

Re R (A Child) (2015)

[2015] EWCA Civ 674

02/07/2015

Barristers

Henry Setright QC
Sally Bradley
Chris Barnes

Court

Court of Appeal (Civil Division)

Practice Areas

Public Children Law

Summary

A decision that a mother was habitually resident in the UK despite having had no permanent abode there since 2006 appeared initially surprising. However, a detailed view of the facts revealed that neither she nor her daughter had settled or integrated into Moroccan society.

Facts

The appellant Moroccan father appealed against a decision ([2015] EWHC 742 (Fam)) that his four-year old daughter had had habitual residence in the UK throughout her life, despite being born in Morocco and having lived there for more than 16 months before being removed to the UK by the respondent US mother.

From the age of 13, the mother had lived and been educated to post-graduate level in the UK. She ceased to have a permanent residence in the UK when she met the father in 2006. She married him in Morocco in 2007 and their daughter was born there in 2010, although both parents had intended her to be born in the UK if her pregnancy had reached full term. The mother fraudulently registered the birth in England. The mother and daughter then travelled to France, Switzerland and the USA before returning to Morocco in November 2011. They remained in Morocco for 16 months until March 2013 when they flew to England. They had remained in the UK ever since. In October 2013 as a consequence of the mother's excessive physical restraint, the daughter was taken into local authority care and fostered. In care proceedings, the judge found that the mother had never lost her habitual residence in the UK.

The father submitted that Morocco was the country of habitual residence and the judge's findings were perverse given that the daughter's life in the UK from March 2013 until she was taken into care in October had been one of effective homelessness and neglect and that prior to that she had only ever visited the UK for short periods.

Held

1) The court had been required to determine jurisdiction with regard to care proceedings issued in April 2014, when the daughter was nearly three years old. Consequently the relevant date for determining her habitual residence was either April 2014 under Regulation 2201/2003, the Brussels II Revised Regulation, or October 2013 if the Hague Convention on Parental Responsibility and Child Protection 1996 applied. Although evidence relating to her habitual residence prior to those dates was relevant, it had been unnecessary for the judge to have made a finding that the daughter had been habitually resident in the UK all her life (see para.39 of judgment). (2) Viewed from a high level the judge's conclusion appeared surprising. However, looking at the detail, the mother had failed to settle or integrate into Moroccan life, there had been domestic violence, and the parents had lived apart for significant periods in Morocco. The mother had really only ever integrated into the UK, where she had spent over 10 years at school and university and in work. Her return to Morocco had been an extended stay while she sought a temporary harbour. The judge's conclusion that, given the degree of dependence, the daughter's habitual residence was effectively determined by that of her mother was uncontroversial, *A v A (Children) (Habitual Residence)* [2013] UKSC 60, [2014] A.C. 1 considered (paras 50-55).

Permission

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