

THE HIGH COURT

[2013/3629P]]

IN THE MATTER OF J.A. (A MINOR) BORN ON 1ST MARCH 2013 AND IN THE MATTER OF THE CHILDCARE ACT 1991 (AS AMENDED) AND IN THE MATTER OF COUNCIL REGULATION (EC) NO. 2201/2003 OF 27TH NOVEMBER 2003 CONCERNING JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN MATRIMONIAL MATTERS AND MATTERS OF PARENTAL RESPONSIBILITY

BETWEEN

THE HEALTH SERVICE EXECUTIVE

PLAINTIFF

AND

M.A. AND S.S.

DEFENDANTS

JUDGMENT of Mr. Justice Birmingham delivered on the 29th day of May 2013

1. In these proceedings, the plaintiff, the Health Service Executive (HSE) is seeking an order pursuant to Article 15 of Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility making a request, to be addressed to the Courts of England and Wales, requesting them to assume jurisdiction in relation to childcare proceedings involving J.A., a minor born on the 1st March, 2013. The HSE's position is supported by M.A., the first named defendant, who is the mother of J.A. and also by Mr. Eugene Bigley who was appointed to act as guardian *ad litem* on behalf of J.A. The second named defendant, S.S., the father of J.A., although served with notice of the proceedings has not taken any part in the proceedings and a solicitor consulted by him has indicated through the solicitor for the HSE, that he has been unable to obtain instructions.

2. The background to the matter coming before the Court was that J.A. was born on the 1st March, 2013 in the Rotunda Hospital in Dublin. On the 8th March, 2013, the HSE applied for and obtained an Emergency Care Order from the District Court in Dublin. On foot of that order, J.A. was placed in foster care. Interim Care Orders were subsequently obtained. Provision was made for access to J.A. by his parents five days a week, and this right was exercised by them for a period.

3. The decision by the HSE to seek Care Orders was taken in a situation where J.A.'s parents had travelled from England and Wales to Ireland very shortly before his birth. I have been informed by counsel on behalf of M.A. that the parents travelled on the 24th February, 2013, and that they returned to Britain on the 24th March, 2013. The HSE was contacted by the Rotunda Hospital which reported concerns that its personnel were experiencing. The HSE made contact with X local authority in England. That local authority had an involvement with both J.A.'s parents over many years. A report prepared by the local authority was made available to the HSE. Without going into any great detail in relation to that report, suffice to say that M.A. had a long history of depression, involving overdosing and self-harm. Her two eldest children, whose father is the ex-husband of M.A., were placed on a child protection plan. Thereafter, M.A. began a new relationship and S., a daughter, was born in 2003 during that relationship, which has since ended. Initially, S. was cared for by her maternal great grandmother, but when that lady's health deteriorated, S. was placed in foster care and was later adopted.

4. So far as S.S. is concerned, he is the father of two children, now adults, from a previous marriage. These children were placed on an 'At Risk Register'. Also of note is that at one stage, S.S. served a prison sentence for setting fire to the family home. Indeed, both parents have received prison sentences at different stages.

5. I am referring to these matters only to put in context the fact that the local authority in England on the 16th January, 2013 commenced the procedures designed to produce a pre-birth assessment. The local authority decided to issue an application for an Interim Care Order. As part of that assessment exercise, a home visit was arranged for the 15th February, 2013. However, there was no contact on that day with the parents. One of the purposes of that visit had been to inform M.A. of the fact that S.S. had been placed on the sex offenders' register for life following a conviction for rape. There was no further contact with M.A. at that stage and M.A. and S.S. travelled to Ireland very shortly thereafter. It appears to be an inescapable conclusion that they left England fully aware of the concerns felt by the local authority and decided to travel to Ireland in order to frustrate and set at nought the actions of their local authority. Seen from a different perspective, however, their actions in coming to Ireland were designed to maximise their chances of being allowed care for their then unborn child.

The Regulation

6. The HSE has brought its application pursuant to Article 15 of Council Regulation EC No. 2201/2003. However, the starting point for consideration of this request is Article 8 of that Regulation, which states the general position which is that the courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seized. That is the general position but to that general position there are exceptions.

7. Turning, then, to Article 15, that Article, so far as material provides as follows:

"Article 15

Transfer to a court better placed to hear the case

1. By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:

(a) . . .

(b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

2. Paragraph 1 shall apply:

(a) upon application from a party; or

(b) . . .

(c) . . .

3. The child shall be considered to have a particular connection to a Member State as mentioned in paragraph 1, if that Member State:

(a) has become the habitual residence of the child after the court referred to in paragraph 1 was seised; or

(b) is the former habitual residence of the child; or

(c) is the place of the child's nationality; or

(d) is the habitual residence of a holder of parental responsibility; or

(e) is the place where property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of this property.

4. The court of the Member State having jurisdiction as to the substance of the matter shall set a time limit by which the courts of that other Member State shall be seised in accordance with paragraph 1.

If the courts are not seised by that time, the court which has been seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

5. The courts of that other Member State may, where due to the specific circumstances of the case, this is in the best interests of the child, accept jurisdiction within six weeks of their seisure in accordance with paragraph 1(a) or 1(b). In this case, the court first seised shall decline jurisdiction. Otherwise, the court first seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

6. The courts shall cooperate for the purposes of this Article, either directly or through the central authorities designated pursuant to Article 53."

A Particular Connection with England and Wales

8. It is first necessary, therefore, to consider whether J.A. has a particular connection with another Member State, in this case, the United Kingdom, and more particularly, with England and Wales. If such a particular connection is established, it will then be necessary to consider whether the courts of England and Wales would be better placed to hear the case, and whether it is in the best interests of J.A. that the case should be heard by the courts of England and Wales. So far as the question of a particular connection is concerned, it seems to me that this is clearly established by reference to paras. 3(c) and 3(d). England is the place of habitual residence of M.A. and S.S.

9. So far as para. (c) is concerned, on the basis of information made available to me in other cases which included leading counsels' opinion, I am satisfied that J.A. is by descent a British national, having regard to the terms of s. 2(1)(a) of the British Nationality Act 1981 (as amended). I am told that an affidavit of laws will be made available confirming that is indeed the position.

Better Placed to Hear the Case

10. I turn, now, to consider the question of whether the courts of England and Wales would be better placed to hear the case. The starting point for consideration of this issue has to be to recognise that J.A. has no real connection with Ireland. His parents came to this jurisdiction just eight days before his birth and left Ireland just over three weeks later. Counsel on behalf of M.A. has indicated that she has no intention of returning to Ireland at present.

11. It seems to me that the courts in England and Wales would enjoy considerable advantages. Both of J.A.'s parents, who would be necessary parties to any proceedings, are resident in England. M.A., who is supportive of the suggestion that a request be made to the courts of England and Wales to assume jurisdiction, has indicated that if the courts in England agree to assume jurisdiction, that it is her intention to engage with the proceedings, seeking to resist any suggestion that her son should be taken into care or placed for adoption. In addition, all the potential witnesses are based in England. I have referred to the fact that the local authority initiated the pre-birth assessment and has had dealings with both M.A. and S.S. over many years. In these circumstances, it is very likely that officials of the local authority in question, including health visitors and social workers, would be important witnesses. Psychiatric assessments in respect of M.A. were carried out by two doctors in the proceedings concerning S. These doctors are potentially significant witnesses. If it is necessary to update those reports, then this is best done in England where the original report authors can contribute. In all the circumstances, I am of the view that the courts in England and Wales would be better placed to hear the case.

The Best Interests of the Child

12. The question, then, is whether it is in the best interests of J.A. that the proceedings relating to him should be heard in the courts of England and Wales. Ordinarily, and absent unusual circumstances, it will be in a child's best interests that the courts that are best placed to hear the case should be the ones to actually hear the case. I am of the view that is indeed the situation here. There are additional factors present that reinforced that view. First of all, I am struck by the fact that it is the unanimous view of the professionals who have had an involvement with J.A.'s situation, the HSE social work team and the guardian *ad litem*, that his best interests are served by having the case transferred to England if the courts of England and Wales are agreeable to accepting jurisdiction. A further factor to be considered is that if J.A. is in England, then the possibility of contact with S., his half sibling, and other members of his extended family arises. If the proceedings result in J.A. being taken into care, then, depending on decisions

made thereafter by the competent authorities, that may or may not be a practical proposition. It is, however, a possibility that is available to be considered if J.A. is in England and Wales but is unlikely to be available in Ireland.

13. Having regard to the views that I have formed that the courts of England and Wales are better placed to hear the case and that this would be in J.A.'s best interests, I will put in place the necessary procedures in order to make a request of the courts of England and Wales. That request can be processed through the Central Authorities, but in addition, I will seek the assistance of Finlay Geoghegan J., the liaison judge for these purposes, in having the request communicated through the offices of the international judicial network. In addition, I am going to request the HSE to undertake to this court that it will "drive along" the request, to use the language of Cobb J. in the matter of *L.M. (A Child)* [2013] EWHC 646 (Fam.) and seek directions for the judicial determination of the request in the requested State. In that regard, I was pleased to hear that the HSE has already been in contact with a solicitor, junior counsel and leading counsel in London.