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Re B-M (A Child) (Adoption) (2000)

LTL 25/7/2000 EXTEMPORE

25/07/2000

Barristers
Private: Jonathan Cohen QC
Private: Elizabeth Coleman

Court
Court of Appeal

Summary
In the rare situation where an applicant sought to adopt two unrelated children and it was inevitable, as a matter of practicality, that both applications would be heard together, the result in respect of one of the children would be a factor to be considered in the balancing exercise in respect of the other and it was therefore appropriate, after the close of evidence, for submissions to be heard and judgment to be given in respect of one child before hearing submissions and giving judgment in respect of the other.

Facts
Parents' appeal from the order of Hogg J made 30 July 1999 that a child ('C') be adopted by the applicant ('SM'). C's mother, Mrs B-M came from Ghana where she had been married to Mr B. The couple had four children. Mrs B-M escaped to the UK where she started a relationship with Mr B-M. C was born out of that relationship in April 1987 but was brought up to believe that Mr B was her natural father. C's early life was unsettled as she moved between local authority care and placement with an aunt. Security came in July 1988 when she was placed with the applicant ('SM') with whom she had lived ever since. SM had been a local authority foster parent since 1983 and although her record over nearly 20 years had not been unblemished, complaints made had been investigated with nothing convincing the local authority that she was not a fit person to foster children. In August 1997 SM made an application to adopt C and another child in her care ('E'). In March 1998 C's biological father, Mr B-M re-entered her life. The parents were now living in the USA and during one telephone call between C and Mrs B-M the telephone was passed to Mr B-M who informed C that he was her father. Following paternity testing establishing that Mr B-M was indeed C's father, he was joined to the proceedings which both parents resisted. The judge concluded that the parents were unreasonably withholding their consent and made the order for adoption. The parents appealed. The first ground, and the principle objection was that upon adoption C would lose the right she had to join her mother as a dependant in the USA, the judge having heard expert evidence on this issue. Secondly, it was submitted, the judge had not tested C's wishes as far as was practicable. Thirdly, the judge had failed to make findings about the incidents in SM's previous history as a foster parent and fourthly, the professionals involved had not carried out a sufficiently profound inquiry. In conclusion it was said that the four points taken cumulatively showed that the judge had been plainly wrong.

Held

HELD: (1) It was true that adoption would undoubtedly reduce the possibility of C joining her natural family in the USA in the event of any breakdown in the adoption. Whilst C was very conscious of the family unit in the USA and had expressed the wish or intention to join or visit the family when she was grown-up that had to be balanced against the facts that: (i) a breakdown in the adoption was unlikely; (ii) the position of the family unit was far from secure, with Mr B-M not having no right of residence there and living an almost fugitive life; and (iii) expert evidence was that C's picture of the natural family unit's life in the USA was more imagined than real with little information having been given to C about the quality of that life. Aside from those considerations the adverse consequence of adoption had only to be balanced against the benefits. This the judge had clearly done finding that the benefit of security far outweighed the loss of any right to join the natural family in the USA. (2) As to the extent to which C's views could have been investigated, this was a matter of discretion for the judge. (3) On the complaint that the judge had failed to make findings in respect of SM's conduct as a foster parent, whilst there was force in this submission the past issues of fact were far from clear. Considering the evidence in its totality it was clear that the judge had accepted that there had been some incidents but had balanced these against the overall confidence in SM's abilities. (4) No criticisms could be made regarding the evidence of the professionals involved. (5) This was a delicate case in which the judge had had to arrive at a just balance and in which the factors in favour of adoption were very strong: C had lived with SM since she was 8 months old, her natural mother had failed to fulfil numerous promises to make arrangements and had effectively abandoned her in the UK, SM had become C's psychological mother since C was 15 months old and C had only seen her natural mother on three occasions since. Adopting the practical approach suggested by Steyn and Hoffman LJJ in Re C (1993) 2 FLR 272 the advantages of adoption overrode the objections of the parents. (6) In the court below it had decided to hear the applications in respect of C and E together since much of the evidence would have been common to both. The objections of a hypothetical reasonable parent could not properly be judged in respect of one of the children until the result in respect of the other was known. Approaching the case knowing that E had been adopted, the case for C was strengthened. Although a rare situation a possible solution was that, after the close of evidence, submissions be heard and judgment be given in respect of one child before hearing submissions and giving judgment in respect of the other.

Permission