

Y v H & Anor

[2017] EWHC 3698 (Fam)

22/12/2017

Barristers

Adele Cameron-Douglas

Court

Family Division

Practice Areas

Private Children Law

Judgment as to whether the courts of England and Wales had jurisdiction over a nine-year-old boy in respect of matters of parental responsibility or whether jurisdiction rested with the courts of Northern Ireland.

Background to proceedings

These proceedings concerned C, a boy aged 9. This portion of proceedings concerned a dispute as to whether the courts of England and Wales have jurisdiction over C in respect of matters concerning parental responsibility or whether jurisdiction lay in Northern Ireland.

The parties were in a brief relationship in 2007, which broke down before C was born in 2008. The father's name was added to the birth certificate in 2010 when the relationship was briefly resumed. The father applied for a child arrangements order and prohibited steps order later that year. Various contact orders were made during ongoing proceedings. These orders were breached by the mother, who was sentenced to a period of imprisonment in 2014 for contempt of court. The custodial sentence was suspended on terms that she comply with the court orders and subsequently discharged.

Limited indirect contact then took place but no direct contact, following which the father applied for a child arrangements order that C should live with him and a prohibited steps order preventing the mother from removing C from the jurisdiction. C was subsequently brought to a contact centre on 14 February 2015, on the basis that the mother said he should now live with his father.

The mother then sought C's return at a final hearing on 18 March 2015. An order was made after a contested hearing that C should live with the father and spend time with the mother, including alternate weekend staying contact. A prohibited steps order was made preventing the mother from removing C from the jurisdiction and an order was made under s.91(14) of the Children Act 1989 preventing any further applications for two years.

The mother failed to return C after the first contact session on 25 March 2015. When the police attended the property, the mother asserted that the father was not C's biological father. She stated that she had

received advice from Social Services not to return C to the father and subsequently sent purported DNA evidence to the court to support her assertion. The father made a further application for a prohibited steps order and specific issue order on an ex parte basis. At that hearing, a guardian was appointed to represent C and a prohibited steps order was made preventing the removal of C from the jurisdiction.

When the matter returned to court on 5 May 2015, the mother was in attendance and represented. She filed a statement setting out her commitment to remaining with the jurisdiction of England and Wales. A direction was made for DNA testing and provisions made for C to remain in his mother's care in the interim. The earlier prohibited steps order was not repeated but remained in force.

On 12 May 2015, the mother removed C from the jurisdiction and took him to the Republic of Ireland. With a suggestion that the mother's relocation was not known about for some time, the matter returned to court on 15 June. An order was made for C's return 'by 17 May 2015', rather than 17 June 2015. It was subsequently argued that the error in respect of the date rendered the order one that the mother was not capable of complying with, assuming that she had had notice of the order.

A further hearing was listed on 18 June which the mother did not attend. It was evident by that stage that she had left her address in England. At this and subsequent hearings in the Family Court and High Court, various orders were made to locate the mother and C. A recovery order was made on 1 September 2015. On 29 February 2016, an order was made discharging the appointment of a children's guardian and removing C as a party to proceedings. The application for enforcement was adjourned generally with liberty to restore.

The mother accepted living in the Republic of Ireland, where C attended school and was registered with doctors. The mother subsequently became engaged, her case being that she moved to Northern Ireland in May 2017 to live with her fiancé and C. C had been diagnosed as being on the autistic spectrum and saw various medical professionals in Northern Ireland, as well as attending school. C's whereabouts ultimately became known through a medical appointment and he was returned to England by the police, where he was placed in the care of the father.

The mother made an application to the High Court in Northern Ireland and an order was made in that court on 4 October that jurisdiction lay in England. The mother's application for wardship was refused and the matter was adjourned to allow the mother to make an application to the Portsmouth Family Court for proceedings to be transferred to Northern Ireland. The mother made various applications to the Family Division of the High Court, namely a stay of the recovery order, immediate return of C to her care and the transfer of proceedings to the High Court in Northern Ireland. Orders were made on the mother's application refusing a return of C to the mother's care and an order that C should live with the father until further order. A prohibited steps order was made preventing the mother from removing C from the care of his father or the jurisdiction of England and Wales, with a penal notice attached. C was joined as a party to proceedings and a guardian was appointed.

The matter returned to court on 27 October. The mother was arrested en route to court on suspicion of child abduction and attempting to pervert the course of justice (the latter charge arising out of alleged fabrication of C's DNA test results). A condition of her release on bail was not to have contact with C, who remained living with his father. The mother subsequently gave birth to another child.

The law and determination

In relation to the issue of jurisdiction, the relevant law lies in the Family Law Act 1986 ('residual domestic jurisdiction'). Sections 1 – 3, s7 and s41 were cited in particular. Council Regulation 2201/2003, Brussels IIA, does not apply to a jurisdiction issue within the United Kingdom.

The issue of jurisdiction was determined as follows:

(a) There were ongoing proceedings under s8 of the Children Act 1989 in the jurisdiction of England and Wales, which fall under s1(1)(a) of the Family Law Act 1986 and had never been brought to an end. The court's attention necessarily 'switched' to attempts to enforce orders but those proceedings did not terminate the ongoing s8 proceedings.

(b) It was not therefore strictly necessary for the court to come to a conclusion as to habitual residence but Baker J was 'very reluctant to come to any concluded view' as to whether C had acquired the necessary degree of integration in a social and family environment in Ireland and Northern Ireland on the basis of the mother's untested assertions, given the history of her behaviour. The same applied to the mother's assertion that they were living openly. Unilateral remove of C would not per se prevent him acquiring habitual residence in Ireland or Northern Ireland but it is a factor to be taken into account.

(c) Even if there were no live application before the court, the application for transfer to Northern Ireland having been concluded, the relevant date would be the date at which the court is considering whether to make the order. By that time of the contested hearing, C had lived with his father for over nine weeks and had settled in his father's care. He had therefore acquired 'some degree of integration' in a social and family environment.

(d) Baker J declined to stay proceedings on the grounds of forum non conveniens. England was 'manifestly more suitable' given that C is living here and there have been ongoing proceedings for several years. The guardian was able to travel to Northern Ireland and any professional witnesses from Northern Ireland could give evidence by video link. The mother and her husband were able to travel to court in England.

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