Neutral Citation: [2013] IEHC 472

THE HIGH COURT

[2013 No. 7539 P.]

IN THE MATTER OF THE CHILD CARE ACT 1991(AS AMENDED) AND IN THE MATTER OF COUNCIL REGULATION (EC) NO. 220112003 OF 27TH NOVEMBER 2003 CONCERNING JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN MATRIMONIAL MATTERS AND THE MATTERS OF PARENTAL RESPONSIBILITY

BETWEEN

THE HEALTH SERVICE EXECUTIVE

PLAINTIFF

AND

C.R. AND J.M.

DEFENDANTS

JUDGMENT of Mr. Justice Birmingham delivered on the 22nd day of October 2013

1. This relates to an application made by the Health Service Executive (HSE) pursuant to Article 15 of Council Regulation (EC) No. 2201/2003 of 27th November, 2003, concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

2. The background to the application is that the minor named in the proceedings, K.R., was born on 30th December, 2012, his mother, the first named defendant, having travelled to Ireland from Britain in December 2012 at a very late stage in her pregnancy. It appears to be established that Ms. R. came to this jurisdiction in order to avoid social service interventions by the authorities in Britain in respect of her unborn child. The second named defendant who was nominated by the first named defendant as being the father - some doubts have been expressed in this regard in a situation where it was another male who attended the delivery of K.R. in the guise of being the partner of C.R.

3. While at one stage C.R. appeared to indicate that she was not opposed to the application, more recently she has been saying that she was opposed to the suggestion of a transfer of the proceedings and would attend in court to express those views. However, she did not in fact appear, but I think it appropriate to approach the case on the basis that C.R., the mother of the applicant named in the proceedings, is opposed to any suggestion that the proceedings should be transferred from the Irish Courts to the Courts of England and Wales, which is what is proposed.

4. Following the initial contact by the British authorities, more detailed information was provided and it emerged that Ms. R. had first come to the attention of social services in Britain in August 2010 because of concerns about her relationship with a particular individual, Mr. W., and incidents of domestic violence. Over a 12- month period, there were 14 reported incidents of domestic violence. It was also established that Ms. R. has three children in Britain. These three children have different fathers. All of them have been removed from her care. Full care orders were granted in respect of two of the children in November 2012, and there was a placement order secured in respect of the third child on the same date. The third child has now been placed for adoption. Ms. R. appealed the making of the orders but her appeal was dismissed by His Honour Judge Hall at Wolverhampton Court on 6th December, 2012.

5. Following the birth of K.R., the gardaí invoked s. 12 of the Child Care Act 1991 to ensure that the baby was not removed from the hospital. There followed an application for an emergency care order and subsequently for an interim care order which has been extended from time to time since then. K. has been placed with foster carers and C.R. has had access once per week for three hours. She has exercised this right without incident, though there have been occasions when she was unable to do so because she was in Britain exercising access rights in respect of her other children.

6. Article 15 of Council Regulation (EC) No. 2201/2003, so far as directly relevant, provides as follows:

> "Transfer to a court better placed to hear the case
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> 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) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or
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> (b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.
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> 2. Paragraph 1 shall apply:
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> (a) upon application from a party; or
>
> (b) of the court's own motion; or
>
> (c) upon application from a court of another Member State with which the child has a particular connection, in accordance with paragraph 3.
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> A transfer made of the court's own motion or by application of a court of another Member State must be accepted by at

least one of the parties.

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."

7. This application by the HSE seeking that a request be made of the courts of England and Wales to assume jurisdiction requires consideration of a number of issues. In the first instance, it is necessary to determine whether K.R. has a particular connection with another Member State. If that is established, it is then appropriate to consider whether it is the case that the courts of that other Member State would be better placed to hear the case or specific parts thereof and whether that would be in the best interests of K.

8. Dealing first with the question of a particular connection with another Member State, it seems to me that it is clearly established by reference to paras. 3(c) and 3(d) of Article 15 that there is such a particular connection. I have been provided with an affidavit of laws from Mr. Laurie Fransman Q.C. which confirms that K.R. was born a British citizen by decent by virtue of the provisions of s. 2(1) (a) of the British Nationality Act 1981. For completeness though, I should say that K. is also entitled to Irish citizenship, having been born in Ireland to parents who are British citizens. So far as paragraph 3(d) is concerned, Ms. R. is a British citizen, having been born on 25th May, 1984, in Britain. It also appears that K.'s father is habitually resident in Britain though few details are available and this aspect is less certain.

9. Accordingly, I am satisfied that K.R. does indeed have a particular connection with another Member State.

10. Accordingly, it is appropriate and necessary to consider whether the courts in Britain, and more specifically, the courts of England and Wales, are better placed to hear the proceedings.

11. There are a number of factors that merit consideration.

12. The authorities in England and Wales have already sought care orders and placement orders in respect of Ms. R.'s three other children. The evidence that was available relating to child protection concerns in the earlier cases is potentially of considerable relevance. It is the case that all relevant witnesses are based in England and Wales. Various risk and parental assessments that were carried out in respect of the three other children were all carried out in England and Wales by professionals based there and the pre-birth assessment in respect of K.R. also took place there.

13. The courts of England and Wales have conducted lengthy hearings, both at first instance and on appeal in relation to the child care proceedings involving Ms. R.'s three other children.

14. It seems that, inevitably, there would be a considerable overlap between those earlier proceedings and any future care proceedings. In that regard, it seems to me to be clearly the case that the courts of England and Wales would have considerable advantages. Ms. R. and the R. family have had a long history of involvement with social services. All those social services professionals are based in Britain. In these circumstances it is clear that the courts of England and Wales would indeed be better placed to hear the case.

15. There remains for consideration whether transferring the case to the courts of England and Wales would be in the best interest of K.R.

16. Ordinarily, it would be in the best interests of a child that decisions in relation to him or her should be taken by the courts best placed to hear the case. Decisions in relation to the welfare of a child are of enormous significance. It obviously makes sense that such decisions should be made by the court best placed.

17. There are some additional factors. Members of K.R.'s extended family are all located in England and Wales. It is possible that at some stage consideration might be given to placing K.R. with a member of his extended family. This is a more realistic prospect if the case is dealt with by the courts of England and Wales.

18. K.R.'s siblings, or rather, half-siblings, are resident in England and there is greater prospect of contact with those siblings as well as other extended family members if the case is transferred to England.

19. For all these reasons, I am convinced it is in the interest of K.R. to make the request of the courts of England and Wales and I will do so. I will discuss with counsel what needs to be done to give effect to this decision.