

Z (A Child) (Egyptian fostering UK adoption) (2016)

[2016] EWHC 2963 (Fam)

05/12/2016

Barristers

Henry Setright QC
Michael Gratton

Court

Family Division

Practice Areas

International Children Law

Judgment arising from an application for an adoption order in respect of Z, a girl who is now six, who was born in Egypt on or about 29th October 2010 to unknown parents and was found abandoned.

Issues and background facts

The court was concerned with an application by T, a British national, who had previously lived in Egypt, for an adoption order regarding Z, an Egyptian national girl (aged six at the time of the judgment) who had been placed with her and her Egyptian husband, K by an orphanage in Egypt.

On 1st July 2013, T brought Z to England on a visit visa. Due to civil unrest in Egypt, including a coup d'état on 3rd July 2013, T decided to remain in England. She contacted her local authority, and, ultimately, issued an application for an adoption order or, in the alternative (what is now) a Child Arrangements order ("CAO") for Z to live with her in England.

K, from whom T had become estranged by the time of the hearing, initially gave his written consent to T applying for an adoption order/CAO in England. Later, however, he opposed the application, informing the Court that Egyptian law did not recognize adoption, and that that Z's position in Egyptian law must be respected, or he himself would face prosecution. In the proceedings, he opposed T's applications and sought Z's return to Egypt.

A legal opinion on the position in Egyptian law was obtained from counsel in England during the proceedings. This opinion apparently confirmed K's assertion that Egyptian law did not recognise adoption. Counsel's opinion was that placement of Z with T and K would have been under Islamic "kafala" – in essence, a foster placement.

The Egyptian Ministry for Social Solidarity applied to be joined as a party. It opposed T's application and sought Z's return to Egypt either with or without T. During the proceedings it became clear that the Egyptian Ministry would not exercise its discretion to allow Z to have dual nationality if an adoption order

was made and she acquired British nationality, and that therefore she would lose the right to travel freely to the country into which she had been born.

Russell J observed that the case raised sensitive cultural issues, and complex legal issues concerning Z's status in international law. It also involved a conflict between the laws of England and Wales and those of Egypt in relation to adoption. Ultimately, however, all parties agreed that the Court had jurisdiction to determine T's applications and that Z's welfare should be the Court's paramount consideration.

Judgment

Russell J began her legal analysis by outlining the provisions of the UN Convention on the Rights of the Child ("UNCRC") and the extent to which they applied in Egypt, England and Wales. The learned judge observed that Egypt was a signatory to the Convention and had implemented it into Egyptian law, and that the Egyptian Courts were required to apply the principle of the best interests of the child in all cases concerning children.

Russell J observed that although the UNCRC had not been implemented into the law of England and Wales by an Act of Parliament, the court should seek to interpret domestic legislation consistently with it, and that the Supreme Court had relied on the UNCRC to support the proposition that, in applications for adoption, a child's welfare and best interests should be paramount.

The learned judge went on to consider the requisite factors under the ACA 2002. She was asked to consider whether the Egyptian Ministry was a 'guardian' for the purposes of s47 and whether, if so, the Court should dispense with its consent to the adoption. Russell J found, with regard to s144 of the Act, and s5 Children Act 1989 that, although the Ministry had, in some ways, acted as Z's guardian, it was not her guardian for the purposes of ACA 2002, because it had not been appointed by the Court.

Russell J undertook a Re B-S analysis of all available options, noting that there was a paucity of evidence in relation to the options that involved Z returning to Egypt.

Russell J rejected the proposition that Z should return to Egypt with T as "unrealistic". She said that this would leave T and Z stranded and without support or any financial provision. She said that T would be vulnerable to prosecution and that Z would continue to be a child in the care of the state. The learned judge found any advantages of this option to be "illusory, for although Z would return to her country, culture, religion and heritage of birth and will remain in the care of her 'psychological mother' and primary carer their situation will be so precarious as to undermine any such advantages" [140].

Considering the option of Z returning to Egypt without T, Russell J observed that this would involve "a leap into the unknown" and that the likelihood of Z's successful cultural integration into Egypt was "speculative" [141]. Disadvantages were that Z would remain a parentless child, at risk of stigmatisation, discrimination and FGM, and that there was a risk of placement breakdown with any new foster family due to Z's attachment to T.

Russell J noted that the two realistic options for Z, if she returned to England, were an adoption order or child arrangements order in favour of T. Although she considered that a child arrangements order would have some advantages for Z - for example, it would not involve any change to her nationality, and may enable her to travel to her native land - it would leave her in psychological and practical limbo.

Ultimately, Russell J concluded that it was in Z's best interests for the court to make an adoption order. Although this would necessarily involve Z being separated from the culture into which she was born, T had demonstrated a commitment to an upbringing for Z which took into account her cultural heritage. An adoption order would provide Z with the permanence which she required.

The court therefore made an adoption order and rejected the Egyptian Ministry's application to return Z to Egypt.

Permission

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