

Tower Hamlets London Borough Council v MK [2012]

[2012] EWHC 426 (Fam)

02/03/2012

Barristers

Brian Jubb

Court

High Court (Family Division)

Practice Areas

Public Children Law

Summary

Care proceedings involving issues of jurisdiction, paternity and s.38(6) applications

Facts

Care proceedings involving Polish girls aged ten and 7 3/4. Proceedings were initiated following police discovering the girls living with two men, SK and KK in a disused hut near railway lines. Investigations revealed that the girls were known to the authorities in Poland due to concerns regarding their mother's alcohol use and had been abducted from Poland by KK and SK to prevent them going into a children's home. SK was registered in Poland as the girls' father but the mother, SK and KK claimed that KK was actually the father. Paternity testing revealed that KK was not the father of either child.

At a late stage in the care proceedings the mother came forward and sought assessment as a carer for the girls with KK.

Held

In his fact-specific judgment Baker J explores the issues involved in the case:

(1) Jurisdiction: the Children Act 1989 is silent on the jurisdictional basis for making applications for orders under s.31. Baker J considered the European authorities of *Re C* (case C-335/06) [2008] and found that the authority derived from Brussels II Revised. This superseded earlier the authority found in earlier cases. In the instant case although under article (8) the Polish court retained jurisdiction, strikingly, they had not sought the return of the children or to intervene in the English proceedings. Therefore Baker J concluded that the English court acquired jurisdiction under article 10(a) or in the alternative all the conditions of article 10(b)(i) were satisfied.

(2) s38(6) assessment of mother: the mother had put herself forward late in the proceedings, she said, because the Local Authority had failed to keep her informed. Baker J acknowledged some failings on the

part of the LA, but found that the mother had knowledge of the proceedings from an early stage. Further her plans for care of the children were inadequate, she continued to drink and that the court had sufficient information to make final orders.

(3) Contact: the LA care plan was not definitive as to contact due to the uncertainty as to how the children would react. Baker J considered the options available to him on contact and concluded that, as all other aspects of the care plan were approved he would make a final care order. The issues of contact were resolved by making an order under s.34(5) Children Act 1989 with a review in 6 months so that the Local Authority plan for long term contact could be considered.

Permission

Family Law Week 