

those involved in the matter. My first protocol case was diarised in the PRFD prior to the allocation hearing: it achieved the singular distinction of fixing a final hearing on a date for which all of our chosen experts were unavailable; four advocates had prior professional engagements; neither of the allocated case management judges were free; and the guardian, the social worker and a putative father were all on holiday (though, to the best of my knowledge, not together).

Much of this can be viewed as teething troubles. The aim of the protocol is to speed up care decisions to reduce delays, which itself can cause significant harm to vulnerable children. If nothing else, it has focused the minds of advocates and judges on minimising that delay, and there is no doubt that many children will be returned to their families or placed permanently more quickly as a result of the protocol. We can only hope those placements come about as a result of a considered case in which a guardian has been fully involved.

#### CHILD ABDUCTION

##### **Re J and another (children) (abduction: children's objections)**

[2003] All ER (D) 359 (Dec)

This was an interesting case, with a number of complicating factors, not least that one of the two children was not the natural child of the father with whom he was resident, but also because, at the time of the hearing, both children were clearly objecting to the idea of returning to live with their father in Germany. The father had been granted a residence order in respect of two children, now aged 13 and 11, by consent on certain conditions. The mother refused to return the children to Germany at the end of an agreed holiday. The father was not the true father of the older child, although neither child knew that. The older child was told of his parentage by the mother a day prior to their departure to England for the half-term holiday. The father brought proceedings pursuant to the Hague Convention seeking the return of the children. Subsequently, the children met with a CAFCASS reporter who discussed with them their objections to their return to their father. The mother claimed, *inter alia*, that the children were being abused. The judge overrode the children's objections—partly on the basis that their opinions had been fermented by their mother while they had been in the UK. That the children objected to being returned was not in dispute, nor

was the fact that there had been problems in the relationship between the father and the eldest child, but on the facts of the case the mother had not established that the necessary degree of grave risk existed or that the children's objections were insurmountable. The court's readiness to dismiss the clear view of the eldest child despite his apparent maturity is quite visible in this case.

##### **Re S (abduction)**

[2003] All ER (D) 238 (Dec)

The family home had been in the US. At the end of an agreed holiday, the mother kept the child in Ireland. As a result of Hague Convention proceedings in Ireland, a consent order for the child's return to the US was made. However, shortly after the mother and child's return, she took the child to England. She did not appear at a US hearing later that month and an interim custody order was made against her. More than four years later the mother and child were found to be living in England under assumed names. The child was removed from the mother pursuant to a police protection order (PPO) and placed in foster care provided by the local authority. Proceedings were instituted under the Child Abduction and Custody Act 1985 (CACA 1985). At the end of the first day of the hearing the PPO was due to expire; the father requested directions to ensure that the mother and child would remain within the jurisdiction for the duration of the proceedings.

The issue which arose for determination was whether there was a legal foundation which permitted arrangements for the care of a child in Hague Convention cases. The judge found that s 5 of CACA 1985 enabled the court to give directions concerning the manner in which a child's welfare and whereabouts were to be managed if the circumstances of the case required removal from the abducting parent or temporary arrangements to be made. CACA 1985 established a self-contained code. Applications pursuant to the Act should proceed on parallel tracks to those made under the Children Act 1989, but with separate operating systems and a different gauge. Section 5 directions might extend to a local authority, but only when all other alternative arrangements had been considered and found wanting. The court retained the responsibility to control whatever interim measures were necessary to comply with obligations under the Hague Convention.

Interestingly, the court also made it clear that it had the power to order electronic tag-

ging of the errant parent where necessary. The court stated that it would ordinarily only do so with the consent of the individual concerned (or perhaps as a condition, non-compliance with which might bring about alternative safeguards against the perceived risk). However, where tagging is under consideration, representatives for the parties should contact Ananda Hall at the office of the president.

##### **A v A (children) (abduction: acquiescence)**

[2003] All ER (D) 284 (Dec)

Following the parent's separation, the youngest three children remained in the family home in Portugal with the father. The mother later moved to England and, subsequently, the father agreed to the oldest child joining her there. The father later agreed to the youngest two children spending the summer holiday with her. Towards the end of that visit, the father consented to the children remaining in England and agreed to send their clothes. After the Portuguese school term resumed, the children had still not returned. Consequently, the father contacted the authorities and sought the children's return under the Hague Convention, contending that his agreement was a pretence, based on his fear that if he did not agree, the mother would take the children to a place where he could not find them. The mother argued that the father had acquiesced and that the delay before the father contacted the central authority was fatal to his claim. The court ruled that the defence of acquiescence was not made out because the subjective position of the father at the time of his agreeing to the children remaining in England was fundamental. The judge decided that the agreement was a pretence designed to secure the mother's compliance and, once it was clear the children were not returning, the father had acted without unreasonable delay. The children were returned to Portugal.

This is the first reported case of the defence of acquiescence being challenged in this way. That the father *agreed* to the children remaining was not at issue; *why* he agreed was the central point. There might well be mileage for those parties accused of acquiescence to argue that their acquiescence was merely a pretence in order to stay in touch with their children and not to drive the other parent underground.

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