

Re R (A Child: Habitual Residence) (2014)

[2014] EWCA Civ 1032

22/07/2014

Barristers

Henry Setright KC
Mark Jarman KC
Jacqueline Renton KC

Court

Court of Appeal Civil Division

Practice Areas

International Children Law

Summary

A judge had not taken all the factual evidence into account in finding that a child was habitually resident in the United Kingdom. Whilst there were factors which pointed towards that conclusion, there were other factors which pointed in the opposite direction and contributed to a sense that her stay in the UK lacked stability.

Facts

The appellant mother (M) appealed against a decision that her nine-year-old daughter (S) was habitually resident in the United Kingdom pursuant to Regulation 2201/2003.

M, who was Italian, had been S's primary carer since her separation and divorce from the respondent father (F), who was Scottish. M had been granted leave to remove S from the jurisdiction permanently and she became habitually resident in Italy in 2010. M was diagnosed with cancer in 2011 and received treatment in Italy. The former matrimonial home was subject to a long-running dispute, F seeking its sale and M resisting that. In 2012 sale of the property was ordered unless M returned to live there by a prescribed date. M had not returned but the date was extended. In August 2013, M and S returned to the UK and moved into the property. A hearing concerning the property dispute took place on September 12, 2013, and two days later M purchased one-way tickets for her and S's return to Italy. They returned in October 2013. Meanwhile, on September 23, F applied for a residence order in relation to S on the basis that she was habitually resident in the UK. F's case was that M and S were not just visiting when they came to the UK in August 2013 but that they had come to live and rapidly became habitually resident. M's case was that they had remained at all times habitually resident in Italy. The judge, having considered emails and documents but without hearing oral evidence, found that M had retained her interest in the property and resisted its sale, that she had expressed an intention to work and receive medical treatment in the UK and for S to be enrolled in school, and that she had described herself as being in the UK permanently. She therefore concluded that S was sufficiently integrated into English

society, as M was, for her to have become habitually resident in the jurisdiction, if not immediately after arrival, then at the date of the issue of the proceedings, and at the date of her return to Italy. The judge made a declaration in those terms, and was satisfied that the court had jurisdiction.

M accepted that she had at one time considered returning to live in England but contended that that thought was embryonic, and that the trip to the UK in August 2013 was primarily to resolve matters concerning the property, so that S's stay with her in the UK then did not amount to habitual residence. She argued that the judge had put too much emphasis on her asserted or supposed intention, that she had failed to put the documents upon which she relied into their proper context, and that she had also failed to take into account the large body of evidence which weighed against S having become habitually resident in the UK by September 23.

Held

Habitual residence was a question of fact requiring an assessment of whether the country concerned was a place which reflected some degree of integration by the child, or in the case of an infant or young child, his parents, in a social and family environment, A v A (Children) (Habitual Residence) [2013] UKSC 60, [2014] A.C. 1 followed. The residence of a particular person in a particular place had to acquire the necessary degree of stability to become habitual, LC (Children) (International Abduction: Child's Objections to Return), Re [2014] UKSC 1, [2014] 2 W.L.R. 124 followed. The judge's evaluation of the habitual residence question had been too narrowly focused. Whilst she had recognised that until August 2013 S had been entirely integrated in Italy, she had not proceeded to review what, if any, links remained with Italy by September 23, 2013, only just over three weeks later. The judge had not taken all the factual evidence into account in arriving at her determination. Whilst there were factors which pointed towards S being habitually resident in the UK, as the judge had identified, there were other factors which pointed in the opposite direction and contributed to a sense that her stay in the UK lacked stability. A reliable determination as to habitual residence could only be made if they were all weighed up. The matter was remitted for rehearing (see paras 20-21, 40, 44-45 of judgment).

Permission

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