

B City Council v (1) S (2) R (3) A (A Child by her Guardian) (2006)

[2006] EWHC 3065 (Fam) (2007) 1 FLR 1223 : (2007) UKHRR 588

01/12/2006

Barristers

Robin Barda

Court

Family Division

Summary

An unmarried father's application for an order preventing his parents from being told that he had fathered a child was refused where there was no evidentially sound basis to conclude that they would reject the child but where the grandmother might come forward as a potential caregiver if the child were placed for adoption.

Facts

It fell to be determined in care proceedings whether the court should make an order that the parties to the proceedings should not inform the paternal grandparents of a child (X) that X existed. X's mother (S) and her father (R) were together for two years but had never cohabited or married. After X was born their relationship ended, but R had regular contact with X. Because of S's previous parenting difficulties and non-accidental injuries suffered by her children from a former marriage, the local authority had issued care proceedings in respect of X soon after her birth. The assessment of S's parenting skills was ongoing but there was a possibility that X would be freed for adoption, which R did not oppose. R lived with his parents, who were devout Muslims. He had not told them about his relationship with S or X's birth. R had previously told X's guardian that if S was unable to care for X, then his own mother might wish to come forward to do so. But R's position by the time of the instant hearing was that if his family learned about X, they would not accept her because of S's background as a prostitute, they would throw him out of their house, and the disclosure would cause difficulties for him and his family within the Muslim community.

Held

HELD: The duration of the relationship between R and S, together with their continued friendship and R's good and developing contact with X, indicated that there was family life for the purposes of the Human Rights Act 1998 Sch.1 Part I Art.8. In the instant application, R's Art.8 rights were opposed to those of X. Based on principles established in cases concerning mothers who sought to have their child adopted without notifying the father of the child's existence, the court had jurisdiction to grant or to refuse R's

application, R (A Child) (Adoption: Duty to Investigate), Re (2001) 1 FLR 365 Fam Div and H (A Child) (Adoption: Consultation of Unmarried Fathers), Re (2001) 1 FLR 646 Fam Div considered. But the matter had to be determined on the facts and there was no evidentially sound basis to conclude that R's parents would reject X. R's change of approach about his parents' likely reaction to the news of X's existence was not convincing and was driven substantially by the upset he feared he would create rather than a genuine appraisal of whether his mother might wish to care for X. Adoption was a last resort for any child and to deprive a significant member of the wider family of the information that a child existed who might otherwise be adopted was a fundamental step that could only be justified on cogent and compelling grounds. There were no such grounds in the instant case. Balancing the Art.8 rights of R and X required that the order sought by R should not be made.

Permission

Lawtel 