

Re A (A Child) (2014)

[2014] EWHC 604 (Fam)

06/02/2014

Barristers

Private: Joanne Porter

Court

Family Division

Practice Areas

Public Children Law

Application by father under the Hague Convention for the return of his son to Latvia, following the commencement of care proceedings in respect of the child. Held that the English court had no jurisdiction to deal with the care proceedings and the child should be returned to Latvia.

A was the child of C and G who were both Latvian nationals; they were married in 2007 in Latvia where A was born in 2008; both parents shared the care of A until separation. Following the divorce of the mother and father, the father continued to have contact with A until the mother removed A from Latvia to England where he remained. The father asserted that A was removed without his consent.

Following an initial referral from A's school in relation to bruising being seen on his face, he was removed from the care of his mother and placed with foster carers. The local authority initiated care proceedings and an interim care order was granted by the court in England in April 2013.

In May 2013, the father was informed of the care proceedings in England by the Orphans Court in Latvia and of the fact that A was residing in foster care. The father participated in a family group conference facilitated by the local authority via Skype in July 2013, with there being no further contact made by the local authority until the case was heard by the High Court in September. The father was not served with the court documentation until late September 2013.

At the hearing in September, the father asserted that the mother had removed A from Latvia without his consent and accordingly, issued an application seeking A's return to Latvia, pursuant to the Hague Convention. The mother raised a number of defences to The Hague Convention application, namely:

- 1) Acquiescence to the removal,
- 2) The risk of harm to A should he be returned to the Father's care (the Article 13(b) defence),
- 3) The question of A's settlement in England for a period of over 12 months.

Theis J found that the mother had failed to establish the defences of acquiescence to A being moved to the jurisdiction, that she had failed to establish an Article 13(b) defence, and that the defence of settlement was not made out by the mother. In such circumstances, the court did not need to consider its discretion as to whether the court should order a return as none of the defences had been established. Applying the principles in *A v A (Children: Habitual Residence)* (2013) UKSC 60 Theis J found that A had remained habitually resident in Latvia; accordingly, the judge concluded that the court had no jurisdiction to determine the care proceedings, other than for the limited purposes under Article 20 BIIR. The judge therefore ordered A's immediate return to Latvia.

Within her Judgment, Theis J was critical of the failure to deal with the jurisdictional issues at a much earlier stage, for non-compliance with previous court orders and also for the unacceptable delay in notifying the father of the care proceedings, in properly serving him with the court documents and in failing to give him effective access to legal advice to advise him of his position.

In respect of future cases where one or both of the parents live abroad, Theis J set out the following guidance in relation to the actions which should be taken:

(1) At an early stage every effort should be made to locate, contact and engage a parent who lives abroad. If that other country is one of the signatories to BIIR information as to the parent's whereabouts can be obtained through an Article 55 request via the Central Authority.

(2) Once contacted the parties and, if necessary, the court should take active steps to secure legal representation for such parents. In this case nothing effective was done for five months. It took less than five hours at the hearing in September to contact the father and secure representation.

(3) The court must effectively timetable any issues as to jurisdiction to avoid the delays that occurred in this case. This includes early consideration regarding transfer to the High Court. A party seeking written expert legal advice about the extent of this court's jurisdiction as to habitual residence is not likely to be a helpful step. The question of jurisdiction is a matter to be determined by the court following submissions from the party's legal representatives.

(4) There needs to be a more hands-on approach by all parties with regard to compliance with court orders. No party should be able to sit back as a spectator and watch non-compliance with orders and not shoulder any responsibility that flow as a result of those failures. The air of indifference by all parties in this case at the hearing in September to the fact that the father had not been served for five months was shocking.

Permission

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