

Re C (Children) [2010] EWCA Civ 1610 (17 December 2010)

Case No: B4/2010/2766

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE PRINCIPAL REGISTRY, FAMILY DIVISION

(MR JUSTICE RODERIC WOOD)

Royal Courts of Justice

Strand, London, WC2A 2LL

17th December 2010

B e f o r e :

LORD JUSTICE THORPE

LORD JUSTICE LONGMORE

and

LADY JUSTICE BLACK

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IN THE MATTER OF C (Children)

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Mr Henry Setright QC and Ms Ruth Kirby (instructed by TV Edwards LLP) appeared on behalf of the Appellant mother.

Mr Anthony Hayden QC and Mr Bansa Singh-Hayer (instructed by Stephenson LLP) appeared on behalf of the Respondent father.

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HTML VERSION OF JUDGMENT

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Lord Justice Thorpe:

This is an application for permission to appeal, with appeal to follow, from the judgment of Wood J of 18 November. The Appellant's Notice was filed on 24 November, the papers were put before me recently and I directed this hearing today. The issues raised by the Appellant's Notice have been discussed between leading counsel, Mr Setright QC for the appellant and Mr Hayden QC for the father, and they have arrived at a very sensible disposal.

The case below was not straightforward. There was a conceded wrongful removal and the only obstacle to a summary return order was the mother's Article 13(b) defence. All that arose out of the circumstances that propelled her flight from Ireland, and plainly those circumstances required investigation by child protection agencies. Plainly, the first responsibility lies with Child Protection Services in the Republic where these children are habitually resident, both at the date of their removal and, in my opinion, as at today's date. It seems that following the mother's flight to this jurisdiction,

somehow the Cheshire Constabulary were persuaded to embark upon investigation as though they were primarily responsible rather than simply acting as agents for the Services in the Republic, and there is no doubt that there has been an ABE interview of the older child.

Wood J's judgment is impeccable in the sense that he directs himself by reference to relevant authority. He pays heed to the purposes and objective of the Convention. He regards his obligations under Brussels II Revised Article 11.4. However, in the end there is to me a distinct impression that he has been tempted into a more familiar role, namely the pursuit of child welfare. His adjournment of the case and the application generally to permit police investigations to be completed does not in my judgment sufficiently regard either the objective of the Convention or the fact that the primary responsibility for investigating the past and protecting the future lies with Irish agencies.

The second consideration that stems out of the judgment is that the mother's Article 13(b) defence rested almost entirely on the assertion that a return to Ireland necessitated a return to the marital home; alternatively, to close proximity between children and father. It was that that swayed the judge to the order that he made. However, it seems that the mother's case was put more by way of submission than as it should have been, by way of statement, and so at the close of the judgment the judge directed mother to file a statement substantiating the submissions that had been made by her counsel. An application by Ms Kirby for the father to respond by a statement was not accepted by the judge.

However, the response statement is now in as fresh evidence in this case and Mr Setright QC has pointed to two further statements that have been prepared, further evidence from, as I understood it, solicitors for the father who have attended over the last year. Mr Hayden QC has very sensibly conceded the Judge's open-ended adjournment conflicted with the Convention responsibilities of this jurisdiction to return children promptly to the jurisdiction from which they have been wrongfully removed, and the directions which have been agreed between counsel, as amended by this court, now seem eminently suitable.

So the order that goes today is permission to appeal; permission to admit fresh evidence; appeal allowed; application remitted for trial for a final hearing subject to the corrections which have been agreed at the Bar.

Lord Justice Longmore:

I agree.

Lady Justice Black:

I agree that we should endorse the agreed resolution of the appeal and make directions as amended.

Order: Application granted; appeal allowed.