

Re A (Change of Name)

[2003] 2 FLR 1

27/01/2003

Barristers

Justin Ageros

Court

Court of Appeal

Facts

The Somali mother began a relationship with the Somali father shortly after divorcing from her husband, and 3 months after the divorce conceived the father's child. The mother registered the child with two names, a given name and the name of her ex-husband, rather than with the father's name. The father applied for an order changing the boy's registered name. At the hearing the mother argued that she would lose dignity and prestige in the community if her child bore the name of the father, the father argued that the Somali patrilineal naming principle required that after his given name the child's second name be that of his father, and the third that of his paternal grandfather. The judge found against the mother and ordered the alteration of the child's name. Apart from a report given by the Children and Family Reporter to the effect that the Imam at the local mosque had advised that any child conceived within 4 months after a divorce should bear the name of the mother's former husband, rather than that of the father, which supported the mother's position, there was no expert evidence as to the custom and convention within the community. The Court of Appeal granted a stay, and an oral hearing of the mother's application for permission on notice with appeal to follow, giving directions to the effect that if the lack of expert evidence had disadvantaged the judge, expert evidence should be obtained. Two of the expert reports prepared advised that the patrilineal principle applied in Somali society, but failed to address the issue of what should happen under Muslim law when a child was conceived within 4 months of a divorce. The third expert report advised that under Muslim law a child conceived within 4 months of divorce would be regarded as 'belonging' to the ex-husband, and would be named accordingly.

Held

Held – allowing the mother's appeal –

(1) The only one of the expert reports prepared for the appeal which addressed the key issue of what should happen under Muslim law when a child was conceived within 4 months of the mother's divorce confirmed the mother's position, and the father's suggested names did not themselves follow the relevant patrilineal format. The judge had manifestly been in error and the registered name should not be altered (see paras [10], [13], [15]).

(2) It was absolutely fundamental in Children Act proceedings that any expert report commissioned must

be made available in the litigation even if it was contrary to the interests of the party who commissioned it. Any such report must be disclosed to the other side, to the court and to any other expert approached (see para [8]).

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