

Re SU and SA (Children)

[2017] EWHC 441 (Fam)

06/03/2017

Barristers

Ruth Kirby KC

Court

Family Division

Practice Areas

International Children Law

Judgment of Baker J following a referral by HM Passport Office regarding renewal of British passports in the names of three teenage girls (two of whom were wards of court) who were living in Australia with their father and whose mother objected to the renewal.

During Children Act proceedings in 2005, the father removed the parties' three children from England to Africa. On 3 February 2006 the children were made wards of court and the father was ordered to return the children to this jurisdiction. The father never returned the children. It later transpired that he had relocated with the children to Australia in August 2009. On 17 June 2010, the mother's application for summary return under the Hague Convention was dismissed by the Family Court of Australia. In March 2011, the family court in Melbourne granted a residence order in the father's favour. Meanwhile, ongoing proceedings in this jurisdiction were adjourned. Following further orders in Australia, the mother started having telephone contact with the children in 2013 which later progressed to Skype contact.

No further steps were taken in the family court in this jurisdiction until March 2016 when the court was contacted by HM Passport Office which had received applications for renewal of passports in respect of the three children, two of whom remained wards of court. The father informed the court that the passports were sought as a trip to the UK was planned. The court indicated that it wished to consider as a preliminary issue the question of whether it had jurisdiction in respect of the children and, if so, how it should exercise the jurisdiction or whether any issues about the children's future should be determined in Australia.

The parties' positions were as follows: (1) the mother asked that the wardship and the order preventing renewal of the children's British passports should continue; (2) the father asked that the court to discharge the wardship and remove all restrictions on the issue of passports but accepted that the British court had jurisdiction to deal with the passport issue; (3) both parties agreed that the Australian court had jurisdiction to deal with all issues relating to the children's welfare.

On behalf of the mother, whilst it was accepted that jurisdiction in respect of the children's welfare

rested with the court in Australia, it was submitted that the girls, as British nationals, were entitled to the protection of the Crown, exercised through the inherent jurisdiction of the High Court. It was the mother's case that if the British passports were renewed, then the children may disappear again and would lose all that is theirs in their current habitual residence as well as contact with their mother. The Children's Guardian was of the view that denying the girls their passports was neither necessary nor proportionate.

With reference to *Re B (A Child)* [2016] UKSC 4, Baker J held that where a court in another country has jurisdiction (based on the children's habitual residence), and has exercised that jurisdiction on a number of occasions, the circumstances in which the court in this jurisdiction will exercise its inherent jurisdiction to protect children are very limited. The important point was that, in most cases, the court of the country of habitual residence will be able to take all necessary steps to protect the children. In this case, Baker J was not persuaded that there was any justification for exercising the inherent jurisdiction to protect the children by preventing the renewal of their British passports, save as a very short term measure.

The children had Australian passports. The mother raised a number of arguments as to why the children should be prevented from travelling out of Australia. The arguments were strongly contested by the father. Baker J held that such an investigation is manifestly matter for the Australian court.

However, in view of the history of the case, in particular the children's removal from England, Baker J held that he would exercise the court's protective jurisdiction in a limited way, by permitting the mother an opportunity to apply to the Australian court before the British passports were renewed and released. His Lordship considered that such an order was consistent with the principles of comity referred to in *Re B*.

Baker J therefore ordered that the British passports were not to be renewed before one month had elapsed (to enable the mother to apply to the Australian court) and that upon the passing of one month the children would cease to be wards of court and all the restrictions on the renewal of passports would be lifted.

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

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