

Re JL and AO 2016

[2016] EWHC 440 (Fam)

03/03/2016

Barristers

Henry Setright KC
Chris Barnes

Court

Family Division

Practice Areas

International Children Law
Public Children Law

Judgment concerning babies relinquished for adoption. Approval of adoption does not depend on local authority or court reaching the conclusion that 'nothing else will do'. Consideration of issues including obligations under Vienna Convention when child relinquished for adoption or otherwise voluntarily accommodated by a local authority.

This decision concerned two cases involving babies (JL and AO) born to mothers from Eastern Europe but relinquished at birth for adoption.

JL's mother and putative father were Estonian. JL's mother indicated she did not wish to look after JL and he was voluntarily accommodated by the LA in foster care. The mother expressed a clear wish that JL should not be placed with a family member but should be adopted in this country, and the putative father indicated he agreed to JL's adoption in this country. The mother signed an advance consent to adoption. Enquiries were made of family members in Estonia, and no family member contacted sought to care for JL. The LA made an application for a placement order. Estonian authorities confirmed that they were pleased for JL to be adopted in the UK and they wished to play no further part in these or any other proceedings relating to JL.

AO's parents were Hungarian. The parents confirmed prior to AO's birth that they wanted the baby to be adopted in England, and they did not want the baby to have information about her origins and history. The Hungarian authorities sought that AO be placed in Hungary. The LA filed an application under the inherent jurisdiction prior to AO's birth seeking a determination as to the child's habitual residence following birth. It was subsequently ordered that the child should upon birth become a ward of court, and permission was given to the LA to place the child with foster carers on discharge from hospital.

The issues that arose in these cases were:

In cases involving babies relinquished for adoption by their parents, what jurisdiction does the court have

to make orders facilitating such placements?

What factors must be taken into account when making decisions about relinquished babies, what are the possible outcomes, and what procedures should be followed?

Where a child born to nationals of a foreign country has been placed voluntarily in the case of a LA (whether with a view to adoption or otherwise, is the LA under an obligation under the Vienna Convention on Consular Relations 1963 to inform the consular officials of that country about the placement?

In the case of JL, further issues were:

- o Does the court have jurisdiction to make a placement order?
- o What order, if any, should be made?

In the case of AO, further issues were:

- o Is it open to the court to transfer jurisdiction to Hungary?
- o Is it open to the court to make an order permitting the LA to send AO to Hungary?
- o In the light of its answers to the previous two questions, what order, if any, should the court make?

In a detailed judgment, Mr Justice Baker concluded:

The jurisdictional rules of Council Regulation (EC) 2201/2003 ('Brussels IIA') do not apply to decisions on adoption or measures preparatory to adoption. The jurisdiction to make orders for the placement for adoption and the adoption of children in England and Wales is derived wholly from statute (as summarised at [90(1)]). Although the inherent jurisdiction may be invoked to supplement the statute, it cannot be used to make orders that cut across or conflict with the statutory scheme.

Approval of adoption in cases where parents have relinquished their baby and expressed a wish that he or she be adopted outside the natural family does not depend on the LA or court reaching the conclusion that 'nothing else will do'. (See further [90(2)]).

As to the Vienna Convention issue, although it did not fall to be decided on the facts of this case, when a child of nationals of a foreign country is relinquished for adoption or otherwise voluntarily accommodated by a LA there is no obligation under Article 36 to notify consular officials, though three important caveats are set out at [66-68] including that the court is under an obligation under Article 37 to notify the consular authorities when a guardian is appointed even in those cases where no obligation arises under Article 36.

Where parents have given a valid consent to placement for adoption (unconditionally and with full understanding of what is involved) the LA will be 'authorised' to place the child for adoption. The Judge did not consider a placement order either necessary or possible (see [71]) in respect of JL, and the case was resolved by an order containing declarations and dismissing the LA application (see [73]).

As per AO's case, where the issue was whether the baby should be adopted here or in Hungary, the proceedings fall outside Brussels IIA and cannot be transferred to Hungary under Article 15. The Court cannot use the inherent jurisdiction in a way which cuts across or conflicts with the statutory scheme. The court therefore declined to make an order transferring the proceedings to Hungary, or to make an order under the inherent jurisdiction authorising the placement of AO in Hungary. If the LA after reflection wished to proceed with its plan to place AO in Hungary, it should issue care proceedings and seek a care order and permission to place the child abroad under Schedule 2, paragraph 19 CA 1989 (see further [75-89, and 90(5)]).