

Re D (Stay of Children Act Proceedings) (2003)

[2003] EWHC 565 (Fam) (2003) 2 FLR 1159

20/02/2003

Barristers

Private: Marcus Scott-Manderson QC

Court

Family Division

Summary

The choice between international jurisdictions was not an issue that was directly related to the upbringing of a child; therefore, although the issue was important, it fell outside the ambit of the Children Act 1989 s.1(1)(a).

Facts

The applicant father (F) applied for a stay of proceedings in relation to the mother's (M) application for a residence order, a prohibited steps order and a defined contact order in the English jurisdiction. M, who was English, and F, who was American, had lived in Virginia, USA, prior to their separation and had a daughter, H. M returned to the UK and an order made in Virginia granted residence to her with extended staying contact in favour of F. The order included a declaration that Virginia retained jurisdiction. After her relocation to the UK, M made her applications to the English court and jurisdiction was accepted on the basis that H was habitually resident in England and Wales.

Held

HELD: Deciding between competing jurisdictions was a question of balance, taking into account such factors as the habitual residence of the child, *Spiliada Maritime Corporation (Defendant) v Cansulex Ltd (Plaintiff)* [1987] A.C. 460 applied. The choice between international jurisdictions was not an issue that was directly related to the upbringing of a child; therefore, although the issue was important, it fell outside the ambit of the Children Act 1989 s.1(1)(a), *S (A Minor) (Residence Order: Jurisdiction)*, *Re* [1995] 1 F.L.R. 314 followed. Where leave to remove had been granted, it was extremely important that English courts had regard for foreign court orders retaining jurisdiction. In the instant case, the Virginian order had been made as recently as six months earlier and that court already had a great deal of information available to it; therefore to resolve the issues in that court would be more expedient.

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