

B v H (Habitual Residence: Wardship)

[2002] 1 FLR 388

19/10/2001

Barristers

Robin Barda

Court

Family Division

Facts

The mother alleged that the father had been threatening and violent during the marriage; at one stage the mother had obtained a non-molestation order against the father, later going into a refuge for 3 months. Following a reconciliation, the mother, now pregnant, and the three children, all habitually resident in England, accompanied the father to Bangladesh for what the mother believed would be a visit of 4-5 weeks. While on the visit the father announced his intention to remain in Bangladesh, refused to hand over the passports of the mother and children, and revealed that he had purchased single rather than return tickets to Bangladesh. Because the mother was unable to leave the country, the fourth child was born in Bangladesh. Subsequently, after another violent incident, which was reported to the police in Bangladesh, the mother left the father, eventually obtaining a divorce and her passport, but not the children. The father retained control of the children and the mother returned to England without them. The mother applied for the children to be made wards of court with care and control to her, and for injunctive orders against the father requiring him to return the children to the jurisdiction. It was common ground that the court did not have jurisdiction to make such orders in respect of a child who was not habitually resident in England and Wales at the date of the originating summons.

Held

Held – making wardship orders in respect of all four children and making injunctive orders against the father, in personam, that he return the children to the jurisdiction –

(1) The three oldest children did not lose their habitual residence in England when the family left for Bangladesh because, although the father may have intended to change their habitual residence, the trip had been presented to the mother as a temporary visit, and one of two parents with joint parental responsibility could not change the habitual residence of a child unilaterally. As, on the facts, the mother did not form an intention to live permanently in Bangladesh after the family's arrival there, or become resigned to that possibility, the children did not subsequently lose their habitual residence in England (see paras [22], [88], [89], [90], [97]).

(2) The baby was and remained habitually resident in England even though she had never been to England. A child could not acquire an habitual residence until he or she was born and became an

independent being; at birth the habitual residence of a baby was that of the people who had parental responsibility for the baby. Although it was possible for individuals to have no habitual residence, a baby had an habitual residence if its parents had an habitual residence. The mere fact that a baby was born abroad did not of itself found a conclusion that the baby was not habitually resident in England; it was not the case that a baby could not be habitually resident in England until he or she had physically been to England. The father's unilateral decision to remain in Bangladesh, albeit made and communicated before the birth, did not change the baby's habitual residence at birth, which remained that of the mother and the siblings. As with the siblings, habitual residence in England had not been lost as a result of the extended stay in Bangladesh (see paras [108], [114], [115], [142], [144], [150]).

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