

MA v DB (2010)

[2011] 1 FLR 724 : [2010] Fam Law 1161

27/05/2010

Barristers

Jacqueline Renton

Court

Family Division

Summary

The court gave guidance on the jurisdiction of the court in proceedings pursuant to the Hague Convention on the Civil Aspects of International Child Abduction 1980, which were not family proceedings within the meaning of the Children Act 1989, to make residence and contact orders.

Facts

The court was required to determine the jurisdiction of the court in proceedings pursuant to the Hague Convention on the Civil Aspects of International Child Abduction 1980, which were not family proceedings within the meaning of the Children Act 1989, to make residence and contact orders. Proceedings had been brought in relation to two children pursuant to the Child Abduction and Custody Act 1985 alleging wrongful removal from Greece, which also therefore were pursuant to Council Regulation No 2201/2003 and the Hague Convention. The applicant father (F) accepted that the originating summons had to be dismissed as he had no rights of custody under Greek law. The parties had agreed that the respondent mother (M) would have a residence order and F would have a contact order.

Held

HELD: (1) There needed to be a jurisdictional foundation for the court's order. Once family proceedings within the meaning of the 1989 Act were in being, the court could make any order of its own motion, but only a s.8 order pursuant to s.10 of the 1989 Act. Proceedings pursuant to the inherent jurisdiction of the court in relation to children were family proceedings within the meaning of the 1989 Act, according to s.8(3). It was not necessary for a child to be made a ward of court in order for the inherent jurisdiction of the High Court to be invoked. Once inherent jurisdiction proceedings were in being, the court had powers to make any s.8 order. The court also had the power to dispense with all formalities in order to bring the proceedings to a mutually agreed conclusion and the parties had agreed at the conclusion of the Hague proceedings that the jurisdiction of the English court should be invoked. (2) Accordingly an order was made that M undertake to issue an originating summons pursuant to the inherent jurisdiction. The residence order and contact order would take effect immediately. Service of the originating summons, the filing of any evidence and any other formalities were dispensed with. The parties were at liberty to issue Children Act proceedings in the normal way if they wished to vary the arrangements.

Judgment accordingly

Permission

Lawtel 