

Re S (A Minor) (Custody: Habitual Residence) Sub Nom Re S (A Minor) (Abduction: European Convention) (1997)

**(1998) 1 FLR 122; (1998) AC 750 : (1997) 3 WLR 597 : (1997) 4
All ER 251; Times, July 30, 1997**

24/07/1997

Barristers

Baroness Scotland QC

Court

House of Lords

Summary

Appeal and cross-appeal concerning a child whose Irish mother had died when resident in England and where proceedings for custody and abduction were proceeding concurrently in England and Ireland.

Facts

Grandmother and aunt's appeal against the decision of the Court of Appeal holding that the appellants were wrong fully keeping the child ('S'), of the grandmother's deceased daughter, in Ireland and allowing the appeal of the child's father.

Held

The critical question was whether, since S had left England on 11 March 1996, he was still habitually resident in England on 13 March 1996 when Wall J made his order in the High Court. Had he become habitually resident in Ireland, or any rate lost his habitual residence in England even if he had not acquired a habitual residence in Ireland? After the making, or at the latest, the service of the order of Wall J giving care and control to the father, the retention of S in Ireland and the failure to return him to England became unlawful and improper for the purposes of the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children (enforceable in England by s.12(2) of Sch. of the Child Abduction and Custody Act 1985) within the meaning of Art.1(d). The result was reflected in s.23(2) of the 1985 Act. It was clear that there were custody proceedings relating to a child who had been removed from the UK and in respect of whom, before the judge, an order was sought pursuant to the European Convention that his removal was improper and unlawful and that since the father had requisite interest, the court was empowered to make the declaration which it made.

Permission

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