

A v P (Habitual Residence)

[2012] 1 FLR 125; [2011] EWHC 1530 (Fam)

21/06/2011

Barristers

Ruth Kirby KC

Court

Family Division

Practice Areas

International Children Law

Summary

Child abduction from Poland to the UK; defence based on habitual residence in the UK and the father's acquiescence. Hague Convention 1980 applied. Held that the child's habitual residence was Poland and the father had not acquiesced.

Facts

Father sought the return of MAT to Poland pursuant to the Convention on the Civil Aspects of International Child Abduction 1980 (the Convention) as incorporated into English law by section 1(2) of and Schedule 1 to the Child Abduction and Custody Act 1985. Although both the UK and Poland are subject to Brussels II Revised the case was pleaded and determined solely with reference to the Convention.

Mother defended the application on the basis that a) MAT was not abducted from Poland as she was habitually resident in the UK at the relevant date or in the alternative b) the father had acquiesced to her removal.

MAT's habitual residence was thus the principal issue before the court. The court confirmed that the purpose of the Convention was to ensure that where children have been wrongfully moved across international frontiers, or wrongfully retained within a Convention State, they are swiftly returned to the State of their habitual residence for decisions about their welfare to be taken in the State of their habitual residence.

Held

The case of P-J (Abduction: Habitual Residence: Consent) [2009] EWCA Civ 588, [2009] 2 FLR 1031, and in particular the part where Ward LJ discussed the concept of "habitual residence" in Convention terms between paragraphs [24] and [34] were considered and adopted. In addition the following three riders were added: 1) habitual residence is an issue of fact and is crucially dependent upon the particular facts of the case before the court; 2) where one is dealing with married parents and with a child of MAT's age

it is not open to one parent unilaterally to charge the child's habitual residence; and 3) in *Re S (Habitual Residence)* [2009] EWCA Civ 1021. [2010] 1 FLR 1146 it had been determined that a period of some 7 to 8 weeks' residence was sufficient to establish that a child had become habitually resident in England.

On the facts of this case the court found that at the time of the alleged removal of the child to England, the child had retained a habitual residence in Poland. Furthermore the court found the father had acted timeously in issue proceedings, and applying the decision of the House of Lords in *Re H (Minors) (Abduction: Acquiescence)* [1998] AC 72 it was found that his subjective state of mind was never that of the acquiescent parent.

Accordingly the court directed the return of MAT to Poland for consideration by the courts of that jurisdiction of issues relating to contact and residence.

Permission

Family Law Week 