

## Re S (A Child) (2009)

**[2009] EWCA Civ 993**

16/06/2009

### **Barristers**

Teertha Gupta KC

### **Court**

Civil Division

### **Summary**

An appeal under Regulation 1347/2000 art.33 against registration of a judgment relating to the custody of a child had to be directed to the Family Division of the High Court.

### **Facts**

The appellant mother (M) appealed against a decision granting permission for an Italian judgment to be registered in the United Kingdom pursuant to the provisions of Regulation 1347/2000. The relationship between M and the respondent father (F) had broken down before the birth of their only child (S). The Italian courts had jurisdiction in respect of S, although S had always been in M's care and M and S were habitually resident in England. M had not complied with arrangements for contact between S and F and orders for contact had been made in the Italian proceedings. The Italian court had directed that the custody of S be assigned to the Municipality of Milan. That order was capable of immediate registration and enforcement under the Regulation and F applied for and obtained permission to register the order. The judge's order provided for M to seek to appeal and granted a stay until the expiration of the time for filing the notice of appeal. M issued a notice of appeal to the Court of Appeal. F submitted that an appeal under art.33 of the Regulation against registration of a judgment for the purposes of enforcement under art.28 had to be directed to the Family Division of the High Court.

### **Held**

HELD: (1) An appeal under art.33 against registration had to be directed to the Family Division of the High Court. No permission to appeal was required. A second appeal lay to the Court of Appeal and permission to appeal would be required. The Court of Appeal excepted from the general provision that permission was required to bring a family appeal very few appeals and all of them related to liberty of the subject. The procedure was governed by the Regulation and no further appeal would be permissible beyond that provided for in art.34. The application for permission to register was a without notice application. It was essentially administrative, although it required a judicial act. That plainly fell within the province of the district judges within the Principal Registry of the Family Division. An appeal went to the same court but to the judge at the higher level of the hierarchy, namely a High Court or circuit judge. (2) The appeal was remitted to the High Court and directions were given to ensure that the listed hearing was effective. It was appropriate to request a CAFCASS report. If the content of the report was of little

bearing on the argument as it developed, nothing much would have been lost, whereas if the judge felt that some sort of welfare assessment was needed, it would be very unfortunate if there had to be an adjournment for it to be prepared.

## Permission

Lawtel 