

Re G (A Child) (2014)

[2014] EWCA Civ 680

19/05/2014

Barristers

Private: David Williams QC

Court

Court of Appeal Civil Division

Practice Areas

International Children Law

Summary

An English court order permitting a mother to temporarily remove a child from the jurisdiction was a final order ending that set of proceedings. Where proceedings later began in an Italian court, it was the Italian court, not the English court, which was first seised, and the English court was right to impose a stay on further proceedings in England under [Regulation 2201/2003 art.19\(2\)](#).

Facts

The appellant mother (M) appealed against a decision ([\[2013\] EWHC 4017 \(Fam\)](#), [\[2014\] Fam. Law 455](#)) imposing a stay under [Regulation 2201/2003 art.19\(2\)](#) on proceedings she had brought in England regarding the child (G) she had had with the respondent father (F) and requiring her to take G to Italy.

M and F were Italian. They moved with G to England, where they separated. A consent order was made in September 2012 permitting M to remove G from England to Qatar for one year. It made provision for arrangements on their return to England. M and G returned from Qatar earlier than anticipated and lived in Italy, where F by then also lived. F issued proceedings in Italy in August 2013 for measures preventing G's removal from Italy, as he feared that M might remove him to Finland. In September, M applied in England for temporary leave to remove G to Finland, an order preventing F from removing G from her home, and a residence order. In October, the Italian court declined to make any order as it appeared that M had taken G to Finland, and fixed a further hearing in December. An English judge ruled that the proceedings in England should be stayed under art.19(2) until the Italian court had determined whether it was first seised and if so whether it had jurisdiction. He ordered M to take G to Italy before the December hearing unless the Italian court said that was not necessary.

M argued that the English court was first seised by virtue of the September 2012 order; that order was not a final order ending proceedings in England before the Italian proceedings had begun.

Held

(1) It was rare for an order relating to a child to be truly final if that meant ruling out further applications to the court. Orders could subsequently be varied or discharged, but that did not mean that they were

not final. Whether particular proceedings had come to an end was a fact-specific question which had to be determined by careful examination of the circumstances in which the order had been made and its precise terms. One pointer was whether any further hearing date had been set. It was noteworthy that the September 2012 order did not include any provision for a subsequent hearing. That supported it being a final order. The fact that the permission to remove G to Qatar was temporary, culminating in a return to England, did not dislodge that. The fact that M had to return G to the jurisdiction at the end of the period did not mean that the proceedings relating to him were still pending. M had suggested that the English court had reserved continuing control over G throughout the permitted removal, but that introduced a jurisdictional concept which the Regulation did not contain. If the court could remain seised in that way, it would preserve its jurisdiction despite the fact that the child's habitual residence might have changed years before a parent sought to revive the English proceedings. That fact that the order contained provisions regulating arrangements for G upon M's return from Qatar pointed towards the order being final. The more that was sorted out between the parties by an order, the more final it appeared to be (see paras 44-54 of judgment). (2) There was nothing objectionable about the return to Italy order or the judge's reasoning for it. The judge had been intent on the Italian hearing being effective, which was a sensible objective and undoubtedly in G's best interests. Not having any reliable information as to what the Italian process required, he had been entitled to err on the safe side and require that G be taken to Italy for the hearing unless the Italian court said that was not necessary (para.62).

Permission

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