

Re EC (A Child) (2006)

(2007) 1 FLR 57 : [2006] EWCA Civ 1115; Times, July 19, 2006

06/06/2006

Barristers

Henry Setright KC
Teertha Gupta KC

Court

Civil Division

Summary

Where Hungary was the primary jurisdiction for the determination of any disputed issues as to the welfare of a child, it was wasteful and exorbitant for a judge to make arrangements for an expedited hearing on the unlikely ground that the case would have been exported under the Council Regulation 2201/2003 Art.15, and it was wrong to challenge the primary jurisdiction of another Member State.

Facts

The appellant mother (M) appealed against an order lifting the stay on proceedings issued by the father (F) for a residence order in respect of their daughter (D) so that provisions could be made for an expedited hearing to consider any disputed welfare issues. M and F had divorced. M took custody of D and moved to Hungary and F stayed in England. While D was on a short visit to England, F issued proceedings for a residence order. M sought D's return and it was granted on the ground that Hungary was the primary jurisdiction for the determination of welfare issues as D was habitually resident there. However, the judge also lifted the stay on F's proceedings, made arrangements for an expedited welfare hearing, and made provisions for the filing of evidence by each party and for the commissioning of a report from a CAFCASS officer. F submitted that the judge's decision to make arrangements for an expedited hearing was justified as Hungary might have exercised its discretion to export the case to the English jurisdiction under the terms of the Council Regulation 2201/2003 Art.15 . F argued that in the event that Hungary did not exercise that discretion, the material garnered in the English jurisdiction would not be wasted as it would be helpful to the Hungarian judge.

Held

HELD: The arrangements made by the judge were exorbitant, insupportable and close to being unprincipled. It was important in those cases that there be no orders that might be said inferentially to challenge the primary jurisdiction of another Member State. Given that no proceedings had been brought in Hungary and that it was only in exceptional cases that Art.15 was invoked, it was very unlikely that a Hungarian judge would have exported the case to the English jurisdiction. In those circumstances, a welfare hearing would have been wasteful and a full report from a CAFCASS officer would have been an extravagance.

Appeal allowed.

Permission

Lawtel 