

Re P (Children) (2006)

[2006] EWHC 2410 (Fam)

04/10/2006

Barristers

Christopher Hames KC

Court

Family Division

Summary

A minor's habitual residence would be determined by the habitual residence of its parents, if they were married and held joint custodial rights, unless there was a contrary agreement; its physical location was not solely determinative of the issue.

Facts

The court had to determine the preliminary issue of whether it had jurisdiction to make two boys in Nepal wards of court. The father (F) and mother (M) were of Nepalese origin but resided in the United Kingdom. However, the boys and M had each separately spent a number of years living in Nepal. When M returned to the UK, F had sent the boys back to Nepal without her knowledge. On M's application, the boys were made wards of court and the court's order for their return to the UK was complied with. F challenged the court's jurisdiction.

Held

HELD: A minor's habitual residence would be determined by the habitual residence of its parents, if they were married and held joint custodial rights, unless there was a contrary agreement. A minor's physical location was not solely determinative of its habitual residence. Furthermore, a parent could not unilaterally change a minor's habitual residence without the agreement of the other, *F v S (Wardship: Jurisdiction)* (1993) 2 FLR 686 CA (Civ Div), *B v H (Habitual Residence: Wardship)* (2002) 1 FLR 388 Fam Div, *A (A Minor) (Wardship: Jurisdiction)*, *Re* (1995) 1 FLR 767 Fam Div and *M (A Minor) (Abduction: Habitual Residence)*, *Re* (1996) 1 FLR 887 CA (Civ Div) applied. In the instant case, there was no dispute that F was habitually resident in the UK. M was also habitually resident in the UK at that time: she had travelled to Nepal with the settled intent to return and her delay in doing so had been due to F's actions. At the time, F and M were married and had joint custodial rights over the boys, albeit that their de facto care lay with F and his relatives. Accordingly, the boys had the habitual residence of F and M, and the jurisdiction of the court was thus established.

Permission

Lawtel 