

Re NH (1996 Child Protection Convention: Habitual Residence)

[2015] EWHC 2299 (Fam)

30/07/2015

Barristers

Robin Barda

Court

Family Division

Practice Areas

International Children Law

Public Children Law

Summary

Where the court had been unable to establish the habitual residence of a child who was staying temporarily in the UK, a jurisdiction of necessity arose under the Hague Convention on Parental Responsibility and Child Protection 1996 to enable it to make substantive orders in relation to the child's long-term care.

Facts

A local authority applied for an order under the inherent jurisdiction of the court or under the Children Act 1989 Pt IV as to the habitual residence of a child.

The child, who was 16, had dual Canadian and Zimbabwean nationality. He had been born in South Africa and lived there until the age of five, when he moved to Canada with his mother and half-sister. They remained there for eight years before moving to Switzerland in 2012. Between 2012 and 2014 the child attended boarding schools in Zimbabwe and then Germany before transferring to a day-school in Switzerland. In February 2015 the mother indicated that she was having difficulty coping with him. He moved into residential care and a child protection file was opened. He opposed his mother's plan to send him to boarding school in Zimbabwe. After the mother's Swiss residence permit expired in March 2015, she and the child travelled to the UK to visit relatives. The mother de-registered the child in Switzerland, extinguishing his right of residence there. In July 2015, the Swiss child protection authority declared itself incompetent under the Hague Convention on Parental Responsibility and Child Protection 1996 to determine the child's habitual residence.

Held

(1) The Convention was intended to centralise jurisdiction in the courts of the child's habitual residence, and habitual residence was a question of fact and not a legal concept, *A v A (Children) (Habitual Residence)* [2013] UKSC 60, [2014] A.C. 1 followed. Parental intent was relevant in establishing or

changing the habitual residence of a child and was one of the factors to be taken into account when deciding whether a move from one country to another had a sufficient degree of stability to amount to a change of habitual residence, *DL v EL* (Hague Abduction Convention: Effect of Reversal of Return Order on Appeal) [2013] UKSC 75, [2014] A.C. 1017 followed. In relation to older children, in particular adolescents, the inquiry into integration in the new environment had to encompass more than the surface features of the child's life there, *LC (Children) (International Abduction: Child's Objections to Return)*, Re [2014] UKSC 1, [2014] A.C. 1038 followed. The child in the instant case was a mature, confident and amiable young man who had a good network of friends in Switzerland and considered it his home. However, he was not habitually resident there given the expiry of his residence permit, the intentions of his mother, the high degree of instability in his life when residing in Switzerland and the fact that the Swiss authorities did not regard him as habitually resident and had specifically submitted that art.6(2) of the Convention was engaged. Moreover, although he had also indicated that he regarded Canada as his home, he was not habitually resident there; his mother had not made out a case that he was habitually resident in Zimbabwe; and he was clearly not habitually resident in the UK (see paras 22, 26-30, 34, 37-38 of judgment). (2) Although cases in which it was impossible to establish a child's habitual residence were rare, it would be wrong to strain to find facts to establish habitual residence simply to achieve an outcome more generally contemplated by the Convention, particularly where the potential target of the determination was a country which did not itself support that conclusion. The Convention was designed to ensure that states which had only tenuous connections with a child did not generally assume jurisdiction to make welfare-based decisions for him. Since it was not possible to establish the child's habitual residence, a jurisdiction of necessity arose under art.6(2) of the Convention, founded upon the child's physical presence in the UK. That jurisdiction enabled the court to make substantive orders, *E (A Child) (Care Proceedings: European Dimension)*, Re [2014] EWHC 6 (Fam), [2014] 1 W.L.R. 2670 applied. Directions would be given for the management of the proceedings to achieve a swift, efficient and child-focused solution to plan for the child's long-term care (paras 3, 39-41).

Permission

Lawtel 

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