

Re AGN (Adoption: Foreign Adoption)

[2000] 2 FLR 431

09/06/2000

Barristers

Michael Sternberg OBE KC

Court

Family Division

Facts

The child was abandoned at birth by his Romanian mother, and taken straight to a Romanian orphanage. The English adopter and the child developed a strong attachment while the adopter was working in the orphanage as a volunteer. The English adopter made efforts to adopt the child, following all the recommended procedures. In the meantime a Romanian court made a declaration of abandonment, declaring that parental rights should be transferred to and exercised by the orphanage in which the child was then living. Later both the child's mother and the director of the orphanage signed a declaration of consent to the adoption and the English adopter was granted a Romanian adoption order. After a passport and visa had been obtained for the child, he came to the UK where he progressed well. The English adopter applied for an English adoption order, which was necessary because the Romanian order was not recognised in the UK. The question arose as to whether the agreement of the orphanage, as guardian of the child under Romanian law, was required. Under the Adoption Act 1976, s 16, a parent's or guardian's agreement to the adoption had to be obtained, and under s 72(1) the definition of 'guardian' was the same as in the Children Act 1989, 'unless the context otherwise requires'. Under s 5(13) of the Children Act 1989 a guardian had to be appointed in accordance with the Act. This was clearly not the case with a guardian appointed by a Romanian court.

Held

Held - granting the adoption order - a foreign guardian, invested with rights under a foreign order recognised under English law, was capable of being a guardian whose agreement to an adoption order needed either to be given or dispensed with pursuant to s 16(1) of the Adoption Act 1976. The definition of 'guardian' in the Adoption Act 1976 did not prevent the court from recognising a foreign guardianship order which had been made by a court of competent jurisdiction. The de facto involvement of a foreign guardian appointed by a court of competent jurisdiction would be a relevant factor in deciding whether the context required that the individual or institution concerned be held to be a guardian within the meaning of the 1976 Act.

Re AMR (Adoption: Procedure) followed; Re D (Adoption: Foreign Guardianship) not followed.

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