

Re J (Adoption: Non- Patrial)

[1998] 1 FLR 225

23/10/1997

Barristers

Private: Elizabeth Coleman

Court

Court of Appeal

Facts

B was the second of four children born in Pakistan to Pakistani parents. Before his birth it was agreed that B would be given to the applicants, the father's cousin and his wife, who were childless. They lived in the UK and had acquired British citizenship. In 1994 the birth parents with their children were granted leave to enter the UK for 6 months. On arrival in August 1994 the family arrangement concerning B was not disclosed and although the family was staying with the applicants a different address was given. Adoption proceedings were commenced in October 1994. The birth parents signed adoption consent forms and returned to Pakistan. The child thrived in his new life and wished to remain with the applicants who were strongly committed to him. The Official Solicitor as guardian ad litem supported the application; the Secretary of State opposed it requiring B to return to Pakistan. The judge refused to make the adoption order and stated that although the welfare considerations supported the application, those considerations were outweighed by the immigration irregularities. The applicants appealed.

Held

Held – allowing the appeal –

(1) There is a distinction between sham applications for adoption solely designed to achieve a legal status, and real applications tainted by deception in their history which are supported by the fundamental foundation of the creation of the psychological relationship of parent and child with all its far-reaching consequences. Where the motive behind the adoption application was to achieve for the child the emotional, psychological, social and legal benefits of adoption, the duty of the court under s 6 of the Adoption Act 1976 was to consider all the circumstances, giving first consideration to the welfare of the child.

Re H (Adoption: Non-Patrial) explained.

(2) The judge had misdirected himself in concluding that it would be wrong to make an adoption order, with all the benefits, since its effect would be to condone an entry the permission for which was obtained without proper disclosure.

(3) In the circumstances the welfare considerations outweighed the immigration irregularities and the

adoption order should be made.

Re D (An Infant) (Adoption: Parent's Consent) and Re W (A Minor) (Adoption: Non-Paternal) followed.

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