



22 June 2016

PRESS SUMMARY

In the matter of D (A Child) [2016] UKSC 34
On appeal from [2016] EWCA Civ 12

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Clarke, Lord Wilson, Lord Hughes

BACKGROUND TO THE APPEAL

These proceedings concern a child, called DD in the judgment, who was born in 2006 in Romania, to Romanian parents who met while working in England. The family returned to England after the birth. The parents separated in 2007 and DD has lived in England since then in the care of his mother. The father returned to Romania in 2009 but has maintained a significant relationship with his son. He commenced divorce and custody proceedings in Romania in 2007 which, after long delays, culminated in a decision of the Bucharest Court of Appeal in November 2013 that DD should live with his father.

The father applied for the recognition and enforcement of this custody order by the English court in February 2014. These proceedings are governed by the Brussels II (Revised) Regulation ('BIIR'). DD was made a party. In July 2014 a High Court judge refused the father's application, applying article 23(b) BIIR which provides that a judgment should not be recognised 'if it was given, except in a case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the member state in which recognition was sought'. The Romanian court had not made direct or indirect enquiry of DD regarding his wishes and feelings. The Court of Appeal upheld the judge's order.

The father sought to pursue a further appeal to the Supreme Court. The Supreme Court considered as a preliminary issue whether it had jurisdiction to hear an appeal against an order for the enforcement of a custody order in proceedings governed by BIIR.

JUDGMENT

The Supreme Court unanimously rules that it does not have jurisdiction to hear the father's appeal, which must therefore be struck out. Lady Hale gives the only substantive judgment.

REASONS FOR THE JUDGMENT

Under s 40 of the Constitutional Reform Act 2005, appeals to the Supreme Court are subject to provision under any other enactment restricting such an appeal. The question therefore is whether the provisions of BIIR constitute such an enactment or otherwise override the jurisdiction granted to the Supreme Court by s 40 [12].

The application to register a judgment governed by BIIR is intended to be a speedy and essentially administrative process. Either party may appeal the decision under article 33, which is subject to the provision in article 34 that the judgment given on such an appeal may be contested only by the proceedings referred to in the list notified by each member state to the Commission pursuant to article 68. The UK has provided in its list of notifications under article 68 that appeals in England and Wales

under article 34 may be brought only by a single further appeal on a point of law to the Court of Appeal [16].

It has been the practice of the UK in several previous European instruments concerned with the free movement of judgments and judicial cooperation to provide for only one tier of further appeal. The purpose of this restriction is to further the intention of these instruments that member states should recognise and enforce each other's judgments without too many avenues for challenge [26].

The provisions of BIIR and the notification under article 68 are directly applicable in the UK. Article 34 does not depend for its implementation upon the member state's choice of avenue of appeal and in any event the UK did make a notification [37]. It is not necessary for the notification to reflect all appellate rights under UK law: to further the objective of BIIR, article 68 permits member states to make notifications which cut down the routes of appeal which would otherwise be available [38].

It follows that the Supreme Court has no jurisdiction to entertain an appeal in this case and the appeal is struck out.

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:

<http://supremecourt.uk/decided-cases/index.html>