

Re ML & AL (Children) (Contact Order: Brussels II Regulation) (2006)

[2006] EWHC 3631 (Fam)

09/11/2006

Barristers

Teertha Gupta KC

Court

Family Division

Summary

Where a mother had failed to comply with a contact order made by the English court which stipulated that the English court had jurisdiction pending the final outcome of the father's contact application, the appropriate course of action was to make the contact order final so that the English court's jurisdiction ceased by virtue of Regulation 2201/2003. The Austrian courts would then take over jurisdiction as to the practical arrangements for the implementation of the contact order.

Facts

The applicant father (F) applied for a change of residence order in respect of his children, who lived with their mother (M) in Austria. F and M had made an express agreement regarding interim supervised contact and vesting jurisdiction in the English court pending final determination of F's contact application. M lawfully relocated the children to Austria, and subsequently obtained an order in the Austrian court, purportedly under Regulation 2201/2003 Art.20, for suspension of contact, relying on psychiatric reports critical of F. The English court found the psychiatric evidence to be unsubstantiated and the suspension of contact unwarranted, and ordered a week of contact requiring M to bring the children to England and providing for further psychiatric assessments. M did not comply with the order. The court considered (i) the validity of the principles of automatic enforcement in another Member State of a contact order validly made in England and Wales as stipulated by the Regulation; (ii) in the instant case, what legal measures were available to F to pursue the restoration of his relationship with his children.

Held

HELD: (1) The Austrian courts had failed to enforce the contact order of the English court, contrary to the clear intention of the Regulation. No measures had been attempted to implement an order that had been determined in the children's best interests. The relevant national and international authorities would have to look closely at how the terms of the Regulation had been shown to be completely ineffective in the instant case. (2) The children had been wrongly deprived of a relationship with F, which amounted to abuse by M and was wholly unjustified. F's personal flaws did not impact on his ability as a parent, as there was no direct nexus between those flaws and the children's interests. However, to accede to F's

application for a change of residence would be totally unprecedented in circumstances where his fitness as a primary carer had not been assessed and the view of the children had not been at least taken into account. There were strong legal and welfare reasons militating against the making of a residence order. The appropriate course of action was to make a final order for contact so that the English court's jurisdiction came to an end by virtue of Art.12 of the Regulation, pursuant to the earlier express agreement between the parties. An order was accordingly made that M allow F reasonable unsupervised contact, with the Austrian courts to take over jurisdiction as to the practical arrangements for the implementation of the order.

Application refused

Permission

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