

Re L [2012]

[2012] EWHC 3069 (Fam)

08/10/2012

Barristers

John Tughan KC

Court

High Court (Family Division)

Practice Areas

International Children Law

Summary

Application by Father for residence order; application by Mother for residence order and leave to remove the child permanently from the jurisdiction.

Facts

The child had been the subject of Hague Convention proceedings which resulted in an order for the Mother to return the child to the UK from the USA which the Mother ultimately complied with. The Children Act 1989 applications were then heard.

Mr Steven Bellamy QC sitting as a deputy High Court Judge reviewed the existing case law in relation to relocation cases and summarised the law as follows: The child's welfare is paramount. Regard must be had to the statutory checklist in section 1(3) of the Children Act 1989, although different weight will be attached to the checklist matters depending on the circumstances of the case. Regard must also be had to the impact of refusal on the child's welfare, the genuineness of the applicant's motive, whether the proposals for relocation were realistic and the genuineness of the respondent's opposition.

Held

The Judge refused the Mother's application for leave to permanently remove the child from the jurisdiction. He did not accept that the Mother would sustain contact if allowed to relocate and in any event did not find that the parents had sufficient funds to sustain such contact. He found that the Mother's response to a refusal of her application would not impact adversely on the child's welfare. He accepted that the Father's opposition was based on the child's welfare and his concerns had substance. The child's welfare required him to have a relationship with both parents to meet his long term emotional and developmental needs which could not be met if relocation was allowed.

The Judge made a shared residence order on the basis that there were welfare factors which positively supported a shared residence order and none to indicate that a shared residence order was not in the child's paramount welfare.

Permission

Family Law Week 