

Re PW (2011)

[2011] EWHC 3793 (Fam) [2013] 1 FLR 96 : [2012] Fam Law 387

12/10/2011

Barristers

Dorothea Gartland KC

Court

Family Division

Practice Areas

Public Children Law

Summary

An application for permission to appeal out of time against an adoption order made some 51 years earlier, was refused on the basis that it was validly made on an appropriate basis under the law in force at the time.

Facts

The applicant (W) applied to set aside or revoke an adoption order.

W was aged 69. She was the middle child of three girls whose parents died when W was 17. The parents of her closest friend offered her a home and subsequently applied to adopt her. An adoption order was made in 1960 pursuant to the provisions of the Adoption Act 1958. W remained living with her adoptive parents until she was 23, when she left home and later married. After the death of her adoptive mother she decided to challenge the adoption order which she claimed should not have been made and had a devastating effect on her life. W's case was that she was not asked about her wishes and feelings prior to the adoption order, that she had felt pressurised by her adoptive parents who very much wished to adopt her and she felt unable to gainsay their wishes.

Held

(1) The power to set aside an adoption order existed only in very restricted circumstances which did not apply in the instant case. The only available remedy was permission to appeal out of time (see paras 1-3, 34 of judgment). (2) Grounds of appeal and an application for an extension of time and for permission to appeal having been drafted and produced by W at the instant hearing, the prospect of success on appeal was considered to be an important factor in determining the application for an extension. Under the law in operation at the time the adoption order was made, there was no procedural irregularity or failure to consider W's welfare. The adoption order had provided W with the security of a loving family with whom she had stayed in touch all her life. There could be no fair challenge to the order which was validly made on an appropriate basis under the law in force (paras 14-15, 40-41). (3) An adoption order altered the

legal status of a child permanently and irrevocably, and there were very strong public policy reasons why adoption orders should not be set aside, save where there was something about the process which meant that the court had fallen into error. The change of status could lead to irrevocable consequences, such as rights under intestacy, which the setting aside of the adoption order would fundamentally undermine. There should be no discouragement to potential adopters from coming forward to adopt children for fear that some change in circumstance, or characteristic of the child or its parents which was not known at the time, would lead to the adoption being set aside. The longer the adoption order lasted the harder it was to challenge, and in the instant case the 51 years during which the adoption was treated as valid could not be ignored (paras 27, 36, 38).

Applications refused

Permission

Lawtel 