



1 December 2009

PRESS SUMMARY

I (A Child) [2009] UKSC 10 [*On appeal from [2009] EWCA Civ 965*]

JUSTICES: Lord Hope (Deputy President), Lady Hale, Lord Collins, Lord Kerr, Lord Clarke

BACKGROUND TO THE APPEAL

This appeal concerns whether an English court has jurisdiction to determine the future level of contact between a child and his mother where the child does not habitually reside in an EU Member State. Under article 12.3 of Council Regulation (EC) No 2201/2003 (“**Brussels II Revised**”) parties are able to opt in to the jurisdiction of an EU court which would not otherwise have jurisdiction to determine a child’s future. This applies where:

- (a) the child has a substantial connection with that Member State; and
- (b) the jurisdiction of the courts “has been expressly accepted or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seised”, and the exercise of jurisdiction is in the best interests of the child.

In this case the child had been resident in Pakistan since 2004, although both he and his divorced parents are British citizens and his parents live here. Both the High Court and the Court of Appeal held that an English court had no jurisdiction. The mother appealed. The Supreme Court had two issues to decide: firstly, whether article 12 extended to cases where a child lived in a non-EU member state; and secondly, if it did, whether the parties in this case had accepted jurisdiction in accordance with the criteria set out in article 12.3(b).

JUDGMENT

The Supreme Court unanimously allows the appeal and declares that the courts of England and Wales have jurisdiction in this case. The Supreme Court holds that article 12 of Brussels II Revised applies to a child who is lawfully resident outside the European Union. In this case it was clear that the criteria of article 12.3 were satisfied and therefore that the parties had opted in to this jurisdiction. Lady Hale gave the leading judgment. There was a difference of opinion between the Justices on the precise meaning of article 12.3(b) but it was not necessary to decide this issue in order to decide the case. (Paragraphs [17], [35], [45])

REASONS FOR THE JUDGMENT

- On the first issue, if parents opt in to the jurisdiction of an EU court under article 12.3, that court can exercise jurisdiction even if the child does not lawfully reside within the territory of a an EU Member State. Lady Hale reached this conclusion using ordinary principles of construction, concluding that nothing in article 12 limits jurisdiction to children who reside in an EU Member State. This was confirmed by the conclusion that the term “third State” in other parts of the Regulation (notably articles 12.4 and 61) means a state outside the EU. This is supported by the Practice Guide to the Regulation, as well as other sources emanating from the EU. [17]-[20] The Pakistan Protocol (referred to by the Court of Appeal), in which the judiciaries of Pakistan and

England agreed it will generally be best for jurisdiction to be exercised in the country of the child's habitual residence, was not directly applicable. In any event such an agreement between judges could not affect the proper interpretation of Brussels II Revised. [41]-[44]

- On the second issue, the criteria under article 12.3 were clearly satisfied in this case. Firstly, under 12.3(a), the substantial connection was satisfied by the fact the child's parents are habitually resident in the UK and they and the child are British citizens. [21] Secondly, jurisdiction had been expressly and unequivocally accepted by the parties under 12.3(b), both before and after proceedings commenced. In particular, the father had accepted jurisdiction by undertaking to bring the child back here if required to do so by the Court. [33]-[34] Finally, the exercise of jurisdiction was in the best interests of the child given the presumption in article 12.4 that where a child is resident in certain non-EU States it will be in his best interests for jurisdiction to be exercised under this article. It was also relevant that the child's guardian in the High Court considered that the child's future was best decided in this country. [37]-[38]
- The Justices expressed different views on the meaning of the words in article 12.3(b) requiring express or unequivocal acceptance by all of the parties to the proceedings "at the time the court is seised". Did this mean before, when or after the relevant proceedings were begun? It was also unclear whether these words describe the time at which parties have accepted jurisdiction or, as argued on behalf of the interveners Reunite, describe the parties whose acceptance is required. The Justices do not express a concluded view as it was not necessary to do so in order to decide this appeal. In this case all the parties had given unequivocal acceptance both before and after the proceedings had begun. The diversity of views indicates that the interpretation is not *acte clair* and if a case arises where the issue has to be decided it may have to be the subject of a reference to the European Court of Justice under articles 68 and 234 of the EC Treaty. (Lady Hale at paragraphs [23]-[32]; Lord Collins at [51]-[64]; Lord Kerr at [66]-[74]; Lord Clarke at [75]-[92])

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html