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W v L (Forum Conveniens) (2019)

[2019] EWHC 1995 (Fam)

19/07/2019

Barristers
Alistair G Perkins

Court
Family Division

Practice Areas
International Children Law
The court determined a child (M) to be habitually resident in England and Wales and that the English court had jurisdiction regarding matters pertaining to parental responsibility

The mother of M (a six-year old child) applied for relief under the court's inherent jurisdiction. Specifically, she sought: a declaration that M was habitually resident in the jurisdiction of England and Wales; an order that M be made a ward of court; orders to prevent the father removing M from either the mother's care or from the jurisdiction of England and Wales; and an order to stop the father pursuing further applications concerning M in the courts of the Hashemite Kingdom of Jordan.

The hearing before MacDonald J was to determine whether M was integrated into a social and family life in this jurisdiction and, if so, whether the English or the Jordanian court would be most convenient to determine the parent's welfare issues.

Both parties were British and Jordanian nationals and M was born in England. The parties separated 11 months after M's birth; the father returning to Jordan and the mother remaining with M in England. Subsequently, on travelling to Jordan with M to begin divorce proceedings before the Sweileh Shariah Court, the mother became the subject of an exit ban due to a without notice application made by the father. Some months later, the Jordanian court granted the mother permission to travel to England with M. M had been resident in England since that time (in September 2015), when he returned with his mother. A range of evidence in support of M's case that M was habitually resident in England included: all his schooling had been received in England; M's first language was English; M had received speech and language therapy at his local hospital since December 2015; and M had not returned to Jordan since 2015.

The father did not seriously dispute the mother's evidence that M was integrated in social and family life in England. He argued though that the Kingdom of Jordan was the appropriate legal forum as the Sweileh Shariah Court had ordered the mother to hand M to him; the mother had only been allowed to bring M to England under a conditional order; there had been previous proceedings in Jordan; Jordanian courts were

as impartial and fair as those of England and Wales; and M held Jordanian and British nationality.

The court considered the matter by reference to Council Regulation (EC) 2201/2003 (BIIa). It was found that M to be habitually resident in England and Wales since the evidence before the court showed M was well integrated socially and within a family environment in this jurisdiction. The consequence of this decision was that 'this court has jurisdiction in relation to matters of parental responsibility concerning M pursuant to Art 8(1) of BIIa as incorporated into domestic law by the Family Law Act 1986' at [36].

As to the father's application to stay the English proceedings whilst the Jordanian courts determined M's welfare issues, the court found the case had the most real and substantial connection with the jurisdiction of England and Wales.

Click here to read the full judgment.

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