

Re N (Jurisdiction) (2007)

(2007) 2 FLR 1196 ; [2007] EWHC 1274 (Fam)

25/04/2007

Barristers

Court

Family Division

Summary

A United Kingdom citizen who had lived with her husband in France retained her domicile of origin, and the courts of England and Wales had jurisdiction to deal with her divorce proceedings under Regulation 1347/2000 art.3(1). However, it was appropriate to stay those proceedings in circumstances where the French court was first seised of the case.

Facts

The petitioner wife (W) petitioned the court to assume jurisdiction of her divorce proceedings. W and her husband (H), both United Kingdom citizens, were married in Wales where they lived for 10 years before moving to France. The couple had a child (N), who at the date of judgment was 13 years old. When the family moved to France, they bought a house and N attended a local school. After three years in France the marriage ran into difficulties and W returned to the UK with N, who was then enrolled in a UK school. H remained in France. N subsequently went to stay with H for a holiday and he failed to return her. W sought the summary return of N pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. The primary issues for decision at the instant hearing were whether the UK court had jurisdiction to hear the divorce proceedings under Regulation 1347/2000 art.3(1) and, if so, whether that was the court first seised of the case under art.19.

Held

(1) Both parents retained their domicile of origin in the UK, as evidenced by their lack of proficiency in the French language and the maintenance of family ties with the UK, and W was accordingly able to bring the petition under art.3(1). "Domicile" had a particular meaning in the UK as the foundation of divorce jurisdiction; therefore, "nationality" and "domicile" had to be read disjunctively as making one provision for the UK and another for all other Member States. A party did not acquire a domicile of choice unless the court was satisfied by evidence of change. The cogency of evidence required was particularly strict, since the acquisition of a domicile of choice was a serious matter and not to be lightly inferred from slight indications or casual words, *Cyganik v Agulian* (2006) EWCA Civ 129, (2006) 1 FCR 406 applied. (2) In France, divorce proceedings were initiated by the issue of the requête, delivery of which to the court was the first manifest step in divorce proceedings, *C v C (Divorce: Jurisdiction)* (2005) EWCA Civ 68, (2005) 1 WLR 1469 applied. On the evidence, that had been done in April 2006, whereas the petition was issued in

the UK in May 2006. Accordingly, the French court was first seised of the case and, pursuant to art.19, the UK proceedings were stayed. (3) The court would give directions pursuant to a hearing under art.11(7) when the appeal against the refusal of a return order in France had been determined. (4) (Per curiam) Were the case to have proceeded, a stay on the basis of forum non conveniens would not have been granted because of the nationality and domicile of the parties, the lack of proficiency in French of both the parties and the fact that, under French law, the case would be decided in accordance with principles of English law to the extent that it related to issues of ancillary relief.

Stay of proceedings ordered and directions given.

Permission

Lawtel 