

Re Z (Recognition of Foreign Judgments) (rev 1)

[2016] EWHC 784 (Fam)

08/04/2016

Barristers

Henry Setright KC
Private: David Williams QC
Michael Gration KC

Court

Family Division

Practice Areas

International Children Law

Judgment considering the exercise of the court's powers under the inherent jurisdiction to recognise and enforce orders concerning the medical treatment of children made by the courts of another member state of the European Union.

Z is a girl in her early teens who lives in Ireland. She developed a very serious eating disorder. It became clear in 2016 that she required specialist treatment, incorporating nutrition, hydration and psychiatric treatment, including the use of restraint which was not available in Ireland. Her doctors made arrangements for her to be admitted to an English hospital. These arrangements were sanctioned by an order of the Irish High Court, after hearing evidence from Z's treating physician.

The Health Service Executive for Ireland ("the HSE") applied under the inherent jurisdiction for an order authorising the treatment of Z in an English hospital. The application was supported by Z's parents, but the correct jurisdictional basis for making such an order was disputed. The HSE submitted that this case fell within Council Regulation (EC) 2201/2003 ("Brussels IIA"). Z's parents submitted that it did not fall within Brussels IIA, but that such an order could be made under the inherent jurisdiction of the High Court.

Baker J held that the order sought did fall within Brussels IIA because it fell within the meaning of Article 1(2)(c), namely it concerned 'the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child'. Even if this is incorrect, it was held that such an order plainly amounts to a measure for the protection of the child and thus, having regard to recital (5) in the preamble, comes within the scope of the Brussels IIA. Baker J accepted the submission on behalf of CAFCASS that the court was asked to make a decision in relation to parental responsibility, not to supplant that of the parents, but to support their parental responsibility in circumstances where the hospital requires authority over and above the parents' consent to provide medical treatment for their child against their wishes.

Having determined that Brussels IIA applied, Baker J noted the process contained within FPR Part 31 for the recognition and enforcement of foreign orders under Brussels IIA, including the interim enforcement of foreign orders pending completion of the process. Such an interim power only arises, however, where the order has been registered. The anecdotal experience of the legal representatives involved was that there was a short, but potentially significant, delay between the filing of an application and the registration of the order. Baker J surveyed a number of authorities as to the appropriate use of the inherent jurisdiction and determined that it is open to the court to invoke it in urgent cases to make orders providing for the immediate recognition and enforceability of orders of a court of a member state of the EU, pending an application under FPR Part 31.

In so determining, Baker J stated the following at paragraph 19:

‘I accept that making an order that protects a child who is not a British national and who has never resided in this country may represent an extension of the use of the inherent jurisdiction. It could be said that such an order goes beyond the *parens patriae* origins of the jurisdiction. But if the modern function of the inherent jurisdiction is to supplement the statutory code where necessary, its use will inevitably evolve over time and, given the globalisation of family law, that evolution will, in appropriate circumstances, extend to embrace international cases.’

Baker J also agreed with the parents’ submission that Article 56 Brussels IIA did not apply. The order sought was not to place Z in institutional care and nor was this a case of a public authority intervening in a domestic case of child protection, particularly given that the parents consented to the treatment. As such, there was no obligation on the Irish court to consult the English Central Authority.

Finally, Baker J concluded that there was no requirement for Z to be represented in these proceedings. She was represented in the Irish proceedings and such proceedings are subject to regular review. Given that an English Guardian would simply support the order being made, it was unnecessary for Z to be represented before making an emergency order under the inherent jurisdiction.

To read the judgment, click [here](#).