

Z (A child) [2012]

[2012] EWHC 139 (Fam)

02/02/2012

Barristers

Jacqueline Renton

Court

Family Division

Practice Areas

International Children Law

Summary

Application by mother for a residence order in respect of the parties' daughter and for permission to relocate her from UK to Australia. Applications granted. *Payne v Payne* (2001) and *K v K* (2011) considered

Facts

Shortly after divorce proceedings began, an Australian mother ('M') applied in London for permission to relocate with her 6 year old daughter ('Z') to Australia. The Belgian father ('F'), who largely participated in proceedings through his lawyers in Belgium on account of a belief that he might be at risk of being imprisoned by reason of a port alert made in relation to him, did not accept that the court of England and Wales had jurisdiction.

After a holiday with her father in Belgium, F had not returned Z. Parallel proceedings for residence and return were commenced. Ultimately, an order was made for Z's return to the UK, and shortly afterwards HHJ Coates declared that the court of England and Wales was first seised, a declaration which was never appealed by F.

M proposed to go to Australia because her family lived there and she felt isolated in this country. She had job offers, and had found a school for Z. She proposed contact by Skype and direct contact in Australia and in England. F considered that if Z were allowed to go to Australia, he would not see her. He sought that she should return to Belgium. Through his lawyers' submissions to the court, he alleged court bias, and sought that the matter should be adjourned so that he could attend by video link.

Held

Pauffley J refuted the allegation of bias. In rejecting the application for an adjournment, the judge noted the efforts that had been made to accommodate the father's request for video link, the extensive delay that had occurred since the application some 18 months earlier, and the encouragement that had been given to F throughout proceedings to engage and to accept the jurisdiction of the English court.

The judge considered without hesitation that Z's welfare needs would be satisfied by a residence order to her mother. She bore in mind the events surrounding Z's unlawful retention by F in Belgium, when police were involved in returning Z to her mother.

She considered the guidance in *Payne v Payne*, as further considered in *K v K*. She found that M's motivation was pure, that her proposals were realistic, and that M did not seek to defeat the relationship Z had with her father. She further considered that M would be shattered by a refusal of her application. She concluded that she was in no doubt as to where Z's best interests lay, and declared that Z would become habitually resident in Australia six weeks after her arrival there. Until the Australian court adopted jurisdiction, she declared that the English court would retain authority.

Permission

Family Law Week 