

IN THE FAMILY COURT AT COVENTRY
IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF AS AND BS

Date: 15th December 2020

Before :

Her Honour Judge Walker
(sitting as a Judge of the High Court)

Between :

A Local Authority

Applicant

- and -

Mrs S (1)
Mr S (2)
AS and BS (by their Children's Guardian) (3)

Respondents

Mr Watson for the Local Authority
Mr Rowley QC and Mr Bartlet-Jones for the First Respondent
Mr Twomey QC and Miss Littlewood for the Second Respondent
Miss Jones for the Children's Guardian

Hearing date: 15th December 2020

JUDGMENT

1. I am concerned with the welfare of two children, AS, who was born on the [a date in] 2014 and BS, who was born on the [a date in] 2007. Their mother is Mrs S and their father is Mr S. Care proceedings began in relation to both of the children when the local authority applied for Emergency Protection Orders on the 23rd September 2020.
2. Those orders were made on the basis that the local authority had received information that the father, along with another person, had been arrested and charged for offences of human trafficking and child exploitation. It is alleged that the father is the ‘second in command’ of an Organised Crime Group who have trafficked and exploited children as young as 12. The mother has been required to answer matters in relation to a linked criminal prosecution in Romania, although I understand that she is yet to be charged with any offence.
3. In fact, none of the material from the criminal proceedings has, as yet, been obtained, despite having been ordered. It is understood that the investigation is being led by police in another jurisdiction, and due to the amount of material and the need for redaction, it is not available.
4. However, this application is, in fact, listed before me to resolve the question of jurisdiction, on the basis that the family, and more particularly the children with whom this court is concerned, had only been in Coventry since the beginning of September 2020, and it is asserted by both of the parents that, whilst I was entitled to use my powers of protection when I first heard the EPO application, these children are not habitually resident in this country.
5. I have been assisted by detailed position statements/skeleton arguments on behalf of all parties. There is no disagreement as to the relevant law. It is set out in commendably comprehensive documents prepared by Mr Twomey QC and Mr Rowley QC. They remind me of the decision of the Supreme Court in *A v A [2013] UKSC 60* and the judgment of Baroness Hale. The salient bullet points are as follows:
 - Habitual residence is a question of fact and not a legal concept such as domicile. There is no legal rule akin to whereby a child automatically takes the domicile of his or her parents.
 - It was the purpose of the 1986 Act to adopt a concept which was the same as that adopted in the Hague and European Conventions. The Regulation must also be interpreted consistently with those conventions.
 - The test adopted by the European Court is “the place which reflects some degree of integration by the child in a social and family environment” in the country concerned. This depends on numerous factors, including the reasons for the family’s stay in the country in question.
 - It is now unlikely that the test would produce any different results from that hitherto adopted in the English courts under the 1986 Act and the Hague Child Abduction Convention.
 - In the view of the Supreme Court, the test adopted by the European Court is preferable to that earlier adopted by the English courts, being focused on the situation of the child with the purpose and intentions of the parents being merely one of the relevant factors. The test derived

from *R v Barnet London Borough Council ex parte Shah* should be abandoned when deciding the habitual residence of a child.

- The social and family environment of an infant or a young child is shared with those (whether parents or others) upon whom he is dependent. Hence it is necessary to assess the integration of that person or persons in the social and family environment of the country concerned.
 - The essentially factual and individual nature of the inquiry should not be glossed with legal concepts which would produce a different result from that which the factual inquiry would produce.
 - As the Advocate General pointed out in AG45 and the court confirmed in para 43 of proceedings brought by A, it is possible that a child may have no country of habitual residence at a particular point in time.
 - In addition to the physical presence of the child in a member state, other factors must be chosen which are capable of showing that presence is not in any way temporary or intermittent and that the residence of the child reflects some degree of integration in a social and family environment.
 - Those ‘other factors’ will mainly be, in the case of a child, those which show some degree of integration in a social or family environment. They include -
 - (i) duration, regularity, conditions and reasons for the stay in the state and the family’s move to that state
 - (ii) the child’s nationality
 - (iii) the place and conditions of attendance at school
 - (iv) linguistic knowledge
 - (v) the family and social relationships of the child in that state
 - Although the intention of the parents will normally be a relevant factor, “the intention of the person with parental responsibility to settle permanently with the child in another member state, manifested by certain tangible steps such as the purchase or rental of accommodation in the host member state, may constitute an indicator of the transfer of habitual residence.”
 - The duration of the stay is a relevant factor but not determinative.
 - In exceptional circumstances, a person may have no habitual residence, although this is very unlikely in the case of a child.
6. The position of the mother and the father can be stated quite simply. They arrived as a family on the 2nd September 2020. They do not own or rent a property and have spent the time since they came to this country living in father’s brother’s home. Prior to the EPO being made, neither of the children was enrolled in a school or nursery in this country, although BS remains on the school roll in Romania. Neither of the children were registered with a GP. The mother has provided evidence that they are so registered with the medical services in Romania. They do not speak English and are currently having to communicate with their foster carers via Google Translate.
7. Prior to September 2020, the children had spent their whole lives in Romania. They are Romanian citizens. Neither of the parents has applied for work in this country, or made application for settled status. BS has talked of his friends back in Romania and the fact that he plays for a football team there. Apart from the uncle and his partner, it is said that the children have no other family,

friends or support network in this country. In contrast, in Romania, the paternal grandparents reside on the same road as the family (where they retain a home) and there are also additional family members in a nearby city, including the maternal grandparents, who have always seen the children on a regular basis. The family worship at a local monastery as Orthodox Christians.

8. The mother and the father say that they came to the UK in order to support the brother who was intending to start up a restaurant, although they do concede that they were contemplating a more permanent move. On behalf of the mother and father it is also asserted that the Guardian's discussion with BS evidences that he had no idea that his move here was to be a permanent one and that he is anxious to return to Romania as soon as possible.
9. None of that is factually challenged by the local authority, who concede on that basis that the children are not habitually resident in England and Wales. The same concession is made on behalf the children. Applying the factors that I have set out within this judgment, it is clear to me that these children never acquired habitual residence in this country. Their life, associations, education, family and language are all in Romania. These children have no integration in a social and family environment in this country.