

MB v GK [2014]

[2014] EWHC 963 (Fam)

14/03/2014

Barristers

Charles Hale KC
Mark Jarman KC

Court

High Court (Family Division)

Practice Areas

International Children Law

Summary

Judgment considering the weight to be given to parental intention in determining whether the habitual residence of an infant has changed.

Facts

The parents agreed that their child, M, would travel to Singapore and remain in the care of his paternal grandparents. By the time of the hearing the child had been in Singapore for 8 months. The applicant mother's case was that there was an agreement between the parties that this arrangement was due to be temporary, and that M had been wrongfully retained in Singapore by the respondent father. The father contended that the parties agreed that M would remain in the care of his parents indefinitely. The issue between the parties was whether the child had acquired a Singaporean habitual residence. It was argued on behalf of the father that he had as a matter of fact, due to the time he had spent in Singapore, "as the purpose and intention of the parents is merely one of the relevant factors."

Held

Starting with *Re P-J (Abduction: Habitual Residence: consent)* [2009] EWCA Civ 588, [2009] 2 FLR 1051, Russell J reviewed the current law regarding habitual residence of a child. Relying on *A v. A (Children: Habitual Residence)* [2013] UKSC 60 and *Re LC* [2014] UKSC 1, the learned judge found that while M must have been dependent on the care of his paternal grandparents as an infant and must necessarily share their social and family environment, "it does not mean that the purpose and intention of the parents (as those with parental responsibility) becomes immaterial."

Further, Russell J placed reliance on the case of *B v. D (Abduction: Inherent Jurisdiction)* [2008] EWHC 1246 (Fam), [2009] 1 FLR 1015, in which a child sent abroad for 9 months of the year for education did not lose his habitual residence.

Having heard the evidence of parties, the judge found:

“M did not acquire a habitual residence in Singapore. His stay was temporary and for a fixed purpose. He was not living with either parent. His mother expected and planned to resume his care not later than January 2014. The role of the paternal grandparents as carers was also a temporary arrangement, therefore applying the propositions propounded by Lady Hale in *A v A I* conclude that M’s integration into the social and family environment in Singapore was temporary in nature, in fact and by intention.”

The father was ordered to return the child to this jurisdiction.

Permission

Family Law Week 