

Re S (A Child) (Financial Provision)

[2005] 2 WLR 895

09/11/2004

Barristers

Catherine Wood KC, MCI Arb

Court

Court of Appeal

Facts

The mother and father, who were Sudanese, were resident in England where their child M was born. They returned to the Sudan where they were divorced. Following a period of contact the father unlawfully retained M. The mother returned to England and commenced proceedings in which she sought M's return to England. During the interlocutory stages of those proceedings a court in the Sudan ordered that M be returned to his mother. Having obtained a declaration from the High Court that M remained habitually resident in England and Wales, the mother made an application under paragraph 1 of Schedule 1 to the Children Act 1989 in which she sought an order that the father make periodical payments or pay a lump sum "for the benefit" of M. The judge held that the mother's purpose for seeking an award under paragraph 1, namely to allow her to travel to the Sudan and enforce the judgment of the Sudanese court, was not "for the benefit" of M. He also held that by paragraph 14 of Schedule 1 the court could only make an order under paragraphs 1 and 2 where the payer was resident in the jurisdiction. The mother applied for permission to appeal.

Held

On the application—

Held, granting permission to appeal and allowing the appeal, (1) that the term "for the benefit of the child" in paragraph 1(2) of Schedule 1 to the Children Act 1989 was to be given a wide construction; that M had suffered great disbenefit in the loss of the company and support of his mother; and, that accordingly, a discretionary appraisal might well conclude that the mother's objectives in seeking an award were for the benefit of M as well as for the mother's benefit (post, paras 19, 27, 28-29, 33).

(2) That paragraph 14 of Schedule 1 to the 1989 Act was not designed to be a comprehensive jurisdictional provision for Schedule 1 in all cases in which the child was not present in the country; that the court had jurisdiction to make an order for financial provision in other circumstances where a child who was living abroad, particularly where the child's residence there was in breach of a court order; that given the judgment of the Sudanese court in her favour and the declaration that M remained habitually resident in England and Wales, the mother was entitled to a discretionary appraisal of whether or not a financial order should be made; and that, accordingly, the case would be remitted to the Family Division

(post, paras 21 , 23 -24 ,26 -27 ,30 -32 , 34).

Permission

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