

Q & V (1980 Hague Convention and Inherent Jurisdiction Summary Return) (2019)

[2019] EWHC 490 (Fam)

06/02/2019

Barristers

Cliona Papazian

Court

Family Division

Practice Areas

International Children Law

Application for the return of Q, aged 17 to Poland under the inherent jurisdiction and for the return of V aged 12 to Poland pursuant to the 1980 Hague Convention

The court was concerned with the welfare of two children: Q (17 years old) and V (12 years old). The children had lived their entire lives in Poland until the mother removed them to England in around August 2018. The father made an application for the return of Q to Poland under the inherent jurisdiction and for the return of V to Poland pursuant to the 1980 Hague Convention (Q is over 16 so the Hague Convention does not apply to him).

The factual background to the matter is lengthy and complex. From the parents' separation in 2010 until the children's removal to England in August 2018, the family was embroiled in continuous litigation in Poland about where the children should live. The detailed chronology is found at [29].

Separate representation

Williams J initially considered an application by the mother to adjourn the final hearing so that Q could be separately represented. The mother stated that a Cafcass officer could not effectively advance Q's clearly expressed wishes. The father opposed the application submitting that Q's views were fully before the court and that the mother would articulate his case.

Williams J set out the test for joinder and the applicable law [22 - 24]. His Lordship held that a determination as to whether a young person should be joined as a party must take into account "issues relating to the autonomy of the young person and their own desire to participate." [24]

The Judge concluded that it was not in Q's best interests to be joined. He had not shown a powerful desire to participate in the proceedings in his interview with the Cafcass officer. The Judge stated, "This is not a case where there is a powerful argument by an articulate and mature teenager who has searched out a lawyer in order to ensure their case is heard." [25]

The substantive applications

The mother's defences to the Hague application were under article 13(b) grave risk of harm/ intolerability and child's objections [16]. The mother alleged that the father neglected the children's needs; that living with the father was against their clearly expressed wishes; and that separating the children or them from her would be intolerable. In relation to returning Q under the inherent jurisdiction she stated that it would not be in his best interests as it was contrary to his expressed wishes.

The father's case [19] was that the children had been influenced and that they did not truly object to returning. The article 13(b) defence was not made out by the mother's allegations of neglect, which were in any event unsubstantiated. It would be preferable for the children to remain together but it would not be intolerable if they were separated. It would be in Q's best interests to return to Poland: his high school, extended family and friends.

Both children's expressed wish was to remain with their mother in England. The Cafcass officer considered that she had not been able to ascertain the children's authentic views. The children's inability to say anything positive about their father supported the Cafcass officer's evaluation that the mother had influenced them, not directly but through exposure to chronic, unabated parental conflict.

Despite their ages (17 and 12) the Cafcass officer expressed concern about the weight that should be afforded to the children's expressed views given the impact of years of chronic parental conflict.

The law

Williams J set out the leading authorities in relation to grave risk of harm and intolerability and distilled a helpful list of 10 principles, which can be drawn from those various judgments [47 - 48].

The Judge provides a 6-point summary [50] of the comprehensive authority concerning the child's objections exception *Re M (Republic of Ireland)(Child's Objections)(Joinder of Children as Parties to Appeal)* [2015] 2 FLR 1074 (and endorsed by the Court of Appeal in *Re F (Child's Objections)* [2015] EWCA Civ 1022).

Decision

Williams J determined that the mother had failed to establish a defence under article 13(b):

1. The evidence did not support the mother's case that the father's care of the children was seriously deficient so as to present a grave risk of harm were they to return to his care. The totality of evidence supported the father's case that he provided the children with appropriate care. [63]
2. The separation of V from her mother would not expose her to grave risk of harm. In coming to this determination V's stated views were "discounted heavily to reflect the situation she is in and the exposure to chronic parental conflict" [64].
3. Q would, if ordered, return to Poland with V, and therefore the risk of separation of the siblings would not arise. However, even if Q did not return, it would not give risk to grave risk of harm to V or otherwise be intolerable to her. [65]

Child's objections: V's expressed views were considered to amount to an objection for the purposes of the 1980 Hague Convention. Q's views constituted a clear wish to remain in the UK. However, the children's views were not expressed in particularly strong terms and the weight to be afforded to them diminished very considerably in light of the influence of the parental conflict. The Judge exercised his discretion to return V to Poland.

The Judge considered that it was in Q's best interests to make an order for his return, notwithstanding his age and expressed wishes. The Judge considered that making an order would free Q from responsibility to remain in England in support of his mother.

Permission

 Family Law Week