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IS (A Minor) v DBS & Anor (Rev 1)

[2015] EWHC 219 (Fam)

04/02/2015

Barristers
Private: David Williams QC

Court
Family Division

Practice Areas
International Children Law

Summary
The High Court, of its own motion, ordered that a 15-year-old girl was not to be removed from the jurisdiction without its consent. The girl, who was a ward of the English court, had been ordered by an Israeli court to attend a hearing in Israel concerning contact with her father.

Facts
The court was required to give directions in a wardship case involving a 15-year-old girl.

The child had been born in Israel in 2000. Her parents separated a year later, and proceedings were begun in the Israeli family court. Contact took place between father and child, with the Israeli court retaining oversight of the case. In 2010, the parents agreed that mother and child could temporarily relocate to England, on the basis that the Israeli court retained jurisdiction in respect of welfare issues and the child was regarded as continuing to be habitually resident in Israel. Contact continued following the relocation. However, in 2013, following a child protection investigation in England, the local authority recommended that contact should be reduced and supervised. The father applied to the Israeli court, complaining that he was being denied contact, and the mother cross-applied to restrict contact on the basis that it was harming the child. In April 2014, the child was made a ward of the English court. The Israeli court made anti-suit injunctions prohibiting the mother and the child from participating in the wardship proceedings. In September 2014, an application by the father to dismiss the wardship came before the English court. Upon the parents agreeing that the child had become habitually resident in England, the court ordered that contact should continue and that a psychiatrist should conduct a family assessment. Thereafter, contact fell apart and the father stopped participating in the wardship proceedings. In the meantime, the Israeli court fixed a hearing in the contact proceedings for February 22, 2015, ordering both mother and child to attend. Through her next friend, the child gave clear instructions that she would not do so.

Held
(1) Whether the child went to Israel for the hearing, or even left England, was a matter for the English

court. She was a ward of court, and nobody was entitled to remove her from the court's jurisdiction without its consent. Nobody had applied for such consent, and it was appropriate for the court, of its own motion, to remove from the child the responsibility of acting in defiance of the Israeli court order. There would therefore be an order preventing either parent from removing her from the jurisdiction without the court's consent (see paras 6-9 of judgment). (2) Notwithstanding the parties' express agreement that the child was habitually resident in England, the jurisdiction issue remained live. Determining habitual residence involved factual questions centred on the degree to which the child had integrated into life in England. Any agreement that jurisdiction should be maintained elsewhere would not trump a contrary determination by the English court based on reality. A hearing was due to take place in the English court in June. The court's provisional view was that it had jurisdiction in relation to parental responsibility and should continue to exercise constructive control over the child's contact with her father. The court therefore requested a judicial moratorium to allow the family assessment to proceed (see paras 38-39).