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Re LC (Children) (2014)

[2014] UKSC 1

15/01/2014

Barristers
Henry Setright QC
Teertha Gupta QC
Private: David Williams QC
Christopher Hames QC
Jacqueline Renton

Court
Supreme Court

Practice Areas
International Children Law

Summary
Where an adolescent child had resided with one of his or her parents in a place, particularly if only for a short time, it could be appropriate for the court to have regard to the child's state of mind during the period of residence when determining whether the child had shared the parent's habitual residence there.

Facts
The appellant father (F) and daughter (T) appealed against a decision made in international child abduction proceedings ([2013] EWCA Civ 1058, [2014] Fam. Law 9) that T and her brothers (L, X and N) had become habitually resident in Spain. T further appealed against the refusal to make her a party to the proceedings.

The children's mother (M), who was Spanish, and F, who was British, were unmarried and had lived in England. Their relationship broke down and M took the children to live in Spain when T was aged 12, L aged 10, X eight and N four. After seven months, the children visited F in England for a holiday. They did not return to Spain. M applied for their return. The judge rejected T's application to be joined as a party. The judge found that the children had become habitually resident in Spain and that F's retention of the children was wrongful under the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.3. He noted that T, L and X objected to living in Spain but held that that was not determinative. The Court of Appeal upheld the finding that the children had become habitually resident in Spain and the refusal to join T as a party. However, it held that, as T had attained the requisite maturity, the judge had erred in not exercising his discretion to decline to order her return. Consequentially, it remitted the question of the return of the three boys to the Family Division in order to determine whether there was a risk that their return would place them in an intolerable situation in that they would, for the first time, be separated from T. The remitted hearing was pending at the time of the instant appeal.

Held

(Lady Hale and Lord Sumption dissenting as to relevance of younger children's state of mind) (1) The test for determining habitual residence under the Convention, Regulation 2201/2003 and domestic legislation was whether the place reflected some degree of integration by the child in a social and family environment, A v A (Children) (Habitual Residence) [2013] UKSC 60, [2013] 3 W.L.R. 761, Proceedings Brought by A (C-523/07) [2010] Fam. 42 and Mercredi v Chaffe (C-497/10 PPU) [2012] Fam. 22 followed. Where a child of any age went lawfully to reside with a parent in a state in which that parent was habitually resident, it would be highly unusual for the child not to acquire habitual residence there too. However, in highly unusual cases there had to be room for a different conclusion; the integration requirement created that room. No different conclusion would be reached in the case of a young child, but where the child was older, in particular one who was an adolescent, and perhaps also where the child's residence with the parent proved to be of short duration, the inquiry into her integration in the new environment had to encompass more than the surface features of her life there. It was not apt to consider the "wishes", "views", "intentions" and "decisions" of the child, but the child's state of mind during the period of residence would occasionally be relevant to whether an older child shared her parent's habitual residence (see paras 30, 37 of judgment). The judge had not addressed T's state of mind; his conclusion that she had been habitually resident in Spain would be set aside and the issue remitted. The instant court was not in a position to regard T's statements as determining the matter (paras 39-42). The finding of habitual residence would also be set aside in relation to the three boys and the issue remitted. None of the boys had been adolescent during their residence in Spain; it was hard to imagine that a judge's exploration of their state of mind could alter the conclusion about their integration in Spain. However, if T were found never to have lost habitual residence in England, the court would need to consider whether that conclusion could sit easily alongside a conclusion that the boys had acquired habitual residence in Spain (para.43). (2) It should not become routine to join as parties to Convention proceedings children whose habitual residence was in issue. However, an older child such as T could be able to contribute relevant evidence not easily given by either parent, namely about her state of mind during the period in question, Cannon v Cannon [2004] EWCA Civ 1330, [2005] 1 W.L.R. 32 applied. T should have been granted party status, although her participation should have been confined to the adduction of a witness statement, cross-examination of M, and closing submissions (paras 49-55). (3) (Per Lady Hale and Lord Sumption) The question of the child's state of mind could not be restricted to adolescent children. Younger children's state of mind was also relevant to whether they had acquired habitual residence (paras 57-58).

Appeals allowed

Permission

Lawtel