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[31/07/1991; Court of Appeal (England); Appellate Court]
Re F. (A Minor) (Child Abduction) [1992] 1 FLR 548, [1992] Fam Law 195

COURT OF APPEAL (CIVIL DIVISION)

Royal Courts of Justice

31 July 1991

Neill, Butler-Sloss, Russell LJJ

In the Matter of F.

Colin Ross Munro QC and June Rodgers for the father

Henry Setright for the mother

BUTLER-SLOSS LJ: This is an appeal from the order of Johnson J on 19 July 1991 in proceedings commenced under the Hague Convention. The child the subject of the proceedings was a little boy, A, 14 months old, born in England on 10 May 1990 to an English father and an Australian mother. He has been registered as an Australian citizen. The parents met in Australia and married in England in 1987. The family lived in England with the father's mother until 10 April 1991. They then flew to the USA for a few days' holiday, particularly to Disneyland, and arrived in Australia on 21 April 1991. The purpose of the journey to Australia and its consequences are in dispute, but it was planned last year. The father, who alone requires a visa, applied for one in October 1990 and made the declaration in it:

'I and my accompanying dependent family members will NOT seek authority to settle in Australia and will leave at or before the end of the authorised visit period.

I and my accompanying dependent family members will NOT undertake employment or any formal studies while in Australia.'

He also declared that he would produce tickets for himself and his family on arrival in Australia. He further declared that the questions he answered were true and correct, and he signed it. He also showed he was staying with various relatives for the first part of the holiday and that this was an application for a visitor visa. The visa form filled up by the father was not available to the judge, who was provided with a similar blank form, but this court gave leave for the completed form to be received as additional evidence.

The mother wrote a letter to her mother in Cairns, Queensland, on 16 October 1991, in which she said:

'. . . we are definitely coming over. Our tickets are booked and paid for. Billy has his passport. Alex is registered as a citizen and we are preparing finances and also getting down to personal organisations. Billy is keen. He needs a break from here as much as I do . . . At the moment what we will do from there is undecided. Where we decide to live will depend on where Billy can get work. We want to be realistic and not just say we want to live in Cairns. I'd like to go there but it may not be practical. Billy will be coming on a visitor's visa. What process did Barbara use to get her husband in . . . Do you know?'

The mother received, around the same time in September, a letter from her father which indicated that he was going to provide, through her sister, a collection of house prices and estate agents' particulars.

In October 1990 the father bought three return tickets for Sydney, with a return date in July 1991 but valid for one year. Nineteen packing cases were dispatched via Pickfords for transport by sea to Brisbane to arrive some 6 weeks after the family. The packing cases, according to the affidavit of the maternal great-grandmother, contained ten boxes of books, two boxes of hi-fi system, a baby's cot, and a picture among other possessions.

According to the mother, the intention of the family was to emigrate to Australia and regularise the father's resident status after arrival. According to the father, the family was visiting for an extended holiday, staying for the first few weeks with relatives, with the intention of considering whether or not to live in Australia for any length of time and whether there might be any work available for them both.

On arrival in Australia, they stayed as a family, first with the mother's father in Sydney and then moved to the mother's mother in Cairns. The relationship between the parents deteriorated on 20 May 1991, at the mother's suggestion, the father went to stay with his sister near Sydney and the mother and A remained with her mother. On 3 July 1991 the mother and A rejoined the father near Sydney and the mother informed the father that the marriage was at an end and that she had consulted solicitors. She and A continued to stay with the father until 8 July 1991. She went to Brisbane and left A with his father. According to the father, she left no address or telephone number and he did not know when she was returning. He decided to take A back to England and consulted solicitors and the Australian immigration authorities to see if there was any reason why he could not remove the child. He was advised that there was not and, on 10 July 1991, he flew back to London with A. He did not tell the mother or any of her family of his plans before he left, but, on arrival in England, got in touch with the mother through his sister in Sydney.

The mother moved with great speed and initiated her originating summons under the Convention procedure, which came first before a judge on 16 July 1991 and before Johnson J on 18 July 1991. Both the mother and the father were present at the hearing. The judge decided the case on the affidavits and other documentary evidence. The judge found that the Convention applied and directed that the child return to Australia with the mother. The parties were able to agree that, despite this appeal, the mother should return with A to Australia, upon her undertaking that, if the appeal was allowed, she would return with the child for the issue of his custody to be dealt with in wardship proceedings.

The removal of A from New South Wales to England by the father was, in my view, entirely wrong and contrary to the welfare of this child. Any legal advice or advice from the Australia immigration authorities as to his right to remove the child does not change a unilateral and unjustified act of taking a child from one country to another, without either the knowledge or consent of the other parent. That, however, is not the issue in this case. The

question is whether the removal of A from Australia contravenes the Hague Convention. Article 3 of the Convention reads as follows:

'The removal or the retention of a child is to be considered wrongful where -

(a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

(b) at the time of removal or retention those rights were actually exercised either jointly or alone, or would have been so exercised but for the removal or retention.'

It is common ground between the parties that, by Australian family law, the removal of the child was in breach of the mother's rights of joint guardianship and custody (Family Law Act 1975) and, consequently, was a wrongful removal under art 3 of the Convention if the other elements of the article apply. It is equally common ground that the child and his parents were all habitually resident in England prior to 10 April 1991. The only issue is, therefore, whether the child was habitually resident in Australia immediately before his removal on 10 July 1991. A young child cannot acquire habitual residence in isolation from those who care for him. While A lived with both parents, he shared their common habitual residence or lack of it. Lord Brandon in Re J (A Minor) (Abduction) [1990] 2 AC 562 said at p 578:

'The first point is that the expression "habitually resident", as used in art 3 of the Convention, is nowhere defined. It follows, I think, that the expression is now to be treated as a term of art with some special meaning, but is rather to be understood according to the ordinary and natural meaning of the two words which it contains. The second point is that the question whether a person is or is not habitually resident in a specified country is a question of fact to be decided by reference to all the circumstances of any particular case. The third point is that there is a significant difference between a person ceasing to be habitually resident in country A, and his subsequently becoming habitually resident in country B. A person may cease to be habitually resident in country A in a single day if he or she leaves it with a settled intention not to return to it but to take up long-term residence in country B instead. Such a person cannot, however, become habitually resident in country B in a single day. An appreciable period of time and a settled intention will be necessary to enable him or her to become so. During that appreciable period of time the person will have ceased to be habitually resident in country A but not yet have become habitually resident in country B.'

The judge found that the child was habitually resident in Australia for two reasons:

1. He found that the family had acquired habitual residence in Australia by 20 May 1991.

2. He found, in the alternative, that the mother had acquired habitual residence and that the father had acquiesced in the child remaining with the mother and in the change of habitual residence of the child to that of his mother.

Consequently, he found that the Convention applied and that the father was in breach of it.

On the appeal, Mr Ross-Munro QC for the father, raised three points: 1. The judge was wrong to hold that the habitual residence of the family was Australia.

2. The judge was wrong to find that the father had acquiesced in the acquisition of the mother's habitual residence by the child.

3. The judge should have heard oral evidence to resolve major conflicts of evidence on the issue which required to be decided and which went directly to the jurisdiction of the court and he was wrong to decide that case on affidavit and documentary evidence alone.

Oral evidence

Taking the third point first, Mr Ross-Munro submits that in a case under the Convention, where the issue is where the child was habitually resident and there is a conflict of evidence on the issue which goes to the jurisdiction of the court, the judge ought to hear oral evidence to resolve the matters in dispute and, consequently, Johnson J erred in not hearing the parties give oral evidence.

Proceedings under the Convention are summary in nature and designed to provide a speedy resolution of disputes over children and secure the prompt return of children wrongfully removed from the country of their habitual residence. The procedure set out in Ord 90, rr 32-47, is by originating summons. The parties may file affidavit evidence, but there is no right to give oral evidence although the court has a discretion to admit it (see Re E (A Minor) (Abduction) [1989] 1 FLR 135). In a number of cases, oral evidence has been admitted and, in others, refused by the judge in Convention cases which have been reported and which were brought to our attention. There is a real danger that if oral evidence is generally admitted in Convention cases, it would become impossible for them to be dealt with expeditiously and the purpose of the Convention might be frustrated.

In this case, there are irreconcilable issues exposed in the affidavits of the parents as to the reasons for the visit to Australia. The disputed evidence goes to the heart of the issue to be resolved and undoubtedly placed the judge in a difficult position. But the criticisms of the judge are entirely unwarranted, when the transcript of the proceedings is read. The question of oral evidence was raised by Mr Setright for consideration by the judge. Mr Setright did not ask the judge to hear oral evidence on behalf of the wife and had no wish for him to do so. The judge consulted Miss Rodgers, acting for the father, who launched immediately into her general submissions without giving the judge an answer to the question on oral evidence. Early in her submissions, she undoubtedly gave the impression that the disputes of fact were de minimis and the issues were those of law and not of fact. A later application for a specific witness to be called is irrelevant to this point. Clearly, Miss Rodgers did not seek either to call her client or cross-examine the mother. In those circumstances, the judge was entirely justified in hearing the matter on the affidavit and documentary evidence and coming to a conclusion on the available material. Having said that, the task of rejecting the sworn evidence of a deponent on contested issues of fact without hearing oral evidence, and, in particular, cross-examination on the affidavits, is not one lightly to be undertaken, where, in a case such as this, the resolution of the disputed facts is crucial to the decision whether the Convention applies at all. If the facts in issue are not crucial, oral evidence would not be necessary. Equally, as in Re E (A Minor) (Abduction) (above), if only one side is present and able to give evidence, that evidence, in the absence of the other side, is unlikely to resolve the issue. But if both parties are present in court, some limited oral evidence relevant to the issue would clearly be helpful in certain cases. With hindsight, it would have been helpful in this case. But the admission of oral evidence in Convention cases should be allowed sparingly.

If a judge is faced with irreconcilable affidavit evidence and no oral evidence is available or, as in this case, there was no application to call it, how does the judge resolve the disputed evidence? It may turn out not to be crucial to the decision, thus not requiring a determination. If the issue has to be faced on disputed non-oral evidence, the judge has to look to see if there is independent extraneous evidence in support of one side. That evidence has, in my judgment, to be compelling before the judge is entitled to reject the sworn

testimony of a deponent. Alternatively, the evidence contained within the affidavit may in itself be inherently improbable and therefore so unreliable that the judge is entitled to reject it. If however, there are no grounds for rejecting the written evidence on either side, the applicant will have failed to establish his case. There is, in my view, no substance in the third point raised by Mr Ross-Munro.

Habitual residence of the family

The judge relied on six points in coming to his firm conclusion on the affidavit and documentary evidence.

1. By far the most important point was the decision of the family to send by sea nineteen packing cases. The father's explanation for these items was:

'We did not take any major household items such as sofa or television set with us - only such items as would make our extended stay enjoyable.'

The father's explanation was, in my view, entirely unconvincing.

2. There were two letters in the autumn of 1990, to which I have already referred, of which the father may not have been aware and which, by themselves, do not add very much, but may be seen as pointers.

3. Shortly after their arrival, the father obtained forms of application for resident status and, I assume, a work permit, and they were partially filled up with the wife's help, but not sent in.

4. The father and mother together filled in an application form in May 1991 for a distributorship in Australia.

5 and 6. The judge also relied upon the application for a visa and the buying of the three return tickets, two of them it seems unnecessary, as consistent with the mother's case.

The judge came to the conclusion, having set all these matters out:

'I conclude from those facts that when the family left the UK and went to Australia, their plan was to settle there. I have no doubt about that. Whether they would have stayed there indefinitely would, no doubt, have depended on the success of the marriage and their ability to find accommodation and employment there. I have no doubt that, in all practical respects, they did intend to emigrate from the UK and settle in Australia. I simply cannot conceive that a family going to Australia for an extended holiday would have acted in the way that not only the mother but also the father acted in the respects to which I have already referred. The father's evidence about it is as follows:

"As far as I was concerned, and I thought the plaintiff was of the same mind, this was to be by way of an extended holiday, during which we would consider whether or not to live in Australia for any length of time and whether there might be any work available for us both."

I reject the father's evidence in that respect.'

Mr Ross-Munro, in his submission, accepts that the nineteen packing cases is a point very much in favour of the mother's case, but seeks to show that it is not sufficiently compelling by itself and that the other points do not go very far to assist the wife. He asserts that in respect of the visa and the tickets, they support the father's case. In addition, he points to the

other items of furniture neither sent to Australia nor disposed of. In that context, it is pertinent to remember that the couple lived with the father's mother. Also, English bank accounts have not been closed. The family had made no effort to look at houses, either to buy or to rent. However, they did part a month after arrival and, until 20 May 1991, were staying together with relatives. I agree with Mr Ross-Munro that the purchase of the three airline tickets is a point in favour of the father, but it may be capable of explanation. The completed visa form, however, is equivocal. On the one hand, the father signed the declaration that he was a bona fide visitor and would not seek authority to settle in Australia and would leave before the end of the authorised visit period. On the other hand, he did obtain forms for permission to reside in Australia, which were incompatible with his declaration. In my view, the judge was entitled to find the visa form not inconsistent with the evidence of the mother. However, the issue remains that, on the vital question as to the purpose of the visit, the evidence of the two parents is diametrically opposed and irreconcilable. Was the judge entitled, on the evidence available to him, to reject the father's account in his affidavit of the extended holiday and find for the mother?

As I have already said, in cases such as these, concerned with establishing the facts and circumstances prior to a decision whether the case is a Convention case at all, if the evidence conflicts in an essential particular and both parties are available to give oral evidence on that point, the normal practice in Convention cases of not calling oral evidence might usefully give way to the taking of a limited amount of oral evidence to enable the judge to resolve the issue. But the judge tried the case on the evidence available to him and, in my view, on the particular facts of this case, he was eminently justified in rejecting the father's affidavit evidence. There was an accumulation of evidence which, put together, became compelling in the absence of any credible explanation from the father. The explanation of the father as to the nineteen packing cases - to make the extended stay more enjoyable - became inherently improbable upon looking at the list of the items sent by sea. Russell LJ, during the argument, queried the existence of the picture, for the inclusion of which the explanation from counsel was that, for sentimental reasons, it went with the family for this extended holiday. That is, perhaps, an extreme example, but the number of packing cases, in itself, is compelling evidence contrary to the suggestion of a holiday, even an extended one. The point about the tickets, in my judgment, is not sufficient to displace the evidence to the contrary.

The judge was entitled to make the finding that the family did intend to emigrate from the UK and settle in Australia. With that settled intention, a month can be, as I believe it to be in this case, an appreciable period of time. Looking realistically at the position of A, by the time he left Sydney on 10 July 1991, he had been resident in Australia for the substantial period of nearly 3 months. Mr Setright, wearing two hats, on behalf of the mother and of the Lord Chancellor as the central authority, reminds us that it is important for the successful operation of the Convention that a child should have, where possible, an habitual residence, otherwise he cannot be protected for abduction by a parent from the country where he was last residing. Paraphrasing his argument, we should not strain to find a lack of habitual residence where, on a broad canvas, the child has settled in a particular country.

On the first ground, therefore, in my judgment, the judge was right and this case falls within the Convention and the father wrongly removed A from Australia.

I would dismiss the appeal on that ground.

Acquiescence

I will, however, make some observations upon the second limb, the question of acquiescence. While parents live together, the child is habitually resident with both parents. When the parents separate, the child's habitual residence may change and will, in due course, follow that of the principal carer with whom he resides. In Re J (A Minor) (Abduction: Custody Rights) [1990] 2 AC 562; sub nom C v S (A Minor) (Abduction: Illegitimate Child) [1990] 2 FLR 442, Lord Donaldson

MR said at p 572 and p 449 respectively:

'. . . in the ordinary case of a married couple, in my judgment, it would not be possible for one parent unilaterally to terminate the habitual residence of the child by removing the child from the jurisdiction wrongfully and in breach of the other parent's rights. Accordingly this decision cannot be applied to the ordinary case of the married couple.'

Lord Donaldson was, of course, considering a more extreme situation than the present, but, adapting the observations of Lord Donaldson to the present facts, I would respectfully agree with what he said. The change of habitual residence of a child may occur in a number of ways, by order of the court, by agreement of the parents, by one parent taking no step to prevent the other parent from changing the child's home, which, over a sufficient period, may amount to acquiescence. In Re P (GE) (An Infant) [1965] Ch 568 Lord Denning MR said at p 585:

'So long as the father and mother are living together in the matrimonial home, the child's ordinary residence is the home -- and it is still his ordinary residence, even while he is away at boarding school. It is his base, from whence he goes out and to which he returns. When father and mother are at variance and living separate and apart and by arrangement the child resides in the house of one of them -- then that home is his ordinary residence, even though the other parent has access and the child goes to see him from time to time. I do not see that a child's ordinary residence, so found, can be changed by kidnapping him and taking him from his home, even if one of his parents is the kidnapper. Quite generally, I do not think a child's ordinary residence can be changed by one parent without the consent of the other. It will not be changed until the parent who is left at home, childless, acquiesces in the change, or delays so long in bringing proceedings that he or she must be taken to acquiesce. Six months' delay would, I should have thought, go far to show acquiescence. Even 3 months might in some circumstances. But not less.'

Whether a parent has acquiesced in a change of habitual residence will, of course, be a question of fact. In the present appeal, the mother, who is Australian and returned to her own country with the settled intention to remain there, may well have reacquired habitual residence in Australia very quickly. The question in relation to A did not arise until after 20 May 1991, and the period with which we are concerned is only until 10 July 1991. But the need for a close examination of time limits, as suggested by Lord Denning, and whether they are relevant to today's peripatetic families does not, in my judgment, arise in this case. Acquiescence is a combination of a sufficient period of time coupled with inactivity by the parent without the child to demonstrate an implied acceptance of the changed position. The circumstances of the parting of the couple, the reluctance of the father to accept the breakdown of the marriage, together with the view of the mother expressed in her affidavit as to some prospect of reconsideration of the future of the marriage, are not, in the written evidence alone, sufficient, in my view, to show acquiescence. I would not myself wish, in our modern way of life, to lay down any rules as to a period of time which may or may not demonstrate acquiescence. It has to be a matter of the facts and circumstances of each case. But where there is a shortish period and the parting of the parents is not yet final and reconciliation is a possibility, the absence of any legal action taken by the non-custodial

parent ought not to be taken as the equivalent of an implied agreement to the actions of the other parent. On the basis of the written evidence alone, the evidence in this case was not, in my view, sufficiently strong for the judge to find acquiescence by the father to the acquisition by the child of the mother's habitual residence. There might have been an argument, however, as to whether the father in fact consented to the child remaining with the mother and changing the habitual residence, but this argument was not placed before the judge and it is not necessary to explore it on this appeal.

I would dismiss the appeal.

RUSSELL LJ: I have had the advantage of reading in draft the judgment which has been given by Butler-Sloss LJ and also the judgment about to be delivered by Neill LJ. I agree with both judgments and, for all the reasons contained therein, I too would dismiss this appeal. There is nothing which I can usefully add.

NEILL LJ: I have had an opportunity of reading in draft the judgment of Butler-Sloss LJ. I agree with it and with the reasons given by Butler-Sloss LJ for dismissing this appeal. In deference to the argument of counsel for the father, however, I propose to add a short judgment of my own on one aspect of the matter.

The question for decision in this case is whether the child A, now aged 14 months, was 'habitually resident' in Australia on 10 July 1991, the day when his father brought him back to England without the mother's knowledge or consent.

It is common ground that, until the family left England on 10 April 1991, the father, the mother and A were habitually resident in England. The family arrived in Sydney on 21 April 1991, having spent a few days en route in the USA.

The only evidence before the judge and before this court has been in the form of affidavits and the exhibits to those affidavits. This accords with the usual practice in Convention cases. There may be cases, however, of which - with the benefit of hindsight - this would appear to be one, where the foreign court has not yet become involved and where there is an issue as to whether the Convention applies at all. In such cases, the court may have to decide questions as to the intention of the parties or other matters where the affidavit evidence is in direct conflict. It may then be more satisfactory for the court, before reaching a decision, to hear oral evidence if this is available.

In the present case, it is and was the father's contention that the family went to Australia on an extended holiday. In para 6 of his affidavit he said this:

'I travelled to Australia on a visitor's visa valid for one year only. I had neither a work nor a resident's permit. As far as I was concerned, and I thought the plaintiff was of the same mind, this was to be by way of an extended holiday, during which we would consider whether or not to live in Australia for any length of time and whether there might be any work available for us both.'

In paragraph 12, when dealing with the circumstances in which he obtained an application form to enable him to obtain residency and rights of work in Australia, he said this:

'I did not complete the forms as I did not want to stay in Australia, save for the extended holiday we were on.' In para 13, explaining how it was that he came back to England on 10 July 1991, he said:

'From her attitude, I concluded there was no future for us in Australia.'

The mother's evidence, on the other hand, is that they went to Australia intending to make their home there. In para 3 of her affidavit she said this:

'After the birth of A, we decided that we would leave England for Australia, because we both believed that we would all have a better life over there. The marriage had been difficult for some time and I hoped that when we got to Australia and found a home of our own things would improve for us. I believe that many of our problems were caused by our very cramped living conditions at the defendant's mother's home. After the decision had been made, I returned to work so that we would be able to save sufficient money to set us up in Australia and to pay off a debt of £4000 which I incurred in this country when I started a small business which did not work out.'

In paras 5 and 6 the mother referred to their intention to settle in Byron Bay in New South Wales. In para 11 she added:

'The decision to live in Australia was a joint decision of us both.' The judge rejected the father's evidence that they went to Australia on an extended holiday. He held that the father had become habitually resident in Australia by (it seems) 20 May 1991, that is within a month of arrival in the country.

The question which has particularly concerned me in this case is whether there was sufficient evidence to be derived from all the surrounding circumstances to entitle the judge to reject the father's sworn evidence in his affidavit which had not been tested by cross-examination. The judge based his conclusion on the improbability, in the circumstances, of the father's assertion that they went on an extended holiday. In his judgment, the judge said this at p 6D:

'I simply cannot conceive that a family going to Australia for an extended holiday would have acted in the way that not only the mother but also the father acted in the respects to which I have already referred.'

The judge's references related to six matters:

'(1) the mother's letter of 16 October 1990 (bundle, p 57) and her receipt from an estate agent in Australia of particulars of properties where they might live;

(2) the fact that the family's possession were packed in nineteen boxes and sent to Australia by sea;

(3) the completion, by the father, of an application form for the grant of a distributorship of a product to be sold by the father in Australia;

(4) the partial completion of an application form by the father for resident status in Australia;

(5) the application for a visa by the father;

(6) the purchase of return air tickets.

I shall deal first with the visa application and the air tickets (items 5 and 6 in the judge's list). Counsel for the father criticised the judge's reliance on these two matters which, it was submitted, strongly supported the father's case. At p 6A of his judgment the judge said this:

'It seems to me that everything that happened in relation both to the air tickets and to the visa application accords with the evidence of the mother that they had planned to settle in

Australia, where she and A would be entitled as of right to settle and where, no doubt, an application that her husband and A's father should also be allowed to settle would be little more than a formality.'

At one time, I was puzzled by this passage in the judgment, as it seemed to me that the application for a visitor's visa and the purchase of the unnecessary return tickets for the mother and for A were more in accord with the father's case than that of the mother. But I am satisfied, on further reflection, that the visa application is at least capable of fitting in with the mother's story that the plan was to apply for resident status after arrival. According to para 4 of the mother's affidavit, the father had been told, in London, that an application from England for resident status could take up to 2 years. Moreover, even the purchase of the extra tickets may be no more than equivocal. An immigration official might look with some suspicion at a visitor who had a return ticket for himself, but no such ticket for his wife or child.

I turn next to the letter in October 1990 and the receipt of information from an Australian estate agent. It may well be that the father was unaware of the terms of his wife's letter to her mother and he may never have seen the particulars. It is certainly true that, on the evidence, the parties took no steps to find a home for themselves during the time they were together in Australia. I propose, therefore, to attach little importance to these items.

The other matters relied on by the judge, however, fall into a very different category. The father accepts that while in Sydney he obtained and partially completed the application for resident status. These steps fit in precisely with the mother's evidence that they both knew that it would be simpler to apply for resident status after arrival. The application for a dealership is also very significant and fits in with the mother's version of the family's intentions. But I attach even greater importance to the shipping of no less than nineteen boxes or cases of possessions from England. The father referred to these boxes in his affidavit at para 7:

'To cover us whilst in Australia, we had arranged for certain items of clothes, children's requirements and books to be shipped out to Brisbane, Australia . . . We did not take any major household items such as sofa or television set with us - only such items as would make our extended stay enjoyable.'

According to the affidavit of the wife's grandmother, the boxes were cleared through customs on 9 July 1991. The airline tickets showed a return flight on 30 July 1991.

I have come to the conclusion that, on the facts of this case, there was indeed sufficient evidence provided from the documents and the surrounding circumstances to entitled the judge to reach the conclusion he did. Moreover, it is to be noted that there is no evidence that the father gave any indication before the wife went to Brisbane on 8 July 1991 that he was planning to leave Australia.

I too would dismiss this appeal.

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