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Re P (A Minor) (Child Abduction: Declaration) (1995)

AC0002049 Times, February 16, 1995

09/02/1995

Barristers
Henry Setright KC

Court
Court of Appeal

Summary
Whether a court should make a finding as to child's habitual residence in child abduction cases.

Facts
The father of a child was English and the mother American and they were married in Las Vegas. The child of the marriage was born in England. A residence order was made in the High Court in favour of the mother in October 1992 but the father and mother afterwards resumed cohabitation. By a deception the mother's sister removed the child to the USA. The father and the mother jointly made an application under the Convention on the Civil Aspects of International Child Abduction for the child's return although the mother subsequently asserted she was party to the removal of the child by her sister. The application was forwarded by the Lord Chancellor's Department, as the requesting state, to the USA but the Attorney General of California, where the child and mother were, took no action on the request apparently by reason of the mother having applied for a guardianship order on the strength of the English residence order. On the advice of the Lord Chancellor's Department, the father applied to the High Court for a declaration under s.8 Child Abduction and Custody Act 1985. Declarations were made by Douglas Brown J:- that by reason of the mother having resumed cohabitation with the father, the effect of s.15 Children Act 1989 was to bring to an end the residence order made by the court on 22/10/92. The judge further found that the child's habitual residence prior to her removal by the aunt, was England and that the removal was wrongful. On appeal by the mother-

Held
HELD: (1) A declaration under s.8 as to wrongful removal could be made in the absence of request under the Convention Article 15 from the appropriate judicial or administrative authority of the requested state. (2) The English court could assume on the facts that it had jurisdiction to grant a declaration under s.8 without it having been agreed or determined by the courts of the requested state that the child was habitually resident in England at the time of removal. (3) No general rule could be laid down as to whether the English court should made findings of habitual residence where this was disputed and likely to be relitigated in the requested state. (4) The court would not interfere with the judge's finding that the child had habitual residence in England because the appeal was against the Order not the judgment and

the mother raised no objection to adopting the course which he took. It was open to the mother to say: “I do not conceded that the child was habitually resident in England at the relevant time but did not contest it in this court”; but she never did. Appeal dismissed.