



12 November 2025

PRESS SUMMARY

R (Children)

[2025] EWCA Civ 1426

The Baroness Carr of Walton-on-the-Hill (Lady Chief Justice), Lady Justice King and Lord Justice Peter Jackson

1. This was an appeal from the refusal by the President of the Family Division on 22 July 2025 of an application to set aside a return order made on 5 November 2024 under the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The question for the Court of Appeal was whether the President was wrong to conclude that there had not been a fundamental change of circumstances which undermined the basis on which the return order was made **[1]**.
2. The appellant children, A (13) and B (11), and their parents are US citizens who all lived in Pennsylvania until 2022. The parents separated when the children were very young. The father was given substantial contact until June 2021 when the mother stopped it, alleging that the children had been sexually abused by the father. The children have not seen him since **[2]**.
3. The judge in Pennsylvania, the Honorable Judge Rashid, determined that the mother had not proved her allegations against the father and she reinstated contact. The mother abducted the children to England, where she claimed asylum. Sole legal and physical custody of the children was awarded to the father in the US in October 2022. The mother's asylum claims were refused and the First-tier Tribunal dismissed the mother's appeal, having rejected the allegations against the father **[3-7]**.
4. The father brought proceedings for the children's summary return **[6]**. The mother relied on Article 13b of the Convention, arguing that the children's return would place them in an intolerable situation **[8]**. The judgment in the Hague proceedings was given by the President and Upper Tribunal Judge Mandalia. They rejected the mother's defences and determined that, despite their clear objections, the children should return to the US **[9]**. Their judgment is summarised at **[25-28]**. Their view was that it would not be putting the children in an intolerable situation for them to be placed in foster care for a short time on arrival in the US in the absence of a suitable third party. The mother was refused permission to appeal in respect of that decision **[10]**.

5. The return order was perfected by the President on 5 November 2024. It provided that it was not to be implemented until the US custody order of October 2022 had been modified so that the children were not to be placed in their father's care on arrival in the US if the mother was arrested, but would be placed in foster care in the absence of a suitable third party [11]. In addition, the father would obtain an emergency hearing in the US to address the issue of custody. The mother and father signed an agreement to this effect [12].
6. The father duly applied to modify the US custody order but this was denied by Judge Rashid, who upheld the order giving the father sole legal custody, but added that the father should allow the children to be temporarily cared for by a known family member if he determined the children were experiencing extreme emotional or mental health issues while in his custody [13] & [34]. Transcripts from the US hearing record that the judge saw no reason why the children should not go to their father pending an emergency hearing and that no family members were put forward by either party as an alternative [31]. The judge was clear that she would not approve an arrangement whereby the children stayed with the mother on arrival [33].
7. The mother applied to set aside the return order. The President added the children as parties and undertook a reconsideration [15]. The father applied to vary the order so as to allow the children to be placed in the care of their paternal grandmother on return. After hearing submissions, the President held that there had not been a fundamental change of circumstances. He did not set aside the order and instead varied it so that the children would be placed in the care of the grandmother if the mother was unavailable [16]. His decision is summarised at [36-38].
8. On appeal, the children, supported by the mother, argued that the President was wrong to find that there had not been a fundamental change in circumstances when the original protective steps were now ineffective [41]. The father submitted that the President's order was open to him for the reasons he gave [42-44].
9. The Court of Appeal was clear that a return to their native country remained in the best interests of the children, despite their objections and the amount of time they had spent in England [47]. However, it found that there had been a fundamental change of circumstances which undermined the basis of the original return order, for reasons set out at [51-56]. In summary:
 - (a) The core protection the children were promised by the original return order was the assurance that they would not be placed with their father on arrival. On any view of the US order, it does not provide them with that assurance: they would go first to the father, who could then decide to exercise his discretion so as to give temporary care of the children to another party. The President fell into error by focusing on the arrangements made within the English proceedings, when it is the US regime that will govern the arrangements after the children arrive in America.
 - (b) There is a clear asymmetry between the English and US orders. The original return order provided that the children should optimally remain with the mother and should in no circumstances go to their father. Conversely, the US

Order directs that the children shall go to the father and shall in no circumstances remain with their mother, even if she is free to remain with them upon return. The father's assurances that he will not take up care of the children is at odds with the regime endorsed by the US court, which did not put a regime in place that provides for the children to be placed with their grandmother on their arrival.

- 10.** The Court of Appeal therefore set aside the dismissal of the children's application and adjourned the appeal for a short period (no more than 90 days) to give the US court the opportunity to consider the up to date position, namely that a suitable family member other than the father is now available as a short term carer. The relevant provisions of the return order were stayed pending further order of the Court of Appeal. A copy of the judgment and order and the President's judgments are to be sent to the International Family Justice Office for onward transmission to the relevant Network Liaison Judge in the US **[57-60]**.

NOTE: This summary is provided to help in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and can be found at: <https://caselaw.nationalarchives.gov.uk/> and <https://www.bailii.org/>.

Paragraph numbers in bold are those assigned in the judgment.