

Re AMR (Adoption: Procedure)

[1999] 2 FLR 807

25/03/1999

Barristers

Michael Sternberg OBE KC

Court

Family Division

Facts

The Polish child was cared for in Poland by her great-grandmother. A family court in Poland deprived the natural parents of their parental authority, eventually appointing the great-grandmother as the child's guardian. The great-grandmother brought the child to England to live with another relative, who sought to adopt her. The questions arose whether (1) the consent of the natural parents was required to adoption, which it would be if they retained parental responsibility under English law, or (2) the consent of the great-grandmother was required, which it would be if she were recognised as a guardian under English law.

Held

Held – recognising the Polish court orders and declaring that the great-grandmother's consent, but not the natural parents' consent, was required or would have to be dispensed with –

(1) It was clear that Polish family law concepts corresponded in large measure to English family law concepts. Judicial comity, judicial authority and common sense pointed to recognition of the Polish orders for the purpose of the English adoption proceedings.

(2) The Polish order depriving the parents of their parental authority had the effect of depriving them of parental responsibility under English law. The right to seek contact which was retained under Polish law was not an incident of parental responsibility, but of being a natural parent. As the natural parents did not have parental responsibility their consent was not required, although their views could and would be sought.

(3) Section 72 of the Adoption Act 1976 provided that 'unless the context otherwise requires' the term 'guardian' had the same meaning in the 1976 Act as in the Children Act 1989, which defined a guardian as a person appointed under s 5 of the 1989 Act. Notwithstanding the narrow and restricted interpretation of s 72 used in *Re D (Adoption: Consent of Foreign Guardian)*, in which it was held that a guardian under a Romanian order was not a guardian within the meaning of the 1976 Act because not appointed under s 5 of the 1989 Act, 'the context' in s 72 meant the entire context of the case. Looking at the full background of this case, the context required that a different definition of guardian be used to

that used in the 1989 Act and the great-grandmother was a guardian for the purpose of the 1976 Act, whose consent was required or would have to be dispensed with.

Per curiam: where there were relevant foreign orders in adoption cases, if the case raised a difficult point it should be transferred to or commenced in the High Court; copies of the relevant orders should be obtained and filed together with translations; expert evidence should be obtained as to the family law system of the foreign jurisdiction, and of the likely effect of the orders under domestic law; and in any case where there was the slightest doubt as to the recognition and effect of foreign orders an interlocutory summons should be issued.

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