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Re F (Child) (2012)

[2012] EWCA Civ 1364; 2013] 1 FLR 645 : [2012] 3 FCR 443 : [2013] Fam Law 37 : (2012) 156(41) SJLB 31

24/10/2012

Barristers
Jacqueline Renton

Court
Court of Appeal (Civil Division)

Practice Areas
International Children Law

Summary
The guidelines in Payne v Payne [2001] EWCA Civ 166, [2001] Fam. 473 could be utilised in relocation cases other than those where the applicant was the primary carer provided the judge considered it helpful and appropriate to do so.

Facts
The appellant father (F) appealed against a county court order granting the respondent mother (M) permission permanently to remove their son (P) from the United Kingdom.

P's parents were both Spanish. They came to the UK in 2009 when F took up a two-year posting by his employer. In May 2011 that period was extended to at least 2013. M, P's primary carer, returned to Spain in August 2011 following a breakdown of the relationship. P was left with F who became P's primary carer. M wished to continue living in Spain. F intended to remain in the UK for the time being. Both parties began proceedings for a residence order. The judge made a shared residence order but granted M permission permanently to remove P from the jurisdiction, allowing for certain arrangements for holidays to be spent with F in the UK. The case was very finely balanced. P, aged eight at the time of the instant hearing, would have been happy in either country, although he regarded himself as Spanish, and apart from F, all of P's family lived in Spain. The judge focused on the decisions in Payne v Payne [2001] EWCA Civ 166, [2001] Fam. 473 and K v K (Children: Permanent Removal from Jurisdiction) [2011] EWCA Civ 793, [2012] Fam. 134, asking himself whether the instant case was one to which Payne applied. He decided that he was entitled to "look at" the Payne guidelines, being the "discipline" set out by Thorpe LJ. Having done that, he then turned to an investigation and evaluation of P's best interests, having regard to the "welfare checklist", before reaching his conclusion.

F claimed that the judge erred in his application of Payne and K v K and in his evaluation of the facts.

Held

The four stage process set out in the “discipline” was highly relevant where the applicant was a primary carer, but it was not relevant only to such cases. The issues raised could arise in many relocation cases where the application was being made by someone other than a primary carer. Therefore, the guidance in Payne could be utilised in other kinds of relocation cases if the judge considered it helpful and appropriate to do so, K v K applied. Although the instant case was not a case where the primary carer was making the application, the judge was entitled to have regard to the “discipline” as set out in Payne. He correctly appreciated that the case had to be decided by reference to P’s best interests and that was what he did, Payne applied. The judge carefully took into account P’s current circumstances in the UK, the quality of F’s care and F’s own plans, wishes and feelings. There was nothing to suggest that there was any presumption in favour of M’s claim. He also took into account and gave appropriate weight to each of the factors to which F had drawn attention. He acknowledged that F was the primary carer and recognised the importance F attached to the argument based upon the status quo. He gave appropriate weight to both those points, whilst correctly appreciating that neither could be decisive. There was no sustainable basis for any complaint that the judge either took into account irrelevant factors or failed to take into account any relevant factors, or that he erred in either the weight he chose to attach to the various factors he had to take into account or in his evaluative decision as to where the ultimate balance fell. Therefore, there was no proper basis upon which the instant court could intervene (see paras 45, 49-52 of judgment).

Appeal dismissed

Permission

Lawtel