

R v S (2006)

[2006] EWHC 3374 (Fam)

21/12/2006

Barristers

Mark Jarman KC

Court

Family Division

Facts

Matrimonial proceedings between parties were continuing matrimonial proceedings until a decree absolute was granted. The court retained the jurisdiction and the power to make a residence order in respect of children resident outside of the jurisdiction but, in the circumstances, it was inappropriate to make such an order.

The applicant father (F), a British national, applied for a residence order in respect of his children, N and K. The respondent mother (M), a Panamanian national, had left the jurisdiction after the parties' marriage broke down and returned to Panama, where shortly thereafter she gave birth to the parties' second child K. Thereafter F issued divorce proceedings in the United Kingdom and it was subsequently agreed that N should join his mother and brother in Panama. That agreement was later incorporated into a contact order (the order) that granted M permission to remove N from the jurisdiction, recognised the jurisdiction of the Panamanian courts in respect of K and expressly provided for a review, including residence, 11 months' later. A decree nisi of divorce was issued but at the date of the instant hearing the decree had not been made absolute. F expressed welfare concerns over his son N and issued the instant proceedings. F contended that the matrimonial proceedings between the parties had not been concluded so that the court had jurisdiction pursuant to the Family Law Act 1986 s.2 to make a residence order and that the court should exercise its jurisdiction and grant a residence order in his favour.

Held

The application for a residence order arose in connection with matrimonial proceedings as, until matrimonial proceedings between the parties were finally concluded and there was a decree absolute, those proceedings were continuing even though the continuance would not impinge on the children in any way. The court accordingly had jurisdiction and power to make a residence order. That power was to be used sparingly in an international context where issues had been resolved, implemented and jurisdiction passed to another state. It was inappropriate to exercise the power in the instant case as it would be wrong to permit F within a year of the order being made, in which residence issues were resolved, to re-open the issue within the jurisdiction unless there were compelling grounds to do so and no such grounds existed in the instant case. Moreover given the evidence of the difficulty and expense for M and other witnesses attending hearings in the jurisdiction, England was not the appropriate forum

for determining residence issues and it was appropriate that any future decisions as to the children's residence be taken in Panama, M v M (Stay of Proceedings: Return of Children) (2006) 1 FLR 138 applied.

Application refused.

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