



22 May 2015

PRESS SUMMARY

In the matter of AR (Appellant) v RN (Respondent) (Scotland) [2015] UKSC 35
On appeal from [2014] CSIH 95

JUSTICES: Lady Hale (Deputy President), Lord Clarke, Lord Wilson, Lord Reed and Lord Hughes.

BACKGROUND TO THE APPEAL

This appeal concerns the application of Article 3 of the Hague Convention on the Civil Aspects of International Child Abduction (‘the Convention’). Under Article 3 it is unlawful to remove or retain a child in breach of rights of custody attributed to a person under the law of the state in which the child was ‘habitually resident’ immediately before removal or retention.

This case concerns two small children, born and raised in France, who were brought to Scotland by their mother in July 2013 with the consent of their father, who remained in France. The mother and children were to live in Scotland for the period of about a year. In November 2013 the relationship between the parents ended. On 20 November 2013 the mother commenced proceedings in which she sought a residence order in respect of the children and an interdict against the father removing them from Scotland. The father argued that the initiation of those proceedings was a wrongful retention within the meaning of the Convention on the basis that the children were habitually resident in France immediately before proceedings commenced.

The Outer House of the Court of Session concluded that the children were still habitually resident in France on 20 November 2013. This judgment was based on the fact that the move to Scotland had not been intended by both parents to be permanent. The Inner House of the Court of Session reversed the Outer House’s decision on the basis that shared parental intention to move permanently to Scotland was not an essential element in any alteration of the children’s habitual residence. The Inner House concluded that the children were habitually resident in Scotland at the material time. The father appealed to the Supreme Court on the basis that the Outer House had been correct, and that the Inner House had in any event erred in its approach. The mother argued that there had in any event been no wrongful retention.

JUDGMENT

The Supreme Court unanimously dismisses the appeal.

REASONS FOR THE JUDGMENT

The Court considers that, for the purposes of habitual residence, the stability of residence, rather than its degree of permanence, is important. There is no requirement that the child should have been resident in the country in question for a particular period of time or that one or both parents intend to reside there permanently or indefinitely. As the Court has previously held in a series of cases, habitual residence is a question of fact which requires an evaluation of all relevant circumstances [16].

In determining habitual residence, the focus is upon the situation of the child, with the intentions of the parents being merely one of the relevant factors. It is necessary to assess the degree of the integration of the child (or, in the case of an infant or young child, the degree of integration of those on whom the child is dependent) into a social and family environment in the country in question. There is no rule that one parent cannot unilaterally change the habitual residence of a child [17].

In the present case, the children were habitually resident in Scotland within the meaning of the Convention. The absence of a joint parental intention to live permanently in Scotland was not decisive, nor was an intention to live in a country for a limited period inconsistent with becoming habitually resident there. The important question is whether the residence has the necessary quality of stability, not whether it is necessarily intended to be permanent [21]. Following the children's move with their mother to Scotland, their life there had the necessary quality of stability. Their home was Scotland for the time being, their social life and much of their family life was there. The longer time went on, the more integrated they became into their environment in Scotland [23]. Given this conclusion, the question of wrongful retention did not arise [25].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.uk/decided-cases/index.html