

X County Council v B (2009)

[2010] 1 FLR 1197; [2009] EWHC 2635 (Fam)

23/09/2009

Barristers

Mark Jarman

Court

Family Division

Practice Areas

International Children Law

Summary

Where the court was seized of an application that involved its discretion and jurisdiction to determine the place of residence of the subject children, it was seized of rights of custody in respect of those children, with the result that the parents' decision to remove them from their habitual residence in England was wrongful.

Facts

The applicant local authority sought a declaration that a decision by the respondent parents (B) to remove their children from their habitual residence in England was wrongful. The local authority had commenced care proceedings in respect of the children, who were living with their parents in England. B had failed to co-operate with the local authority or allow it to conduct assessments in respect of the children. On receipt of the local authority's application for an interim order or a care order, the court clerk directed that it be transferred to the relevant county court and listed for hearing. On being served with the papers, B immediately removed the children to Ireland. Once traced, the children were placed in care by an Irish local authority. The English local authority issued abduction proceedings seeking the summary return of the children. However, that authority did not assert that it had rights of custody, but that rights of custody vested in the court. The Irish court requested, pursuant to the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.15, a reasoned decision from the English court as to whether the parents' removal of the children to Ireland had been wrongful. B submitted that (1) either physical custody or parental responsibility were necessary in order to engage rights of custody; (2) the proceedings had not been properly served on them.

Held

1) Neither physical custody of nor parental responsibility for a child necessarily conveyed the right to determine the child's place of residence. Where the court was seized of an application that involved its discretion and jurisdiction to determine the place of residence of the subject children, it was seized of rights of custody in respect of those children, *H (A Minor) (Abduction: Rights of Custody), Re* (2000) 2 AC 291 HL applied. It followed that B's decision to remove the children from their habitual residence in England was wrongful. (2) Whether or not the court documents which had been served upon the parents

were defective in all or any of the respects alleged, they were ancillary to the process of the court in receiving and issuing the application, which had led to the court being seized of an application going to the issue of the custody of the children. In any event, the quasi-judicial acts of the court clerk vested the court with rights of custody since she had considered the matter and given directions for the future conduct of the proceedings, C (Child Abduction) (Unmarried Father: Rights of Custody), Re (2002) EWHC 2219 (Fam), (2003) 1 WLR 493 applied. (3) It followed that rights of custody in respect of the children had been vested in the English court at the time of their removal from their habitual residence in England, and that those rights of custody would have been exercised but for their removal. Consequently, the removal was wrongful, subject to any “exception” to summary return that B might successfully pursue.

Permission

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