**4PB**, 6th Floor,
St Martin's Court,
10 Paternoster Row,
London, EC4M 7HP
T: 0207 427 5200
E: clerks@4pb.com
W: 4pb.com

# Re LM (A Child) [2013]

## [2013] EWHC 646 (Fam)

27/03/2013

**Barristers**
Henry Setright KC

**Court**
High Court (Family Division)

**Practice Areas**
International Children Law

**Summary**
The High Court of England and Wales agreed to a request from the High Court of the Republic of Ireland under Regulation 2201/2003 art.15(1)(b) to accept jurisdiction over care proceedings begun in Ireland in respect of a baby who had been born in Ireland but whose mother was English and had returned to England.

**Facts**
The court considered a request from the High Court of the Republic of Ireland under Regulation 2201/2003 art.15(1)(b) to accept jurisdiction over care proceedings begun in Ireland in respect of a baby girl (L).

The older children of L's mother (M) had been the subject of public law proceedings brought by her local authority (X) in England. M gave birth to L in Ireland to avoid X bringing proceedings in respect of her. However, the Health Service Executive of Ireland immediately brought care proceedings and L was placed in foster care. M returned to England, to the area of another local authority. She sought, and all parties agreed, that the care proceedings should be transferred to England. The instant court considered (i) whether to accept jurisdiction; (ii) the practicalities of a transfer; (iii) which local authority should be the applicant in any public law proceedings in England.

**Held**
(1) The Irish courts had the sole habitual residence-based jurisdiction. However, England was the place of L's nationality. M was habitually resident in England, which was another basis upon which L could have a particular connection with England. The English court was prima facie better placed to hear the case: M had returned to England and it would be preferable for her to have the opportunity to oppose any order in respect of L in the courts of the country where she lived; further, the evidence justifying public intervention in the family's life had originated in England, in X's area. Article 15(1) and art.15(5) of the Regulation indicated that the court's function in determining a transfer request was limited to a "best interests" determination, rather than a wider review of all the criteria for transfer. In all the

circumstances, particularly the facts that L was British and had no family in Ireland, M was in England, and the history of L's siblings originated entirely in X's area, it was in L's best interests that the proceedings should be transferred (see paras 31-38 of judgment). (2) Although no formal request under art.56 had yet been made, a competent English authority, namely either X or Y, would consent to the placement of L as art.56 required, Health Service Executive v SC (C-92/12 PPU) [2013] I.L.Pr. 6 applied. The Irish court would exercise a residual jurisdiction to achieve the transition of L and the proceedings to England, after which its jurisdiction would cease. The Family Procedure Rules 2010 r.12.66 essentially provided that the court should proceed as if a public law order had been made in respect of L under the Children Act 1989 Pt IV; it followed that the provisions of Pt IV in their entirety applied to the future management of the case once English jurisdiction was engaged. Rule 12.66(2) contemplated that the court would take preparatory steps to give effect to the imminent receipt of the proceedings. That was an exception to the principle that the courts would not generally exercise jurisdiction in relation to a child who was neither physically present nor habitually resident in England, but it was a legitimate approach, W v W (A Minor) (Mirror Order) [2011] EWCA Civ 703, [2011] 3 F.C.R. 151 followed. The case would be allocated to the Family Division of the High Court and reserved to the instant judge (paras 42-47). (3) The identified applicant authority should be the one which was likely to be the designated authority under s.31(8) of the 1989 Act. "Ordinary residence", for the purposes of s.31(8)(a), was broadly synonymous with "habitual residence". A child's habitual residence was generally that of her parents, but where a child had been born abroad, and had never set foot in England, she could not be said to be habitually resident in England, ZA v NA (Abduction: Habitual Residence) [2012] EWCA Civ 1396, [2012] 3 F.C.R. 421 applied. Accordingly, L was not ordinarily resident in any authority in England. Regarding s.31(8)(b), the circumstances in consequence of which the application before the court was to be considered could not be said to have arisen in Y's area. The circumstances of M's older children formed the essential factual foundation of public authority intervention in Ireland, and that would be relied on by the applicant authority to establish the threshold criteria under s.31. Accordingly, X would be designated for the purpose of a care order in the instant case; it was therefore the appropriate applicant authority, and would be the competent authority under art.56 (paras 48, 62-67). (4) Where an art.15 request was made, it would be helpful for the requesting state to communicate such a request at once through the International Judicial Network; further or alternatively, the court in the requesting state should invite one of the parties to drive along the request in the requested state (para.39).