

Re F (A Child) [2014]

[2014] EWCA Civ 789

12/06/2014

Barristers

Henry Setright KC
Teertha Gupta KC
Private: David Williams QC

Court

Court of Appeal Civil Division

Practice Areas

International Children Law

Summary

Father's application for permission to appeal an order that his child was habitually resident in England and Wales. Permission granted and appeal allowed.

Facts

The father sought permission to appeal an order made by Coleridge J on 14 March 2013. It was submitted on behalf of the father that Coleridge J had been wrong to find that the child was habitually resident in England and Wales and did not apply the proper test to determining that issue.

The appeal succeeded on grounds that Coleridge J did not adequately explain why he had concluded that the child was habitually resident in England and Wales and this issue was decided knowing that that the father was challenging jurisdiction, at a hearing where the father was not present and when notice had been given to him that the question of jurisdiction was going to be raised.

Held

The Court of Appeal commented that it is clearly established that Brussels II Revised applies to determine the jurisdiction of the English Court in care proceedings irrespective of whether the other country is a Member state of the European Union.

The Court of Appeal established that it is imperative that the issue of jurisdiction is addressed at the outset of proceedings, it is also imperative that it is dealt with procedurally in an appropriate manner. For example, while it is now possible to make an interim declaration, a declaration made on a 'without notice' application is valueless, potentially misleading and should never be granted. In addition, the Court of Appeal held that the Court cannot come to a final determination as to habitual residence until a proper opportunity has been given to all relevant parties to adduce evidence and make submissions.

The Court of Appeal further established that in future every order directing the instruction of an expert,

whatever the discipline, should contain an express recital to the effect that: “The court is satisfied that the appointment of X is, in accordance with section 13(6) of the Children and Families Act 2014, necessary to assist the court to resolve the proceedings justly.”

Permission

Family Law Week 