

I (A Child) & J (A Child) [2013]

[2013] EWCA Civ 259

05/02/2013

Barristers

Teertha Gupta QC

Court

Court of Appeal (Civil Division)

Practice Areas

International Children Law

Summary

Leave to appeal granted for both cases, the issue being whether habitual residence can be changed by those with parental responsibility summarily removing the children from the jurisdiction.

Facts

In *Re J*, the Mother had placed the children with the maternal Grandparents who obtained residence orders. The Father did not have parental responsibility before the children were removed to America by consent of all those with parental responsibility. In *Re I* the parents (sole holders of parental responsibility) in Nigeria placed the children with an uncle and aunt in this jurisdiction, before removing them back to Nigeria. The issue in both cases was whether those with parental responsibility could remove the children from the jurisdiction.

Lord Justice Ward considered that there are two competing strands of jurisprudence on this point. On the one hand, *Mercredi v Chaffe* [2011] in which it was decided that habitual residence, as understood in Europe, corresponds to the place where there is a degree of social and family integration by the child. Accordingly the rights of custody had a lesser significance.

In contrast in *Re M (Minors) (Residence Order: Jurisdiction)* [1993] it was considered that habitual residence can be determined by those with parental responsibility who have the right to remove a child from the jurisdiction and care of others without parental responsibility.

Held

Accordingly leave to appeal was granted for both cases. Stays of orders in both cases requiring the children to be returned to the jurisdiction were granted.

Permission

Family Law Week  Family Law Week