

Derby City Council v SK and Others [2015]

[2015] EWFC 57

09/07/2015

Barristers

Henry Setright KC

Private: Marcus Scott-Manderson QC

Court

Family Division

Practice Areas

International Children Law

Summary

Judgment to determine jurisdiction in public law proceedings involving a Polish family.

Facts

All three children had been subject to care proceedings in Poland, which had concluded under final orders by which a Guardian was appointed in order to supervise the mother's exercise of her parental responsibility. The mother had then left Poland with the children and relocated to England in 2014. The father of the youngest child had already relocated to England; his parental responsibility had been suspended by the Polish courts. The fathers of the elder two children had had their parental responsibility removed by the Polish courts and their whereabouts were unknown.

The local authority issued care proceedings in March 2015. The matter was listed before Mr Justice Keehan in order to determine jurisdiction, namely:

- Whether there were ongoing proceedings relating to parental responsibility in Poland, which would consequently mean that the Polish court maintained jurisdiction as the court first seized, pursuant to Article 19 of BIIa;
- Whether the mother had removed the children from Poland and/or retained them within this jurisdiction in breach of the custody rights of any person or body, thereby making the removal/retention unlawful;
- Whether any person or body with rights of custody had acquiesced in the removal/retention;
- Whether the children had acquired habitual residence in England, thus giving the Court jurisdiction pursuant to Article 8 BIIa;
- Whether, in the event of no habitual residence being discerned, the Court could acquire jurisdiction pursuant to Article 13 BIIa.

Held

Mr Justice Keehan found that, upon the information provided by the Polish courts, there were no ongoing

proceedings relating to parental responsibility in Poland, which could impact upon the English court having jurisdiction pursuant to Article 19 BIIa. He was also satisfied that the removal/retention of the children in England was not unlawful and that, even if he was incorrect on this point, he was satisfied that the bodies with choate or inchoate rights of custody in Poland, namely the Polish court and/or court appointed Guardian, had acquiesced in the removal/retention.

The judge was satisfied that the children had acquired habitual residence within England and Wales and that, if he was wrong on this point, the court would have jurisdiction under Article 13 BIIa in any event.

The judge finally considered Article 15 and declined to make a request for the transfer of the proceedings, or any part of them, to Poland, making it clear that any future decision in relation to Article 15, could be dealt with by the trial judge.

Permission

Family Law week 