

Re T (A Child: Article 15 of B2R) [2013]

[2013] EWHC 521 (Fam)

13/03/2013

Court

High Court (Family Division)

Practice Areas

International Children Law

Summary

Proceedings in relation to a Slovakian mother, who is the subject of a care order in Slovakia, and her ten-month old son. Request made for transfer to Slovakian court. Art 15 of Brussels IIR applied and request granted.

Facts

T was born in the UK in April 2012. His mother had run away to the UK, with T's father, from a children's home in Slovakia, where she had been placed under a court order, having made allegations against her own mother. They entered the UK on false papers and travelled to Rotherham, where her mother was now living with her new husband.

On the birth of T, the local authority, concerned at the mother's young age (16), and having intervened already in the care of the mother's siblings, took protective measures. M was placed in a mother and baby unit with T. When she left the unit, leaving T behind, the local authority issued care proceedings. These lead to an application for a placement (for adoption) order.

The case came before Mostyn J, whose first task was to consider the most convenient forum for adjudicating questions concerning T's future. The Slovakian Central Authority had sought that the court should request a transfer of the proceedings under Article 15(1)(b) Brussels II Revised, arguing that the mother, who had been entrusted to the care of the children's home, and T were both habitually resident in Slovakia.

The judge considered the terms of the regulation and relevant case law. He considered that the following were the applicable principles:

- i) Article 15 applied to public law as well as private law proceedings.
- ii) As a precondition, the court needed to be satisfied within the meaning of Article 15(3), that the child had "a particular connection" with the relevant other member state.
- iii) The applicant needed to satisfy the court that the other court would be better placed to hear the case (or a specific part thereof). In making this evaluation the applicant must show that the other court is

clearly the more appropriate forum.

iv) In assessing the appropriateness of each forum, the court must discern the forum with which the case has the more real and substantial connection in terms of convenience, expense and availability of witnesses.

v) If the court were to conclude that the other forum was clearly more appropriate, it should issue the transfer request and grant a stay unless other more potent factors were to drive the opposite result.

vi) In the exercise to be conducted at (iii) - (v), the best interests of the child was an important, but not the paramount, consideration.

vii) In making the best interests analysis at (vi) the court should not embark on a profound investigation of the child's situation and upbringing but should dwell in an attenuated inquiry upon the sort of considerations which come into play when deciding upon the most appropriate forum.

Held

The judge considered that, if the case were to proceed in the UK, he would not in any case be in a position to decide matters, since he did not consider the assessment evidence sufficiently thorough and would require a further assessment from an independent social worker fluent in Slovakian. He was also aware of the near impossibility of the local authority finding Slovakian adopters of Romani ethnicity.

He considered that the plans of the local authority, supported by the Guardian, did not have sufficient regard to the promotion of T's Slovakian heritage, and considered that the LA's argument resembled the best interests enquiry which Lady Hale had decried in *Re I*.

If T was returned to Slovakia, he and his mother would be cared for 24 hours a day in a children's home. The judge considered that this plan best promoted the possibility of preserving T's Slovakian and Roma heritage, and he was satisfied that a transfer request should be issued.

Permission

Family Law Week 