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London Borough of Barking & Dagenham v C & Others [2014]

[2014] EWHC 2472

03/07/2014

Barristers
Greg Davies

Court
High Court Family Division

Practice Areas
International Children Law
Public Children Law

Summary
Care proceedings involving Article 15 BIIR and a Romanian child. Court concluded a request should be made of the Romanian authorities to accept the case.

Facts
The child (A) was a Romanian, and Roma, child born in this jurisdiction in September 2013 of unmarried Romanian parents. Care proceedings commenced very shortly after his birth, and he was removed into care. The prognosis in respect of M as a carer was not particularly good. F was in prison in the early months of A's life and put himself forward late but not fatally late, as a carer for A. An ISW assessment of F was to commence.

The local authority put forward only "pros" in respect of a transfer and could not identify any "cons". M supported transfer of the case to Romania. F said he was a man of some substance in Romania. He was not entitled to state support here, and supported a transfer of the case to Romania not only as A was a Romanian child but also because he could not afford to remain in this jurisdiction for very much longer and needed to return. He argued it was for the Romanian authorities to assess the sufficiency of his potential care for A. The Guardian put forward a conscientious, well-considered and thoughtful contrary view.

The Romanian authorities had been less than clear as to whether they would wish to assume jurisdiction in response to a request for transfer but had made it quite clear that if the court were to reach the position whereby it was actively considering adoption of A through the English system they would be highly likely to request repatriation of their citizen.

It was self-evident that A had a particular connection with Romania. The judge approached the examination of the two contentious elements in Article 15(1) with the assistance of a "pros and cons" list.

F's proposal to live in Romania with support from Romanian family members could more easily be assessed – arguably could only properly be assessed in this context – by the Romanian authorities, applying Romanian standards. The question of whether such support could be underpinned by any form of order or state charitable or voluntary sector intervention could only be answered by the Romanian authorities. Only they could decide how this fundamentally Romanian child would be served by the placement options and (a) whether any negatives in F's assessment (if they take it into account) would rule F out in Romanian terms and (b) to assess the efficacy of support in Romanian terms. F could best litigate in Romania and was likely not to be able to do so effectively here. The judge in the lower court had not considered the merits in any respect and the case had not been subject to any judicial continuity at its earlier stages. Various other considerations were thought by the judge to be either neutral or tipped over into the "pros" column (para 18). There were many uncertainties about timescale and the outcome of the assessment – none of those would tip the balance. It was difficult to foresee whether more delay would be caused in this jurisdiction or in Romania but the judge was quite certain that to put off the decision as to whether a request for a transfer ought to be made ran a serious risk of delay and the best possible outcome for A was for F's assessment to run alongside that request.

Held

The judge concluded that the balance lay overwhelmingly in favour of this being a Romanian case, both in respect of Romania being better placed and A's best interests. The worst prospect for A would be to get to the stage whereby if F failed his assessment adoption was put forward and the Romanian authorities then made a request for repatriation. The judge concluded a request must be made of the Romanian authorities to accept the case.

Permission