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## **Court orders infant to be returned to England**

**Coventry City Council -v- S**

Neutral Citation IEHC 303

**High Court**

Judgment was delivered by Mr Justice MacMenamin on July 27th, 2010.

### **Judgment**

A six-month-old baby, who was removed from Coventry, England to Ireland by his grandmother with the consent of his parents because they were fearful of court proceedings, must return to the UK under the Hague Convention on Child Abduction and the Brussels II instruments.

### **Background**

The child in question was born on January 19th, 2010, in Coventry to unmarried co-habiting parents. At the age of six weeks he was admitted to hospital, where he was found to have a number of lesions and bruises. He was also found to have fractures in a leg and arm, which were considered not to be consistent with accidental injury.

Coventry social services were contacted, and it was agreed at a meeting with the child's parents that he would be voluntarily accommodated under s. 20 of the United Kingdom Act 1989. This is an alternative to a formal care order, and allows a child to be placed with foster parents, who may be members of the extended family.

Accordingly agreements were drawn up between the local authority and the parents and the child's maternal grandmother whereby the grandmother, who was of Irish origin and a teacher in Scotland, would come and live in their home, taking care of the child. Under the agreements the parents were not to have unsupervised access to the child.

At a further case conference the local authority intimated it was considering issuing care proceedings, and they also made it clear that they wished to initiate an investigation into the injuries. At all times the parents did not accept that the injuries were non-accidental.

After a meeting between the local authority and the parents on March 24th the grandmother, with the parents' agreement, took the child to Ireland, arriving on March 26th. The local authority initiated care proceedings that day, only ascertaining that the child had been removed three days later. At a hearing on March 31st the district judge ruled that the child was to be placed in the interim care of the local authority.

Further orders relating to the care order and the recovery of the child were made in the High Court in England. The parents and grandmother did not participate in these proceedings, asserting that the English courts lacked jurisdiction to deal with the matter. In a previous hearing the mother had claimed her decision was based on her

belief that she would not get a fair hearing in England and that she could not get a second opinion about a possible medical condition that would explain the child's injuries.

The High Court in England ruled that the child's departure was not part of a settled plan for the family to move to Ireland, but an act of desperation. The court stated that the child's habitual residence was England and Wales, pointing out that up to his removal he had always lived there and both his parents lived there.

The local authority then sought orders for the return of the child in the Irish High Court, naming the grandmother as respondent.

She maintained that both she and her daughter were Irish citizens, her permanent place of residence was Ireland as she had taken early retirement from her job in Scotland, and she had no legal obligation to act on foot of court orders made in England. She said both she and the child's parents had sought an independent assessment of the child, based on their belief that the injuries could be caused by a brittle bone condition.

The mother gave oral evidence that did not differ in any substantial way from her mother's.

### **Decision**

Mr Justice MacMenamin said the courts in England and Wales had declared the child's habitual residence was there, and therefore the courts of England and Wales had jurisdiction to make the orders in question. By virtue of Article 19.2 of Brussels II R, the second court should therefore decline jurisdiction in favour of the first court. The grandmother, who had participated in the early stages of the English court proceedings, could not argue they did not have jurisdiction.

The fact that the child had lived in Ireland for four months did not alter his habitual residence, as his parents were still in England and there was no evidence that, prior to the events of March 24th, they had any intention of moving. "I cannot conceive that the decision made in desperation . . . could constitute a 'settled intention' on the part of the mother," he said.

He said this was not affected by the fact that there was no actual court order in being at the time of the child's removal.

This case bore a strong resemblance to that of GT and KAO , where the mother of twin boys took them to Ireland without the permission of their father and decided not to return with them, he said. The father took High Court proceedings for their return, and the court found that because he had instituted guardianship proceedings in the District Court this court had rights of custody, and the children were wrongly removed without its consent. This ruling was upheld by the Supreme Court.

The circumstances of this case were precisely analogous, albeit though in the reverse situation, where here it was the jurisdiction of the English courts which had been invoked. Once the English courts were seised of the application on March 26th, and

certainly by the time they made the first order on March 31st, they were vested with rights of custody. The issue was not whether there had been wrongful removal, but whether they had been wrongful retention of the child in Ireland after this date, which there was.

Referring to some of the other issues raised, he said that there appeared to be some misunderstandings on the part of the parents and grandmother. The court had not refused a second opinion, but rather stated that this should be regulated by the courts.

The question of adoption had been raised during a case conference, but only as a "long stop", and there was no evidence it was in immediate contemplation, and the police had decided not to charge the mother.

The Supreme Court upheld the judgment on July 31st.

The full judgment is on [www.courts.ie](http://www.courts.ie)

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