

THE G CASE

A decision by Judge McKechnie on the 10th of September 2007

After being in a relationship for just over three years almost entirely spent living like a man and wife and as part of a family unit. K., the Mother took the twin boys out of Ireland to her parent's house in England. She did so without the knowledge, consent or approval of G, their Father and at some point after that made a decision not to return to the family home in the Leinster region. G [the father] started Court proceedings in Ireland and England to have his children returned to Ireland. G and K were not married but were engaged. G being a Teacher and an Irish citizen, was studying for his PHD at the time. K had both an Irish and English passport and was an Irish Civil Servant but she was also a Professional Singer. K was previously married and had one son who is now about nine years of age.

G and K met in Wales where G was in teacher training in late 2003 and by January 2004, the friendship had developed into a full relationship. Soon after meeting they agreed to set up home, get engaged and get married and effectively became a family unit. The following month, February 2004 K was pregnant and they continued to live in Wales until about July 2004 when they moved to the Isle of Man, G having got a teaching post there for the following teaching year. The twins were born in October 2004 in the Isle of Man and G was shown as the Father on the Birth Certificate which was signed by both Mother and Father and the children acquired dual Irish and British citizenship. In July 2005, the twins, G and K and K's nine year old son moved to Dublin and G and K got engaged on the 12th of August 2005. They continued to live

in Ireland until the 2nd of January 2007 when K took all three children to England.

In this case, G was an unmarried Father and as such he had no natural Constitutional Rights to his children. K being the unmarried Mother of the children was entitled to the sole guardianship of them unless she had agreed in writing to appoint G as their Guardian or unless G had made an application to the Court to be appointed as Guardian.

Under Irish Law as it then stood, therefore G was in a very handicapped position in applying to the Court to have the twins returned to Ireland.

Soon after K had gone to England with the twins, he applied to the local District Court to be appointed Guardian of them, to look for joint custody of them and to be given access to them. The local District Judge had doubts as to whether he could deal with this case or not and adjourned matters.

G then went to the High Court in England and issued proceedings there under the Hague Convention which deals with Child Abduction but in July 2007 the English High Court adjourned the case since it was of the view that an application should be made to the Irish High Court to decide the issue as to whether K's removal of the children to England was wrongful within the meaning of the Hague Convention.

The matter then became before Judge McKechnie in the High Court and was heard over three days on the 29th, 30th and 31st of August of this year. The former Minister for Justice, Michael McDowell acted on behalf of G. In effect what G sought was a Declaration of the High Court that the removal and the retention of the children was wrong within the meaning of the Hague Convention. To properly base his right to bring such an application before the

High Court, G had to prove that he had what is called Rights of Custody as I have said up to this under Irish Law an unmarried father did not automatically have any rights to his child without the consent of the child's Mother or an application to the local District Court.

The Hague Convention defined Rights of Custody as including Rights relating to the care of the child and the Rights to decide the child's place of residence.

The Judge accepted that G was present at the twin's birth and had nurtured them at all times. Apparently he mostly got the children up in the morning, washed and dressed and fed them and took them to school or crèche. He also collected the most days and he organised his teaching responsibilities to give a maximum flexibility to care for them.

K played with her band at weekends and sometimes during the week and worked outside the family home full time from mid September 2006. The Judge accepted that both parents were concerned about the children's development, brought them to Doctors etc for their immunisations, a hearing difficulty that one of the children had.

A lot of discussions in the case concerned where the parties habitually lived and the Judge accepted that they remained habitually resident in Ireland up to at least the beginning of 2007 [for legal purposes] even though in January 2007 K took them to England without G's permission or knowledge.

After a lot of legal argument the Judge agreed that K's removal of the children to England was wrongful and unlawful and in breach of G's Rights of Custody. The Judge went on to say that it was now wrong to presume that the only Rights that a caring and devoted father [although unmarried] might have in relation to the children is a Right to apply to a Court to be given such Rights.

The Judge said that any Rights which a father may have are their because of the relationship with his child and if it exists with the child's mother and all that a Court does is to declare that such rights exist rather than creating them. In effect therefore the Judge said a caring and devoted father has always had these rights.

The Court went on to give it's views as to the notion to what a family is and that based on the relationship that existed between G and K that this was a family which was entitled to protection under the European Convention for Human Rights and that in K taking the children to England without G's knowledge or permission, K was in breach of that Convention in that she wrongfully removed the children to a different country. The Court therefore decided that G had rights of custody and a right to determine the child's place of residence to the same extent as K.

Synopsis by Eamonn Fleming

High Court Judgement dated the 10th September 2007

The full text of this Judgement can be viewed via the following link;

<http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/e77d90ebb1cd0ca88025739900341ef8?OpenDocument>