

Re B (Adoption by one Natural Parent to Exclusion of other)

[2001] 1 FLR 589

20/12/2000

Barristers

Michael Sternberg OBE KC

Court

Court of Appeal

Facts

The mother concealed her pregnancy and put the baby up for adoption without informing the father, or any member of her family, of the birth. She told the local authority that the father was living and working abroad. In fact the father had returned to England. Only the chance recognition of the father's name by a typist in the social services offices enabled the local authority to contact the father. The father wished to look after the child himself, in which he was supported by the mother, and when the child was 2 months old she was placed with the father. Since that time the father had given up work to care for the child, and the child was progressing well in the father's care. The father sought to adopt the child to the exclusion of the mother. The mother had expressed slight reservations, but did not oppose the adoption. Her position throughout had been that she had no intention of seeking direct contact with the child, did not want to interfere in the child's life, and wished only to have an annual photograph and progress report. The Official Solicitor opposed the adoption on the basis that it was not in the child's interests to exclude the natural mother. The judge granted the adoption order, justifying the exclusion of the mother, as required by Adoption Act 1976, s 6, on the basis of the mother's rejection of the child from birth. The Official Solicitor appealed.

Held

Held – allowing the appeal and setting aside the adoption order, substituting a residence order in favour of the father until the child's eighteenth birthday, with the power to apply for a passport for the child without the mother's consent and an unfettered power to take the child abroad, and making an order prohibiting the mother from making any application under the Children Act 1989 without leave – it was generally in the best interests of children to have two legal parents and two legal families and exclusion of one of two living legal parents could only be justified if such exclusion was necessary in a democratic society. It would be a disproportionate response to the child's current needs to deprive the child of the legal relationship with her mother. Although the father's desire for complete security was understandable, there was in fact little reason to believe that this mother would seek to interfere, and if she did do so, such interference would not necessarily be contrary to the child's best interests. However, the court could and should protect the stability of the child's home with the father by providing a

package of measures under the Children Act 1989 to secure the child's current living arrangements. The mother would be left with the remnants of parental responsibility which would only come into play if something serious happened in the father's life, and if the court approved the mother's involvement at that stage.

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