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# JK v KC (2011)

## [2011] Fam Law 1204; [2011] EWHC 1284 (Fam)

10/03/2011

**Barristers**
Teertha Gupta KC

**Court**
Family Division

**Practice Areas**
International Children Law

**Summary**
Given that two children had been habitually resident in the United Kingdom at the time when their mother issued wardship proceedings, the court had jurisdiction to entertain the mother's application for indirect contact, even though she was in prison and the children had been living with their father in the United States for over three-and-a-half years.

**Facts**
The court was required to rule on whether it had jurisdiction to hear the application of the plaintiff mother (M) for indirect contact with her two children, who were aged 12 and 9. M, who was Polish, had married the children's father (F), an American, in New York. In February 2006 the family moved to England. In July 2007 M was arrested on suspicion of murder. Later that month, F removed the children from foster care and took them to the United States. On February 11, 2008, M made the children wards of court; in her originating summons she sought continuation of the wardship and the return of the children to the United Kingdom. Later that month, she was convicted of murder and sentenced to life imprisonment, although she was appealing against her conviction. In January 2010 she amended her originating summons to seek indirect contact only. She wished to be able to keep in touch with the children and sought an order which she hoped would be enforceable in the US under the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.21. As F's whereabouts were unknown, he had not been served with the proceedings.

**Held**
Provided that the children were habitually resident in the UK, as the parties had conceded they were, as at February 11, 2008 when the instant proceedings were issued, the courts of England and Wales had jurisdiction to make orders in wardship proceedings or under the Children Act 1989. The court had no alternative but to continue to exercise such jurisdiction and in any event it was right that it should do so. No formal application had been made for a stay of the proceedings under the Family Law Act 1986 s.5; however, it would be appropriate for the court to express a view on the likely outcome of such an application. On the one hand, F and the children had been living outside England and Wales for over

three-and-a-half years and M now accepted, certainly for the time being, that they should remain in the US. On the other hand, M's case was that she had not agreed to the children's removal. Further, the instant proceedings had been extant in the UK for over three years and, although little progress had been made, M had public funding and an established specialist team to advise her; moreover, CAFCASS were representing the children, even though they had been able to do little. An order made under art.21 of the Hague Convention would be prima facie and swiftly enforceable in the US. There was no way in which the court in the US could, and this was said without criticism, provide the kind of professional input which was possible in the instant court. Most importantly, there were presently no proceedings in the US, and it was in effect impossible for M to litigate there. On present information, a stay would not be granted. However, F would be given liberty to apply for a stay and to argue the jurisdiction issue.