

SJ v JJ [2012]

[2012] EWHC 931 (Fam)

02/03/2012

Barristers

Jacqueline Renton KC

Court

Family Division

Summary

Further judgment in respect of a child removed by the mother to Poland. Residence order made in favour of the mother with contact to the father in both Poland and the UK.

Facts

This is the second judgment given by Baker J in this matter, an earlier judgment having been given on 16 September 2011. The background to the case is summarised and the earlier judgment is set out here. At the earlier hearing, the judge had declined to make a final residence order in the mother's favour, albeit that he did not order the return of the child from Poland. The reason for this was that he wished to test the mother's commitment to the child's contact with his father, not having been satisfied previously that she was willing to facilitate this. Further periods of contact were ordered in the interim, in both Poland and the UK.

When the matter came back before the court, some, although not all, of the contact ordered on the last occasion had taken place. The contact which had taken place had not been without difficulties. The father had not travelled to Poland for contact in November 2011 because he was unable to take time off work, but he had visited for an extended period over Christmas, during which time the mother had facilitated additional contact between the father and the child, A.

The court had also ordered that the mother bring A to the UK for contact in January 2012. This had not taken place because the mother had not consulted the father before booking her travel, and the father had been unable to take time off work, despite having seven weeks' notice of the dates and having told the court in September 2011 that his employers were able to be flexible.

At this hearing, the judge heard oral evidence from the Guardian who was of the view that the father, because of his failure to accept that A would remain living in Poland with his mother, might not have the necessary motivation to make contact work. The Guardian was also satisfied that the mother had not done anything to obstruct contact since the last hearing. Overall, the Guardian supported an application by the father for the matter to be adjourned again, and a further period of contact in the UK ordered, so that the Guardian could observe this contact. The mother invited the court to make a final residence

order in her favour, and also to make provision for contact with the father.

Held

Baker J found that the time had come to make a residence order amounting to a judgment on custody within the meaning of Article 10(b)(iv) because he considered that the mother had now demonstrated a commitment to contact. It followed from this that a further adjournment simply to permit contact to happen in this country on one further occasion was not necessary or appropriate. In addition, the fact that hitherto a final order for residence had not been made had created some uncertainty in that the father and the paternal grandparents were continuing to assert, through the Guardian, that the court should reverse its earlier decision concerning where A should live and direct that he be returned to England. Finally, insofar as there were ongoing issues surrounding contact, these would be best dealt with in the Polish courts, where A now lives with his mother.

The judge therefore made a final residence order and an order for contact in both Poland and the UK.

Permission

Family Law Week 