationals and divorced in 2010. The last five years involved highly conflictual and contentious litigation in Bulgaria, with applications and cross-applications in respect of personal protection, children and finances.

The appointed Cafcass officer was clear that the children had been harmed by the actions of the parents post-separation. In the Bulgarian proceedings, L and B had been assessed and interviewed by multiple professionals and B was recorded as being "deeply traumatised by the continuing conflicts between his parents".

In 2011, the mother applied for and obtained an order in the Bulgarian Court permitting her to arrange for B to be educated in England at a private boarding school. L remained in Bulgaria with his mother, but L and B spent time together during school holidays.

In 2013, the Bulgarian Court imposed a prohibition on the mother removing L from the jurisdiction without the leave of the court. In 2014, following a judicial finding that the mother had wilfully obstructed contact between L and his father, L's residence was moved to live with his father. The mother successfully appealed this order and the arrangement was brought to an end after three months. In 2014, at the conclusion of cross appeals, there was an order for L to have unsupervised overnight weekend and holiday contact with his father. There were still pending cross applications in the Bulgarian courts.

In 2015, the mother sought the father's permission to remove L from Bulgaria for a holiday to Paris and the father gave permission. However, the mother brought L to England and, within less than a week, enrolled him in private school.

Cobb J noted that this case illustrates well the rationale of welfare decisions being taken in the parents' "home country", as there was already an abundance of lay and professional evidence in Bulgaria.

The mother contended that L would be at grave risk of harm by virtue of: being exposed to domestic abuse or child abuse at the hands of his father, continuing to be caught up in harmful litigation in Bulgaria, and that L being separated from B would be intolerable for him.

The mother further asserted that L objected to returning to Bulgaria and his views should be taken into account. B, who was a party to proceedings, fully associated himself with his mother's case and relied upon the upset that he personally experienced due to the litigation, his father's conduct towards him, and emphasised the closeness of the sibling relationship.

Grave risk of harm

Cobb J rejected the contention of direct harm caused by his father, as the evidence relied upon pre-dated the last order of the Bulgarian court when the father was granted unsupervised staying contact. It was not accepted that L would be more likely to suffer a grave risk of psychological harm by returning to Bulgaria with litigation ongoing than if he remained here. It was noted that the mother had considerably raised the temperature of the parental disputes by unilaterally removing L to this country. Whilst the judge was satisfied that L and B have a close relationship, it was not of such an intensity so as to create an intolerable situation or harm him if L was returned to Bulgaria.

Objection

The Cafcass officer considered that L's maturity was more highly developed intellectually (closer to age 8) but less developed emotionally (closer to aged 6½). Cobb J concluded that the issue of objection is likely to combine the two components.

Whilst L had spoken about being "upset, worried and sad" at the prospect of returning to Bulgaria and wanting to remain in England, neither his wish to remain in England nor his wish not to return to Bulgaria had been equivocated.

As set out in *Re M (Republic of Ireland)(Child's Objections)(Joinder of children as parties to appeal)* [2015] EWCA Civ 26, the threshold for establishing an objection is "fairly low". Cobb J concluded that L did object to returning to Bulgaria, but that this was not a strongly held view, was likely to have been influenced by the views of his mother (even if unintentionally), and was coloured by a fear of being immediately placed with his father. Cobb J concluded that L was of an age and maturity that meant his views should be taken into account, as it was well-established that a child as young as 6 can be of

sufficient maturity to have their objections taken into account.

His Lordship noted that the discretion afforded to him is large. Having considered the issues at play, he concluded that it is in L's interests that the courts in Bulgaria make welfare decisions. There is already an extensive amount of evidence available to Bulgarian courts and the prospect of some judicial continuity. The father's application was successful and therefore L should be returned to Bulgaria as soon as can reasonably be achieved.

Permission

 **Family Law Week**