

A v L Sub Nom In ReA (A Child) (Foreign Contact Order: Jurisdiction) (2003)

[2003] EWHC 2911 (Fam) ; (2004) 1 All ER 912 : (2004) 1 FLR 641 : Times, December 10, 2003

02/12/2003

Barristers

Private: Marcus Scott-Manderson QC

Court

Family Division

Summary

The English courts had jurisdiction for a contact order application as the proceedings in Spain were final for the purposes of Council Regulation (EC) No.1347/2000.

Facts

Two applications for contact orders and a residence order made by the mother ('M') relating to an 8-year-old child ('C'). The mother and father ('F') were divorced by a Spanish court in June 2001. The Spanish court gave M permission to bring C to live with her in England and made orders as to contact with F ('the Spanish contact order'), inter alia, that C would travel to Spain once a month to visit F. F appealed the order in September 2001. C did not visit as often as the order stipulated and F began proceedings in Spain to enforce the Spanish contact order and in May 2003 F sought an order in Spain for custody of C. In the instant case, M sought two applications in the English courts. The first was issued in October 2001 seeking a contact order on the basis that the Spanish contact order was impracticable. This application came before a judge in London on 14 January 2002 who rejected M's application on the grounds that the proceedings in Spain were not final as F's appeal had not been determined. F's appeal was determined against him by the Spanish court in June 2002. M applied to vary the Spanish contact order but this was rejected and M was ordered to appear before the Spanish court. In the instant case M argued that the Spanish court no longer had jurisdiction pursuant to Council Regulation (EC) No.1347/2000 ('Brussels II'). M's second application to the English court, dated 8 May 2003, was for an order defining contact between C and F and a residence order in M's favour. F opposed both applications. The central issue was whether the English court had jurisdiction to hear M's application as: (i) the Spanish courts had hitherto exercised jurisdiction in relation to M's and F's applications; (ii) Spanish jurisdiction had not been challenged; (iii) there was a need to give respect and efficacy to the orders of the courts of another member state; and (iv) both the UK and Spain were signatories to Brussels II.

Held

HELD: (1) Brussels II was limited to those proceedings that were closely linked to proceedings for divorce

that had become final. It followed from Arts.1 to 3 Brussels II that the Spanish courts had jurisdiction both in relation to the divorce and to parental responsibility in June 2001. F's unsuccessful appeal made a final judgment in relation to the Spanish proceedings. (2) On a proper construction of Brussels II, subsequent applications to enforce the terms of a final order did not alter its state as a final order. A final judgment required a degree of certainty. (3) Brussels II contemplated that there might be further proceedings in relation to children after the final judgment. That did not alter the status of the final order. Jurisdiction ceased after a final judgment. Thereafter, jurisdiction in an appropriate case passed to another member state who could enforce that final judgment. F's applications did not affect the finality of the final judgment of June 2001. (4) The final order of the Spanish court had sanctioned M's move to the UK with C which was an application of finality. Re G (Children) (2003) EWCA Civ 1607 supported these conclusions. (5) Accordingly the English courts had jurisdiction to hear M's application and that of the Spanish court had ceased. The matter would be set down for directions. The provision in the Spanish contact order that required C to travel to Spain once a month would be suspended pending the further hearing.

Permission

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