

Re S (A Child) (2000)

(2001) 1 FLR 302

16/10/2000

Barristers

Mark Jarman KC

Court

Court of Appeal

Summary

The provisions of r.15(3) Adoption Rules 1984 gave a judge an unfettered discretion to join a party to adoption proceedings and the shift in climate since the 1980s was to give a natural father, even if unmarried to the mother and without parental responsibility, a greater involvement in the proceedings.

Facts

Prospective adoptive parents' appeal from the order of HH Judge Cox on 30 August 2000 that the birth father be made a respondent to the proceedings. The birth parents cohabited during the 1990s and in May 1999 their child ('S') was born, by which time their relationship had broken down and the father was unaware of the birth. The mother considered that she would be unable to bring up S so, two days after the birth, S was placed with foster parents. The following month the father returned to the mother and suggested that they bring up the child together but it was clear that his offers of support could not be relied on. The father proposed that he provide a future for S, probably through the medium of his parents, which was put to the local authority and it commenced steps towards an assessment. These proved futile and by September 1999 the mother decided that S needed the security of an adoptive placement. A permanency planning meeting was arranged in advance of which every effort was taken to notify the father but he did not arrive until the end of the meeting. The father was advised of the outcome and told that if he wished to play a part in S's life he should apply for a parental responsibility order. Later that month, the father assaulted the mother. In December 1999, S was placed with her present carers, the prospective adoptive parents. They applied to adopt S in March 2000 at about the same time as the father was sentenced to three years imprisonment for, inter alia, his assault on the mother. The adoption proceedings came before the judge on 19 June 2000 who expressed disquiet about the father's position. The father had had no notice of the proceedings and, accordingly, had not had an opportunity to play a part. The judge considered whether the father should be made a respondent and obtained a report which showed that the father's involvement with S had been short-lived and ineffectual and that he had had more than sufficient opportunity and advice to play a part. The matter returned to the judge on 30 August 2000 and, despite submissions by the adoptive parents and by the local authority that the father should not be joined, the judge ordered that the father be made a respondent. The judge held that it was necessary to consider the rights of the father under the European Convention on Human Rights ('ECHR') and that although the father had not taken the opportunities to be involved, if he was not

joined in the proceedings he could complain later that his rights under Art.6 and Art.8 ECHR had been violated. In those circumstances, the judge considered it preferable to give father the opportunity to air his views. The adoptive parents appealed emphasising the anxiety felt by them in any extension of the proceedings and stressing the welfare of S who would benefit from confirmation of her status as a member of the family.

Held

(1) An unfettered discretion was given to a judge to join any person as respondent to adoption proceedings in r.15(3) Adoption Rules 1984 but there appeared to be no authority on how that discretion was to be exercised. (2) Whilst there would undoubtedly be cases where the discretion should be exercised against the joinder of the birth father (such as following a violent rape), in a case such as this, where there was a history of a relationship between the parents and the father had sought to play a part in his child's life, albeit intermittently, a judge acted wisely in ensuring that a father at least had notice of the proceedings. Each case however would have to be decided on its own facts. There was a spectrum of cases and the question which arose in any particular case was where a father without parental responsibility stood on that spectrum. (3) The judge in this case had balanced all the relevant considerations and had been entitled to conclude that the failure to take the simple step of joining father at this stage risked the father making a future complaint under the ECHR (now enhanced by the Human Rights Act 1998) that a fundamental decision had been taken of which he had had no notice. Giving the father notice at this stage gave him the opportunity to join with the mother in realistically consenting to the adoption and, if not, then judicial powers existed to override his views. (4) Since the father did not have parental responsibility, he did not come within the provisions of s.72(1) Adoption Act and was accordingly not someone whose agreement to adoption had to be dispensed with. A judge might take account of his representations but they would not have the same force as coming from someone with parental responsibility. (5) The climate had undoubtedly shifted since the 1980s towards according greater involvement of the natural father even where there was no marriage and no parental responsibility.

Permission

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