

HJ (A Child) [2013]

[2013] EWHC 1867 (Fam)

03/07/2013

Barristers

Henry Setright KC

Court

High Court (Family Division)

Practice Areas

International Children Law

Summary

Application by the Health Services Executive of Ireland for the transfer of public law proceedings to England and Wales under Art 15 of Brussels (II) Revised

Facts

The mother had two older children from previous relationships, both of whom had been the subject of care proceedings instigated by West Sussex County Council and on 25 April 2012 both were made the subject of care and placement orders by the family proceedings court. By that time the mother was heavily pregnant with the child 'HJ'. She fled to Ireland in early May. HJ was born on 24 May 2012 and made the subject of an emergency care order by the Sligo District Court the same day. The parents returned to England in late June 2012.

On 7 February 2013 the Health Services Executive of Ireland (HSE) applied to the Irish High Court under Article 15 for the transfer of the matter to England and Wales. The application came before Birmingham J, who gave judgment on 2 May 2013. Birmingham J found, answering the questions arising under Article 15(1), that HJ had a "particular connection" with England and Wales, the English court was "better placed" to hear the case, and it was in the "best interests" of the child for proceedings to be heard in England and Wales. Birmingham J accordingly made an order pursuant to Article 15(1)(b) requesting this court to assume jurisdiction and an order pursuant to Article 15(1)(a) that the HSE be at liberty to introduce a request before the English court. That request came before Sir James Munby P.

Held

The President endorsed the recent comments by Cobb J in the case of *Re L-M (Transfer of Irish Proceedings)* [2013] EWHC 646 (Fam). He agreed wholeheartedly with the sentiments Cobb J expressed in para [10] as to the futility of the course adopted by the parents in that case; and he agreed with his analysis in paras [35]-[37] of the limited function of the court of the requested state and with his analysis in paras [56]-[67] regarding the operation of sections 31(8) and 105(6) of the Children Act 1989 in cases such as this. He also endorsed Cobb J's various observations in paras [39]-[42], [70]-[73] as to the

practical steps to be taken in such cases.

The President added that the role of the requested court was limited and the court should not be too willing to go into the merits of the case at a preliminary stage. In many cases the answer to the request would be obvious. There was no automatic need for a hearing to be listed on notice to the interested parties and it would often, as here, be appropriate for an order nisi to be made, which would stand unless an application were made for its set aside.

The President held that Birmingham J had been clearly correct and ordered that the request for transfer was accepted. His order, which is included in full in the judgment, included provision for the parents, if so advised, to have liberty to make representations if they considered that the matter should not be transferred, which would then be considered by the Court, but not automatically lead to an inter partes hearing.

He directed that WSCC be the allocated local authority and listed a one day hearing to consider interim orders before Cobb J and that HSE would cease to have responsibility for the child at the outset of that hearing, thus not necessitating HSE's attendance at the hearing. He commented, however, that in a case where an order nisi for transfer was made and there were to be (or could be) residual issues over transfer, the foreign authority's responsibility should cease during, rather than at the outset of, the further hearing. He directed limited disclosure from the previous proceedings, but commented that disclosure of previous papers should be considered on a case by case basis.

On a separate point, the President also stated that the use of the words "In the inherent jurisdiction of the High Court" in case headings was a solecism which "must now stop". The purpose of "In the matter of..." heading is either to identify the subject matter of the proceedings or to identify the legislative provision that founds the jurisdiction of the court. As the inherent jurisdiction was inherent in the court it did not need to be inserted into the headings of the case.

Permission

Family Law Week 