

JERSEY / JUDGMENT

E v W [2000] JRC 189 (25 September 2000)

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JUDGMENT

THE COMMISSIONER: 1. In 1980 The Hague Convention on the Civil Aspects of International Child Abduction was formulated. The basic parts of that Convention were incorporated into Statute in the United Kingdom by the Child Abduction and Custody Act (1985). Jersey has not yet enacted that legislation but has requested Her Majesty's Government to include us in the Convention. 2. Belgium is not a party to the Convention and in law, as I have said, although Jersey has applied to be included, it is not yet a party to the Convention. So, we are faced with two Non-Convention countries. In Re P (Abduction: Non-Convention Country)

[1997] 1 FLR, there was a Convention country, England, and a Non-Convention country, India. The Court there took the opportunity to review the law as it applied to Non-Convention countries and it is clear from the authorities mentioned there, and referred to by Mr. Tremoceiro for the Plaintiff, that they established a principle - and I quote from Re P (Abduction: Non-Convention Country)

[1997] 1 FLR p.784 para. D in the judgment of Ward LJ: "...the principle which governed the position of the court was and always would be what the paramount welfare of the child dictated. Accordingly, kidnapping was but a single factor to be taken into account. The position was summarised by Ormrod LJ in Re R at 426, when he said this: ' The damage to a child's interest which may arise from not making a summary order is conveniently set out by Buckley LJ at p 264 E-H of his judgment in Re L [1994] 1 WLR 250. In a sentence, they are alienation from background, home, schools, friends, relations and, ultimately, from his country and its society and culture. These dangers have to be weighed against the risk to the child of possible, perhaps probable, separation from the mother, (that was a different case of course) of being entrusted to the care of a father whose capabilities and fitness to act as a single parent may be in doubt, in surroundings which may be unfavourable in themselves, and of being subjected to a regime of law under which the protection of their interest may be open to question...' That is the general approach. It is important not to pass from those cases without emphasising again two important passages, both in the judgment of Ormrod LJ. The first I take from the case of Re C at 112. He there referred to the way in which the judge, in the judgment there under appeal, had directed himself. The judgment under appeal read to this effect: 'I must, as I understand the matter, make a peremptory order for the return of these children unless I am satisfied

that there is some obvious moral or physical danger involved in making such an order'. Of that Ormrod LJ said this: 'That, in my respectful judgment, is a misdirection, and a serious one. The proposition established by Buckley LJ in *Re L* in his long and most careful review of all the cases on this subject and his conclusion about them, particularly in the light of the House of Lords' decision in *J v C* [1970] AC 688, is set out quite clearly in his judgment...'. To summarise that, it was that welfare predominates. Ormrod LJ in *Re R* said this (at 424-425): 'The question is not whether the child will be "harmed" by being sent back to the country from which he or she has been removed, but whether that course will best serve the child's interests'. " 3. We are faced in this Court with an order by a court of competent jurisdiction which on th June, 2000, vested - to use our expression - the exclusive performance of parental authority over N. in the father, with rights of access to the mother. There was, before the Court, a Court Surveyor's report. He was appointed by the Belgian Court with the following assignment: "To examine the material and moral elements in environment of both parents and also to offer advice on which one of both parents would be best entrusted with the exclusive performance of parental authority over N., born on 29 th July 1997, and how the right of access can be further arranged for the one that does not obtain the performance of the parental authority." 4. It is not necessary for me to say here that N. is the child of the Plaintiff and Defendant and that it has been legally accepted by the mother that E. is indeed the father of N. 5. However, I should also say that in the proceedings before those heard in the Court in Belgium, the Defendant had made very serious allegations against the Plaintiff, not only that he had abused her sexually but also that he had neglected her. The Court Surveyor's conclusions, and I quote from the Order of Justice: "...following his investigation were that the Defendant had fabricated these allegations and furthermore did not at the hearing before the Juvenile Court of Appeal request the Court to reconsider her accusations." 6. When the Plaintiff went to a town in Belgium to collect N., where she was living with the Defendant on 1 st August, 2000, he found that the Defendant and N. had disappeared. They were subsequently, as a result of help from the Belgium Consulate here, discovered to be living in Jersey. 7. We are asked, therefore, to make a number of orders today. Bearing in mind the guidelines to which I have referred in *Re P* , and also the following undisputed facts: the order vesting control in the father was made in Belgium by a court of competent jurisdiction; Belgium is the most convenient place where any further arguments about the future the child would be best heard; and sadly, as Mr. Tremoceiro said, it would be best for the child if, in fact, she were returned, we are satisfied that it is in the best interests of the child, that we should make the order asked for and we accordingly do so. 8. The three matters which we formally order are as follows: The interim injunction against the Defendant restraining her, her servants or agents from removing N. from the jurisdiction of this Court without a further order is confirmed. The Plaintiff is hereby authorised to leave our jurisdiction with N. in order to return to Holland. The Defendant is not to return to Jersey with N. in breach of the order of the Belgian court. Authorities *In re Z.* (2 nd March, 1998) Jersey Unreported. *In re P.* (Abduction: non-convention country) [1997] 1FLR 780 C. A. The Hague Convention on the Civil Aspects of International Child Abduction (25 th October, 1980).

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