

O v P (2011)

[2011] EWHC 2425 (Fam)

05/08/2011

Barristers

Henry Setright KC
Stephen Lyon

Court

High Court (Family Division)

Practice Areas

Financial Remedies
International Children Law

Summary

Preliminary issue as to whether court had jurisdiction to hear proceedings under Schedule 1 to Children Act. Held that the court did have jurisdiction under the Civil Jurisdiction and Judgments Act 1982 and the Brussels Convention on the Jurisdiction and Enforcement in Civil and Commercial Matters 1968.

Facts

Baker J was required to consider a preliminary issue arising in proceedings in which a mother sought an order against her former partner for financial relief under Schedule 1 to the Children Act 1989 in respect of the parties' daughter born in 1997. The preliminary issue was whether the court had jurisdiction to entertain the application. The notice of application was filed on 29 February 2000. The judge noted that the reasons for the eleven year delay in the proceedings and the difficulties that prevented the parties arguing the issue of forum non conveniens at the hearing became apparent after consideration of the background to the case which he described as "extraordinary even by the standards of this division".

The parties embarked upon their relationship in 1989 and their daughter was born in 1997. The parties separated in 1999. The mother and the child left England for Scotland and thereafter Australia. The father issued his applications for orders under section 8 Children Act 1989 in 1999 and also for return of the child under the Hague Convention on the Civil Aspects of International Child Abduction 1980. Both the mother and child returned to England and thereafter a convoluted number of trips took place to Scotland, England and Australia (including, in various combinations, the father and the child and the mother and the child) culminating in the father's arrest and later conviction in Australia on two counts of incitement to solicit the murder of the mother and her friend. The father remains in prison in Australia.

Further criminal proceedings against the father (including an appeal), ancillary proceedings between the father and his former wife and delays in organising the proceedings while the father remained in prison in Australia only allowed the mother's application to be heard eleven years after she made it and on only

the preliminary issue as to jurisdiction.

Held

On considering whether or not the court had jurisdiction, Baker J stated that the court had jurisdiction to entertain the application under Schedule 1 Children Act 1989 under the Civil Jurisdiction and Judgments Act 1982 and the Brussels Convention on the Jurisdiction and Enforcement in Civil and Commercial Matters 1968 if (a) at the date of the application the father was domiciled in England and Wales; (b) at the date of the application the father was domiciled in another contracting state, or Scotland or Northern Ireland, and the child was either habitually resident or domiciled in England and Wales; or (c) if the father entered an appearance to the application, save for the purposes of contesting jurisdiction. In the alternative, Baker J held that if no other jurisdiction arises under the 1968 Convention, the court will have jurisdiction under domestic law if it had jurisdiction to make welfare orders under the Children Act or if the child was habitually resident in England and Wales at the date of the application.

In conclusion, Baker J held that, at the dates on which the welfare jurisdiction of the English courts was first invoked by the filing of the father's application and the Schedule 1 application was filed, the child was habitually resident in England and Wales, and under domestic law the court has jurisdiction to entertain an application under Schedule 1 either concurrently with the welfare jurisdiction under the Children Act or simply because the child was habitually resident in the country at the date on which the Schedule 1 application was made. Baker J continued by stating that the court has jurisdiction pursuant to Article 2 of the 1968 Convention to entertain the application under Schedule 1 by virtue of the fact that the father was domiciled in England and Wales at the time the application was filed. In any event, Baker J went on to state, if contrary to his finding, the father was at that date domiciled not in England and Wales but rather in Australia, then pursuant to Article 4 of that Convention and the domestic law of England and Wales, as the child was at all material times habitually resident in England and Wales, the court has jurisdiction to entertain the application, either concurrently with its welfare jurisdiction under the Children Act or simply by reason of S's habitual residence at the date the Schedule 1 application was filed.

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Permission

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