

THE HIGH COURT

Record No. 2013/1060P

IN THE MATTER OF H.J.J. A MINOR BORN ON THE 24TH MAY 2012 AND IN THE MATTER OF THE CHILD CARE ACT 1991 (AS AMENDED) AND IN THE MATTER OF COUNCIL REGULATION (EC) NO. 2201/2003 OF 27 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

L.G. AND J.J.

DEFENDANTS

JUDGMENT of Mr. Justice Birmingham delivered the 2nd day of May 2013

1. In these proceedings the plaintiff, the Health Service Executive (HSE) is seeking pursuant to Article 15(1)(b) of Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (hereafter "Council Regulation 2201/2003") that a request be made to the High Court of England and Wales to assume jurisdiction in relation to the proceedings concerning the placing of H.J.J. in public care, together with ancillary reliefs.

2. The background to the present application is that H.J.J. was born on the 24th May, 2012, at Sligo General Hospital.

3. L.G., previously known as L.M., the first named defendant herein and mother of the minor referred to in the proceedings arrived in this State at the beginning of May, 2012 with her partner J.J., the father of H.J.J. They arrived from Britain. At the time that L.G. left Britain and came to Ireland, she was at an advanced stage of pregnancy and as we have seen H.J.J. was born on the 24th May, 2012.

4. H.J.J. is the first child of L.G. and J.J. but of significance is the fact that L.G. is the mother of two other children R.G., (a boy) born on the 17th September, 2007, and R.B. (a girl) born on the 28th November, 2009, R.G. and R.B. have different fathers and each is a half sibling of H.J.J. Until the 18th April, 2011, R.G. and R.B. were in their mother's care but on that day they moved to the care of the local authority.

5. Full care orders in respect of R.G. and R.B. were made on the 25th April, 2012, following a four day court hearing. It appears that an application was made by or on behalf of L.G. for an adjournment of the proceedings on the first morning of the hearing but this application was refused. Thereafter she did not subsequently return to court.

6. It appears that after the care proceedings in England or indeed perhaps before they concluded that L.G. travelled to this jurisdiction. In that context it is significant that apparently concerns were expressed for the safety of L.G.'s then unborn child during the course of those care proceedings. Indeed, before L.G. left Britain a decision had been made by social services there on the 11th April, 2012, that an application would be made for a care order upon the birth of the expected baby. In that regard it is of note that a pre-birth assessment prepared by senior social worker practitioner, Barbara Bird contained the following assessment:-

"It is the Local Authority's view that neither parent is willing or properly able to make the necessary changes in their lifestyle to ensure the safety of the baby when it is born. To ensure the safety of the new baby it is the Local Authority's intention to make an application for an EPO [Emergency Placement Order] immediately following the birth of the baby."

The pre-birth assessment prepared by Ms. Bird is a detailed one coming to some fifteen pages and is likely to be of considerable assistance to any court required to deal with H.J.J.'s situation.

7. The grounding affidavit on which this application was moved has helpfully summarised what seems to have been the main concerns of the social services in England and Wales. It did so as follows:-

(i) L.G. had not accepted any of the concerns, diagnoses or recommendation of the experts made in the context of the care proceedings relating to her two older children;

(ii) The defendants have a history of abusing alcohol and illicit drugs,

(iii) J.J. has a history of criminal activities including common assault on L.G.;

(iv) L.G.'s parenting is not consistent;

(v) L.G. has been the subject of a difficult and at times violent upbringing.

(vi) L. G. has formed inappropriate relationships in the past and is likely to repeat this behaviour.

(vii) If the baby was left in the care of L. G. there was a significant risk of physical harm in the immediate future from the potential of further domestic violence between L. G. and future partners.

(viii) In the longer term the baby was at risk of emotional harm due to witnessing adult aggression and domestic violence.

(ix) The behaviour and psychological impact of domestic violence upon children has been shown to have a detrimental impact on their behaviour, social and educational development.

8. These concerns were based on a number of significant events that were known to the social services in England and Wales which included the following:

(i) 13th May 2009: L.G. and her first child R. were made subject to a Child Protection Plan due to serious concerns of domestic violence.

(ii) 2010: Police called to the house numerous times in response to domestic violence resulting in a conviction on Mr. B., R.'s father.

(iii) Following the death of her father and certain other factors to which reference is made there was a noticeable deterioration in the mental health of L.G. and she disclosed suicidal ideation to her doctor.

(iv) June 2011: J.J. was arrested for assaulting L.G. in a serious episode of domestic violence in which he also punched a family dog in the head several times and threatened to stab L.G.

(v) July 2011: J. J. was detained under the Mental Health Act by police for his own protection as he had attempted to take his own life.

9. The papers indicate that a very significant amount of detailed information as to L.G. and J.J. is available to the authorities in England and Wales. In addition a considerable number of professional assessments were carried out in the context of the care proceedings in respect of R. and R. Those involved in the preparation of these reports included a consultant psychiatrist, a consultant clinical psychologist and what is described as a risk management specialist, as well as the senior social worker involved with the case since mid 2010.

10. Following the birth of H.J.J. on the 24th May, 2012, an application for an Emergency Care Order was made to Sligo District Court on the 25th May, 2012. The order initially granted was for a period of eight days. On the 31st May, 2012, an Interim Care Order was granted for a period of twenty eight days. At that stage L.G. was present in court and was legally represented by the Legal Aid Board. She consented to the application. This was the last occasion that L.G. was present in the District Court. On the 20th June, 2012, there was an application to extend the Interim Care Order. On this occasion, apparently, J. J. appeared in person and informed the H.S.E. representatives that L.G. had returned to England. He objected to the extension of the order but notwithstanding that the order was extended.

11. The order has since been extended on a number of occasions and remains in force. Initially, both parents exercised a right of access to H.J.J. and in those early days were expressing a determination to do whatever it took to get their child returned to them and at that stage they were indicating that they planned to remain in Ireland. However, in June, 2012 both parents left this jurisdiction, apparently, with no intention to return. Contact was made with the defendants in the United Kingdom by the Social Work Department of the HSE and the defendants confirmed that they would not be returning to Ireland but would be seeking the return of their child to the United Kingdom. On the 7th August, 2012, L.G. phoned an official of the HSE and informed him that she was seeking legal advice in Britain with a view to having H.J.J. returned to her care. In the course of that conversation she indicated that she was no longer in a relationship with H.J.J.'s father as she had been assaulted by him and that she had subsequently suffered a nervous breakdown. In the course of further contact on the 14th September, 2012, L.G. stated that she was still struggling with poor mental health. She had not in fact sought legal advice. She also referred to the fact that J.J. had been imprisoned for a period of twenty weeks on the 21st August, 2012, for assaulting her. A five year restraining order was also put in place.

12. On the 31st October, 2012, J.J. phoned to say that he had just been released from prison and that he still wanted to be assessed as a potential carer for H.J.J. as indeed did his mother. He also stated that he would be seeking legal advice in the United Kingdom. In terms of potential carers reference should also be made to the fact that H.J.J.'s maternal great grandmother also wishes to be considered for such a role. She had access to H.J.J. in October, 2012 during the course of a visit to her sister who lives in Mayo. In the most recent recorded contact between the HSE and L.G. which was on the 28th March, 2013, a change of attitude on the part of L.G. is evident. On this occasion, she reiterated that she wanted to be considered as the primary carer of H.J.J., but that she wanted H.J.J. to remain in Ireland until she was able to resolve her own personal difficulties which she accepted prevented her at this point in time from caring for him.

13. It may be noted that H.J.J. is now eleven months old and it was only on Wednesday of this week that the application seeking to transfer the proceedings to England and Wales was brought. This delay may be partly explained by the fact that the HSE made contact with the British Authorities to see whether an application would be brought by them for the return of the child but it was clarified that there was no such intention. The attitude of the relevant local authority in England and Wales is set out in an email of the 13th July, 2012, and a further communication of the 5th September, 2012. The email contained the following statement:-

"While we sympathise with H.J.J.'s plight and accept that he had British heritage, WSCC is not able to offer any assistance at the current time beyond agreeing to ask prospective adopters for R.G. and R.B. whether they would be willing or able to adopt H.J.J. as well. We will contact you if any such prospective adopters are found but will not limit our search to prospective adopters who are prepared to adopt all three children as R. and R.'s permanence must be our priority."

The communication of the 5th September, 2012, stated:-

"[T]here is no legal basis for WSCC to accept responsibility for this case".

14. A further contributing factor to the delay was that the HSE were seeking to secure parental involvement in the application to transfer the proceedings. However, while these factors are present, and may have contributed to the delay, it seems to me that if similar cases arise in the future every effort should be made to keep delay to an absolute minimum.

15. The order now sought is one pursuant to Article 15 of Council Regulation (EC) No. 2201/2003. Article 15 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) 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

(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;

(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.

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.

(4) The court of the Member State having jurisdiction as to the substance of the matter shall set a time limit by which the court 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."

16. In these circumstances the first task is to establish whether H.J.J. has a particular connection as defined at paragraph 3 with another Member State. Here the suggestion is that the connection is with the United Kingdom and more specifically with England and Wales. If a particular connection is established I must then go on to consider whether the courts of England and Wales would be better placed to hear the case and whether it would be in the best interest of H.J.J. that the case be transferred to the courts in England and Wales.

17. So far as the question of whether H.J.J. has a particular connection is concerned five routes to that status are referred to in paragraph 3. Of these (a), (b) and (e) have no application. That leaves for consideration subparagraphs (c) and (d). So far as subparagraph (c) is concerned I have been informed of the fact that the opinion of leading counsel was obtained in the context of a similar case and that the opinion obtained was that a minor born in Ireland of British parents is a British national. The facts of the present case are similar in many respects to the case of *McL* (Unreported, High Court, Birmingham, J.), where on consent of all the parties I made a request that the matter be transferred to the courts of England and Wales. Thereafter the matter came on before Cobb J in *In the Matter of LM (a child)* [2013] EWHC 646(Fam) and in the course of that judgment which he delivered on the 27th March, 2013, at paragraphs 31 he commented:-

"[T]here is no doubt that this jurisdiction is the place of LM's nationality: see Article 15(3)(c) and section 2(1)(a) British Nationality Act 1981. The mother is a British citizen...."

In the present case it appears that both mother and father are British citizens by birth. L.G., then known as L.M. was born in Brighton in 1986. The position therefore is that H.J.J. was born outside the United Kingdom to a mother who at the time of the birth was a British citizen, otherwise than by descent. Accordingly, H.J.J. was born a British citizen by descent by operation of s. 2(1)(a) of the British Nationality Act 1981.

18. In addition it appears clear that the United Kingdom is the place of habitual residence of the child's mother and father. Accordingly, I conclude by reference to paragraph 3(c) and 3(d) that H.J.J. has a particular connection to England and Wales. However on the other side of the equation it should be noted that H.J.J. as someone born in Ireland of British citizen parents is also entitled to Irish citizenship and this is a factor that needs to be kept in mind.

Are the Courts in England and Wales better placed to hear the case?

19. First of all, it does appear that the courts in England and Wales have certain advantages. In the course of contact with the HSE both parents expressed a desire to see H.J.J. return to Britain and to have H.J.J. placed in their care, though the position of L.G. may

have evolved somewhat recently. If the case proceeds in Ireland there will be no *legitimus contradictor*. In that regard it is of note that L.G. was represented by the Legal Aid Board and by counsel but in recent times. L.G.'s lawyers have been unable to obtain instructions leading the Legal Aid Board to put in place the procedures to terminate the legal aid certificate. Counsel on behalf of L.G. was present when this application was moved but in a situation when she was unable to obtain up-to-date instructions did not play an active part.

20. Very considerable information about this family unit was assembled in the course of the earlier care proceedings and the English courts would have access to this. Also, the professionals who prepared reports for the earlier care proceedings and prepared pre-birth assessments would be more readily available in England. In addition both defendants have expressed a wish to be involved in the care of H.J.J. and to be assessed for this purpose. J.J.'s mother and H.J.J.'s maternal great grandmother also wished to be assessed as potential carers. Other extended family members may also come to be considered. Given that all these people are resident in Britain, it seems to me that the courts in England and Wales would be better positioned to make these assessments. On the other hand if the case is dealt with in Ireland, the case will be dealt with by the courts of a country with which H.J.J. has no real connection other than the chance of his birth place nor has any close family member of his any current connection with Ireland. That H.J.J. was born here was as a result of a tactical decision taken by his parents at a time after a decision was taken by the competent authorities in England and Wales that a care order should be sought once the baby was born.

Is it in H.J.J.'s best interests that the case be transferred?

21. The first answer has to be that it is in a child's best interest that his or her welfare should be considered by the court best positioned to do so. In this case that is the courts of England and Wales. A further very significant consideration is that in England there is the possibility of him having contact in the future with not just his parents, but with his half siblings and with members of his extended family. His half siblings are said to enjoy a good relationship. If H.J.J. could be introduced to that relationship that would potentially be very beneficial to him. At this stage it is unclear whether that will happen or what form any contact might take but that is a possibility in England and Wales and offers a further reason for transferring the case.

22. Accordingly, I am minded to make a request in the courts in England and Wales to assume jurisdiction. Having regard to the helpful suggestions made by Cobb J. at paragraph 39 of his judgment I propose to discuss with Finlay Geoghegan J., the liaison judge for such purposes how that request can be communicated through the offices of the international judicial network and 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.) and seek directions for the judicial determination of the request in the requested State.