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Re AR (A Child: Relocation)

[2010] 2 FLR 1577 : [2010] 3 FCR 131 : [2010] Fam Law 932 : [2010] EWHC 1346

10/06/2010

Barristers
Cliona Papazian

Court
Family Division

Practice Areas
International Children Law

Summary
A child's strong emotional need to have a meaningful participation in his upbringing by his father would be adversely affected were the child to be relocated to France; and he would consequently be damaged by removal. His best interests would be best served by his continuing to live in England and being cared for by his mother and father.

Facts
The applicant mother (M) sought leave to remove her five-year-old son (S) to France, while the respondent father (F) cross-applied for a residence order.

M was French and F was English. They had not married and their relationship ended shortly after S's birth. M was the primary carer for S, but F cared for him for half of the holidays, on three afternoons each week, and on alternate weekends.

Held
(1) In relocation cases, the welfare of the child was the paramount consideration; it was also necessary to take into account that refusing the primary carer's reasonable proposals for the relocation of her family was likely to impact detrimentally on the child's welfare. Therefore, her application to relocate would be granted unless the court concluded that it was incompatible with the welfare of the children. (2) Accordingly, the court needed to ask a number of questions: whether the mother's application was genuine, in the sense that it was not motivated by a selfish desire to exclude the father from the child's life, and was realistic, in the sense that it was founded on practical proposals both well researched and investigated; whether the father's opposition was motivated by genuine concern for the future of the child's welfare or by some ulterior motive; what the extent of the detriment to him and his future relationship with the child would be were the application granted; to what extent that would be offset by extension of the child's relationships with the maternal family and homeland; and what the impact on the mother would be if her realistic proposal were refused, Payne v Payne [2001] EWCA Civ 166, [2001] Fam.

473 and Poel v Poel [1970] 1 W.L.R. 1469 applied. In the instant case, M's application was not selfish, but her plans as to her work in France and S's care and education lacked precision, and she had underplayed her attachment to England and its way of life in her case. F's opposition was motivated by a genuine concern for S's future welfare, and their relationship would be badly affected by a removal to France. That would not be offset by the relationship that S would have with M's family in France. If her application were refused, M would accept that adverse decision responsibly and would work with F in co-parenting S in a meaningful way. (3) In applying the paramountcy principle, the court had to have particular regard to the factors specified in the Children Act 1989 s.1(3). With regard to that statutory checklist, little weight could be attached to S's wishes and feelings as he was only five; his physical and educational needs would be equally well met in either country, but his strong emotional need to have a meaningful participation in his upbringing by F would be adversely affected were he to be relocated to France; and he would consequently be damaged by removal. It followed that S's best interests would be best served by his continuing to live in England and being cared for by M and F along the lines presently obtaining. (4) F's residence application would be rejected. M had always been S's primary carer, and it was plainly in his best interests that she should continue to be so. It would cause enormous upset and confusion to him were that status quo to be altered. A joint or shared residence order should be made.