

J (Habitual Residence) (2012)

[2012] EWHC 3364 (Fam)

03/12/2012

Barristers

Private: David Williams QC

Court

High Court (Family Division)

Practice Areas

International Children Law

Summary

Decision as to the habitual residence of child subsequent to the father's application for parental responsibility order, orders under the inherent jurisdiction and a declaration of parentage.

Facts

The child was born in England. The mother returned to the United States when the child was one year old. The child remained in England with the maternal grandmother who obtained a residence order. The father was not registered at birth but later established paternity by way of DNA tests. He and the paternal grandmother then played a significant role in the child's life, overnight contact taking place on most weeks from 2011.

The maternal grandmother took the child to the United States without the knowledge of the paternal family. The child remained in the United States, after a few months living with the mother, her husband and children without the maternal grandparents.

The father applied to court within 2 weeks of the child's departure from England. He was granted a parental responsibility order, a declaration of parentage order and an order for the maternal grandparents to return the child to England. The maternal grandparents and mother challenged the jurisdictional basis of the orders.

Held

Mr Justice Peter Jackson reviewed case law and concluded that the determination of issues of habitual residence is a question of fact. Such facts may be events, other facts may be of a less tangible nature such as feelings, relationships and intention and others will relate to legal rights and wrongs. Section 13 of the Children Act 1989 was also considered. Clear and unequivocal consent to the permanent removal is required in writing, in advance, from every person with parental responsibility.

The relevant facts were considered, weight being attached to the unusual aspects of the child's family situation which resulted in respect being paid to the child's individuality as opposed to being an adjunct

to any of the adults. Mr Justice Peter Jackson found that the child had spent all of her life as a habitual resident in England. Her absence of 13 days did not result in her losing such status. “Her roots here are deep and her habitual residence did not change as a result of this legally insecure removal.”

Accordingly, the Court had jurisdiction to make the orders that it did.

Permission

Family Law Week 