

Re S-R (Contact: Jurisdiction) (2008)

(2008) 2 FLR 1741;

01/04/2008

Court

Family Division

Summary

Where the Spanish court had acquired jurisdiction under Regulation 2201/2003 art.12 for issues of parental responsibility concerning a child who had since become habitually resident in the United Kingdom, its retention of such jurisdiction was not conditional upon the UK court finding that that was in the superior interests of the child; nor could that jurisdiction be terminated by the decision of the UK court.

Facts

The applicant father (F) applied for enforcement of a contact order made by a Spanish court in respect of his son (S). F was a Spanish national, and the respondent mother (M) a British national, who had lived together in Spain during their marriage. Following their separation, a Spanish court had approved a separation agreement signed by them as part of Spanish divorce proceedings. The agreement provided for shared parental responsibility and for contact between F and S. Thereafter, M returned with S to the United Kingdom where, without reference to the Spanish order, she issued divorce proceedings and applied for a residence order. On F's application for a stay of M's divorce proceedings and for enforcement of the Spanish order, the UK court registered the Spanish order and exercised its power under Regulation 2201/2003 art.48 to make practical arrangements for organising F's rights of access to S. Contact between F and S took place until it was stopped by M, and the UK court was again asked to enforce the Spanish order. The issues were whether the court had jurisdiction to make substantive orders concerning parental responsibility and, if not, what it could do to acquire jurisdiction.

Held

HELD: Jurisdiction over matters concerning parental responsibility for S remained with the Spanish court. The general rule in art.8 of the Regulation, giving jurisdiction to the court in the place where the child was habitually resident, was displaced by the provisions of art.12. Under art.12, a court exercising jurisdiction in an application for divorce acquired jurisdiction in respect of matters relating to parental responsibility if those matters were connected with the divorce application, at least one of the spouses had parental responsibility for the child, both spouses had unequivocally accepted the jurisdiction of the court, and the court concluded that it was in the child's best interests that it accepted jurisdiction. Such jurisdiction continued so long as the divorce process continued, or until jurisdiction was transferred. In the instant case, the divorce process had been started in Spain, the Spanish court acquired jurisdiction over issues of parental responsibility, and it retained jurisdiction under art.12. It was a misreading of art.12 to suggest, as M did, that for the Spanish jurisdiction to survive, the court had to find that the

retention of jurisdiction by a Spanish court was in the superior interests of the child. Moreover, jurisdiction acquired in one country by virtue of art.12 could not be terminated by the decision of a court in another country. The Spanish order remained in effect and the UK court had no power to vary it. So long as that order remained in force the powers of the UK court were limited to those permitted by art.48, namely the making of practical arrangements for organising the exercise of access rights, and in making such arrangements the court had to respect the essential elements of the Spanish order. Having said all that, there were strong and cogent reasons why jurisdiction should be transferred to the UK court under art.15 : S had become habitually resident in the UK and issues of parental responsibility for him, and the evidence about those issues, principally concerned his life in England. The court was therefore to apply to the Spanish court pursuant to art.15 for transfer of the jurisdiction over all matters concerning parental responsibility. In those circumstances, the appropriate course was to adjourn F's application to enforce the Spanish order for four months and to make, under art.48, such practical arrangements as were appropriate for organising the exercise by him of his rights of access until jurisdiction was transferred and the matter could be heard in the UK.

Judgment accordingly

Permission

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