

# Re W (A Child) (No 2) (2017)

**[2017] EWHC 917 (Fam)**

17/04/2017

## **Barristers**

Chris Barnes

## **Court**

Family Division

## **Practice Areas**

Public Children Law

Judgment of the President dealing with applications by W's father for a certificate for a 'leap-frog' appeal to the Supreme Court, an application to appeal to the Court of Appeal and a stay.

Following the handing down of judgment by the President in Re W (A Child) [2017] EWHC 829 (Fam), W's father's legal team made applications for a certificate for a 'leap-frog' appeal to the Supreme Court under section 12 of the Administration of Justice Act 1969, an application to appeal to the Court of Appeal and a stay.

The applications

W's father's legal team initially identified three points of law that they invited the President to certify as meriting a 'leap-frog' appeal to the Supreme Court. Following oral submissions, Munby P indicated that he was minded to refuse both the certificate and permission to appeal to the Court of Appeal, but would defer that decision pending receipt of any revised formulation of the proposed certificate questions and grounds of appeal.

Subsequently, the following points of law were identified and submitted as being of general public importance. (1) Whether section 47 (2) of the ACA 2002 is compatible with articles 6 and 8, ECHR where the child is placed for adoption by an adoption agency, without threshold having been established and without the consent of the child's parents to the child being placed in the care of the adoption agency or for adoption. (2) Whether an adoption order can be made where the child's parent has not proved particularly unfit, nothing has been done to preserve or rebuild the child's family and rehabilitation is possible. And (3) the proper approach to determining the child's best interests where the child has the opportunity to return to the birth family and gross failures of State institutions has led to the attachment to the prospective adopters and de-attachment to the parents. Also, the proper approach to post-adoption contact.

The proposed grounds of appeal to the Court of Appeal focussed on the threshold criteria in the context of this case, the obligation to "rebuild" the family and the President's exercise of discretion. They are set

out at paragraph 11 of the judgment.

#### Decision

Munby P dismissed the applications for 'leap-frog' appeal and permission to appeal to the Court of Appeal.

Looking at both, the President held that: the argument that section 47 (2) of the ACA 2002 is in this case incompatible with article 8, ECHR had no real prospect of success; nor did the assertion that the Court of Appeal authorities are in conflict with the Strasbourg and/or Court of Appeal jurisprudence; the argument that the State may not rely on its own failures to justify adoption was not the proposition that underlay either the prospective adopters' application nor the judgment's reasoning and in any event, case-law makes clear that the child's welfare is paramount; and, the questions of principle suggested are all concluded by Court of Appeal decisions themselves founded in House of Lords or Supreme Court rulings, the more recent of which are in turn founded in Strasbourg jurisprudence.

In addition - and specifically in relation to the Court of Appeal application - Munby P held there to be: no real prospect of success in relation to the threshold and obligation to "rebuild" the family points, given that he applied the relevant Strasbourg, Supreme Court and Court of Appeal authorities; no real prospect of success in relation to the exercise of his discretion, in relation to which it was not even asserted that he was "wrong"; and no other compelling reason for the appeal to be heard.

A stay was granted for 21 days to allow W's father to renew his applications before the Court of Appeal.

#### Permission

 Family Law Week