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Re CB (A Child) (2015)

[2015] EWCA Civ 888

06/08/2015

Barristers
Henry Setright KC

Court
Court of Appeal (Civil Division)

Practice Areas
International Children Law
Public Children Law

Summary
A Latvian mother's appeal against the dismissal of her application to oppose her daughter's adoption was dismissed. It was a difficult and concerning case, but the Family Court judge had been correct to decide as he did and essentially for the reasons he gave.

Facts
A mother appealed against a judgment (Re B, London Borough of Merton v LB [2014] EWHC 4532 (Fam)) dismissing her application to oppose her daughter's adoption.

The child and her mother were Latvian citizens, although the child was born in the UK in April 2008 and had been habitually resident there. Following an incident in March 2010, the child was taken into care by the relevant local authority and placed in foster care. In July 2012 care and placement orders were made. The district judge found that the child had been subjected to significant physical and emotional neglect in the care of her mother and had suffered significant harm. She was placed with prospective adopters in May 2013, and had been with them ever since. The last contact she had with the mother was on 6 March 2013. The mother applied for the proceedings to be transferred to Latvia under Regulation 2201/2003 art.15, and for permission to oppose the adoption order under the Adoption and Children Act 2002 s.47(5). The judge determined that England was the more appropriate forum for the proceedings as the courts and state authorities had been making decisions for the child's welfare for over four years; the two-stage test in B-S (Children) (Adoption: Leave to Oppose), Re [2013] EWCA Civ 1146, [2014] 1 W.L.R. 563 applied to dismiss the application to oppose the adoption; and the child's welfare needs were such that any alternative to adoption would be likely to cause her significant emotional harm.

The mother submitted that there had been (1) an error of law, specifically the judge's failure to properly examine the relationship between her applications under art.15 and s.47(5) and his conclusion that art.15 did not apply, and the UK's systemic failure to inform the Republic of Latvia of the instant proceedings; (2) a change in circumstances, in particular that the Republic of Latvia had become

involved as intervener; (3) an absence of up-dating information; and that (iv) the UK was out of step with the rest of Europe in that it caused or permitted too many children to be adopted.

Held

(1)(i) The judge was correct to decide as he did and for the reasons he gave. An application under s.47(5) was a "measure preparatory to adoption" within the meaning of art.1(3)(b) and thus the Regulation did not apply (see para.56 of judgment). (ii) The significance of the Vienna Convention on Consular Relations 1963 was now, generally speaking, well recognised by local authorities, which were now appropriately pro-active in bringing to the attention of the relevant consular authorities the fact that care proceedings involving foreign nationals were on foot or in contemplation, E (A Child) (Care Proceedings: European Dimension), Re [2014] EWHC 6 (Fam), [2014] 1 W.L.R. 2670 applied. In the instant case, any breach by the local authority of its obligations under the Vienna Convention had not, in the circumstances, had any effect on the outcome. There was nothing to show that, if they had been involved earlier, the Latvian authorities would have adopted a different stance or a stance which would have led to the proceedings taking a different course. However, that was not a reason for not requiring local authorities to be pro-active in bringing such proceedings to the attention of the relevant consular authorities at the earliest possible opportunity (paras 70-79). (2) None of the matters relied on by the mother was, in the circumstances, such as to amount to a change of circumstance and, accordingly, the judge was right to decide as he did and for the reasons he gave (para.64). (3) The judge was not without up-dating information as he had both the local authority adoption report and a report from the guardian. The mother was given every opportunity to provide any information she wished the court to consider to demonstrate that there had been a change of circumstances, but in fact her focus was on what she said were failures in earlier proceedings. Without any prima facie evidence of change the need to consider a further assessment was not triggered. There was no basis for her complaint (paras 65-68). (4) The Court of Appeal was acutely aware of concerns voiced in many parts of Europe about the law and practice in England and Wales in relation to "forced adoptions" or "non-consensual adoption". Whatever those concerns might be, there could be no suggestion that the domestic law of England and Wales was incompatible with the UK's international obligations or, specifically, with its obligations under the ECHR. The relevant authorities in England and Wales had to be understanding of the concerns and do everything in their power to ensure that the processes in place were not subject to justifiable criticism. There was a pressing need for care and rigour in dealing with such cases, B-S (Children) applied (paras 80, 82-85).

Permission