

Sandwell Metropolitan Borough Council v (1) GC (2) HC (3) Mr & Mrs X (4) MMC (By the Children's Guardian) (2008)

[2008] EWHC 2555 (Fam)

24/10/2008

Court

Family Division

Summary

The court gave guidance about the application of the Adoption and Children Act 2002 s.19 and about the approach that should be taken concerning parental consent when a child of less than six weeks old was placed for adoption. A two-stage process should be followed whereby the mother signed a written consent in the prescribed form to place the child with prospective adopters. Once the baby was six weeks old, the mother should then be asked to sign the s.19 consent.

Facts

The applicant local authority applied for a declaration that lawful consent had been given by the first and second respondent father and mother (F and M) to the placement for adoption of their 15-month-old daughter (Z), the fourth respondent. Z had been placed on the child protection register before she was born and had been placed with the local authority on a voluntary accommodation basis shortly after her birth. When she was four weeks old, M and F had signed two forms purporting to be made in accordance with the Adoption and Children Act 2002 s.19 and s.20. The adoption panel had approved the plan for adoption and Z, aged four months, had been placed with the third respondents (X). M and F had married a couple of weeks before the placement began. When X applied to adopt Z, it came to light that the parental consents were ineffective under s.52(3) of the Act because they had been obtained before Z was six weeks old. M and F had refused to renew their consent and had asked for Z to be returned to them. The court was required to determine whether the s.19 consent to the placement of Z with a view to adoption was effective in relation to either or both M or F despite the fact that it was given before Z was six weeks old.

Held

On its face, s.19 of the Act provided for placement with no restriction on age, subject to parental consent under s.52 of the Act. Section 52 specifically referred to consent to both placement and adoption except for s.52(3), which referred only to consent to the making of an adoption order and not to consent to placement. Parliament must be presumed to have intended that restriction and there was no basis for implying into s.52(3) consent to a placement order. The CAFCASS "Protocol for Children Relinquished for Adoption" issued in August 2007 suggested that consent to placement could not be given before a child was six weeks old, but the Adoption Agencies Regulations 2005 reg.35 specifically provided for

placement of a baby who was less than six weeks old. Statutory guidance in the 2002 Act provided a specimen “written agreement” designed to comply with that rule. The statutory guidance indicated that a two-stage process should be followed whereby the mother signed a written consent in the prescribed form allowing the adoption agency to place the child with prospective adopters. Once the baby was six weeks old, the mother would then be asked to sign the s.19 consent. That would satisfy the requirements of s.47(4)(b)(i) of the Act and allow all adoption orders to be made without future litigation except where, exceptionally, a court gave a parent leave to withdraw his or her consent. The position therefore, was that a child under six weeks of age was treated as an exception to the general provisions for placement in s.18, s.19 and s.20 of the Act. There could be placement for adoption but only if subject to a written agreement. There could be no consent to the making of an adoption order when the child was under six weeks old. Furthermore, consent to placement could not be relied upon as a basis for making an adoption order and in order to proceed with an adoption order in those circumstances, the court would have to be satisfied that the consent should be dispensed with under s.47(2)(c) of the Act. Good practice and common sense suggested that s.19 consents should only be sought after the child was six weeks old, as consent given before that time, even if given in writing, would not satisfy s.47 of the Act. Failure to follow that course undermined the objective of s.19 to ensure speedy, secure, consensual placements of young children outside care proceedings without the uncertainty and delay implicit in an application to dispense with parental consent. In the instant case, Z’s placement had not been unauthorised because, whether she had been placed by way of s.19 consent or by way of written agreement under reg.35 of the Regulations, consent to the placement had been properly given. (2) F had acquired parental responsibility for Z by virtue of his marriage to M and would be treated as having given consent in the same terms and at the same time as M in accordance with s.52(8) and s.52(9) of the Act.

Permission

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