



Neutral Citation Number: [2024] EWFC 39

Case No: ZC21P01021

**IN THE FAMILY COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29/02/2024

**Before :**

**MRS JUSTICE JUDD**

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**Between :**

**U**

**Applicant**

**- and -**

**E**

**Respondent**

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**Frankie Shama** (instructed by **TV Edwards LLP**) for the **Applicant**  
**Ruth Cabeza** (instructed by **Miles & Partners Solicitors**) for the **Respondent**

Hearing dates: 20<sup>th</sup> February 2024

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## **Approved Judgment**

This judgment was handed down remotely at 10.30am on 29<sup>th</sup> February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**MRS JUSTICE JUDD**

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

**Mrs Justice Judd :**

1. This case concerns a four year old boy, R, who has been the subject of litigation in this country for almost three years. The parties to the proceedings were in a relationship from about 2017 to 2021. R was conceived by artificial insemination with donor sperm by private arrangement. The respondent is the biological mother. The applicant does not have parental responsibility as the parties were not married or in a civil partnership at the time he was conceived but she does regard herself as a psychological parent, having been part of the decision to bring R into the world and involved in his care for the first 18 months of his life. The father has played no role to date.
2. The proceedings began in July 2021 when the respondent took R to Ireland in disputed circumstances. The applicant applied without notice for a prohibited steps order but although the order was made within 24 hours the respondent and R were already on the plane. They have been in Ireland ever since.
3. One point that was overlooked at the time of the original PSO was that the applicant required leave to apply for an order pursuant to s10 Children Act 1989. Permission was granted in September 2021. There was no challenge to jurisdiction, no doubt because at the time the application was made, R was habitually resident in England and Wales.
4. The parties made a number of serious allegations of domestic abuse against each other, and the matter was listed for a fact finding hearing which took place before District Judge Cronshaw in May 2022. In a detailed and careful judgment he made a number of serious findings against both of the parties of physical, verbal and emotional abuse. Following that hearing the case was adjourned for further evidence (including expert evidence) to be filed. This took some time for reasons which I will not rehearse here. At a directions hearing before District Judge Cronshaw in March 2023 the respondent raised the question as to whether or not the court continued to have jurisdiction with respect to R, submitting that his habitual residence was by now in the Republic of Ireland.
5. At this point in time some uncertainty had arisen as to the relevant date for determination of habitual residence for the purposes of establishing the court's jurisdiction pursuant to Article 5 of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children ("the 1996 Convention"). In July 2022 in *London Borough of Hackney v P and Ors* [2022] EWHC 1981 (Fam), MacDonald J had determined that it was at the date of the hearing rather than the date on which the court is seized. In December of that year Lieven J in *Derbyshire County Council v A Mother and Others* [2023] EWFC 183 determined that it was the date on which the court is seized.
6. In response to the raising of the jurisdictional issue the proceedings were transferred to be heard by High Court Judge. District Judge Cronshaw determined, however, that he could continue and make orders about interim arrangements in the meantime. At this point R had been having indirect video contact the applicant twice a week for some time and the District Judge ordered additionally that there should be direct supervised contact once every six weeks in Ireland. The parties agree that in the absence of any finding that R's habitual residence had moved by then the order or measures taken then will continue pursuant to Article 14.

7. The case was listed before me on 23<sup>rd</sup> June 2023. At that hearing the parties agreed that at the date the proceedings were issued (July 2021), and also at the date upon which the applicant was granted leave to apply for section 8 orders (September 2021), R was habitually resident in England and Wales. However it was also agreed that by the current date R's habitual residence had moved to Ireland. The effect of this was stark; if the relevant date for establishing jurisdiction was the date the court was seized, this court would continue to have jurisdiction. If it was the date of the hearing, it no longer did. As an appeal before the Court of Appeal as to the relevant date was expected before too long the proceedings were adjourned until the decision was handed down in October 2023 (*London Borough of Hackney v P and Others (Jurisdiction: 1996 Hague Protection Convention)* [2023] EWCA Civ 1213).
8. The case was listed before another Judge in November 2023. Following the decision of the Court of Appeal the applicant accepted that the Irish Court had exclusive jurisdiction. Nonetheless, Mr. Sharma who has represented her throughout submitted that there should be a further adjournment for an expert in Irish law to be instructed to advise whether the applicant would have an effective remedy under Irish law as someone without legal parenthood or parental responsibility. If she did not, it might be appropriate for the court to make a declaration that the English court was best placed to hear the case and to submit an Article 9 request for the proceedings to be transferred back to England. Permission was given as sought and the report commissioned.
9. The expert has now advised that the applicant is able to pursue her case in Ireland and accordingly the applicant and respondent have agreed that these proceedings should now be brought to an end on the basis that applications will be made to the court in the Republic of Ireland as soon as possible. I have so ordered. The respondent made an application for me to reduce the interim contact arrangements ordered in March 2023 but in the event did not pursue it. In those circumstances it was not necessary for me to decide whether or not this court has jurisdiction to vary previous orders made here in circumstances where there is no jurisdiction under either Article 5 (habitual residence) or Article 11 (cases of urgency where the child is present in the relevant jurisdiction). I grant the respondent permission to withdraw her interim application accordingly.
10. The parties understand that there may be a further appeal to the Supreme Court in the *Hackney* case, but the applicant has come to the view and both parties accept that, whatever the outcome of any further appeal, it would be better for the case to be concluded here and re-litigated in Ireland. R and the respondent have now been there for approaching three years and the sources of support and assessment are much easier to access there.
11. I have been asked by the parties to draft a short judgment to set out the procedural history of these proceedings in order to clarify matters for the Irish courts. I will grant permission for all the documents in these proceedings to be disclosed so that the judge there will have the benefit of reading the fact finding judgment and the professional and expert reports. It is not known how quickly this case can be heard once the proceedings are issued but plainly the delays to date have had a significant effect on the child as well as the parties and I hope this means that the proceedings there can be expedited if possible. I note that the issue of jurisdiction alone has led to these proceedings being delayed by almost a year.

12. This is an example of a case in which habitual residence has moved during the course of proceedings leading to this court losing jurisdiction. Whilst the parties have agreed that R was habitually resident in Ireland by July 2023, what has not been established is the date upon which habitual residence actually changed between 2021 and 2023. Fortunately it is not necessary now to do so.
  
13. In a case such as this where both states are signatories to the 1996 Convention and where there is no order for the return of a child at the outset, habitual residence may change quite quickly, depending on the all the surrounding circumstances. This is something which the parties must now be alive to in order to try and plan for the future of the proceedings, here and/or elsewhere. Cases where a separate fact finding hearing is deemed to necessary can be lengthy, no matter how robustly they are case managed and it may be that by the time the case is ready for a substantive hearing jurisdiction will have moved. If such a scenario is not anticipated in advance it could lead to lengthy delays. There will continue to be challenges for the parties and the courts alike, albeit it is to be hoped that with greater experiences they will be easier to manage.