

HSE Ireland v SF (a minor) (2012)

[2012] EWHC 1640 (Fam)

15/06/2012

Barristers

Henry Setright KC

Court

Family Division

Practice Areas

International Children Law

Summary

Judgment on an application brought by the Health Service Executive of Ireland under Article 20 of Brussels IIR in respect of SF, a girl aged 17, who had been placed into care at a young age.

Facts

Shortly before the application, SF's behaviour had escalated to the point where she became a danger to herself and others. The Health Service Executive of Ireland ("the HSE") (the statutory authority with responsibility for children taken into care in the Irish Republic) applied to the Irish court for an order permitting SF's detention in a special care unit. The application was granted; however, those responsible for her care considered that the level of care necessary to meet SF's needs could not be found in the Irish Republic and therefore an approach was made to a unit in England. When the necessary consents had been obtained under Brussels IIR, therefore, an order was made in the Irish court providing for SF's detention and treatment at the English unit, which placement would be the subject of regular reviews in the Irish court. The HSE then applied for recognition and enforcement of the order in England and, pending the making of such orders, an urgent application under Article 20 of Brussels IIR securing SF's placement in the English unit and allowing her to be detained and treated there.

Baker J considered the relevant provisions of Brussels IIR and recent domestic and European authorities in relation to enforcement and recognition as well as urgent applications for protective measures under Article 20. On the question of recognition and enforcement, His Lordship considered the procedure under Part 31 of FPR 2010, which provides that a Court cannot enforce a judgment until the expiry of any period for appeal, although an application for provisional measures under Article 20 can be made in those circumstances. Of particular relevance to the instant case was the recent authority of HSE for Ireland v SC (C-92/12 PPU), where the facts were very similar and an order had been granted in the English court. His Lordship considered that the judgment of the CJEU in that case provided implicit approval for the Article 20 procedure adopted. As a result of that judgment, urgent consideration was underway as to whether Part 31 of the FPR should be amended; unless and until such amendments are implemented, however, Article 20 will continue to have a crucial role.

Held

On the facts of the instant case, Baker J was satisfied that the interim orders sought under Article 20 should be made. His Lordship observed that each case would turn on its own facts and in other cases the court may need to analyse the situation in more detail, including by providing separate representation for the child in England and/or by communicating directly with the Irish court.

Permission

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