

W (A Child – No 4)

[2017] EWHC 1760 (Fam)

12/07/2017

Barristers

Chris Barnes

Court

Family Division

Practice Areas

Public Children Law

Munby P dismisses application to set aside an adoption order, and prevent removal of the child from the jurisdiction, on the grounds of alleged fraud and dishonesty.

In his fourth decision in proceedings, Munby P considered whether or not to set aside an adoption order on the basis of allegations of fraud and dishonesty made by the father of W against W's prospective adopters, Mr and Mrs A, with whom W had been living for some time. Munby P made the adoption order under challenge in April 2017 in favour of Mr and Mrs A (Re W (A Child) [2017] EWHC 829 (Fam)), on the grounds that it was in W's welfare interests to do so.

As a part of his judgment, Munby P noted the "clear consensus" amongst the experts in the case that it would be in W's best interests for increased contact with her birth family to take place, "leading to direct contact... as soon as it is practical". This was a particular issue in this case as there was a question mark over whether Mr and Mrs A intended to, or would be, moving to Italy or America. Leading up to the April judgment, both Mr and Mrs A had given evidence to the effect that they had no plans to do so but that the prospect of relocation might have arisen in the future: see §8-9 for a summary of their evidence.

Following judgment being handed down, the court was notified that Mr and Mrs A had informed health professionals, during the course of a medical check up of W, of their intention to move to the USA and had asked them not to mention this in any letters concerning W. Further evidence thereafter demonstrated that Mr A had accepted a US-based job offer in February 2017, that he had started this role shortly after the adoption order was made (in May 2017), and that Mr A was currently commuting between jurisdictions to work: see §11, 14.

On the grounds of this information, which had not been disclosed to the parties, the father applied to have the adoption order set aside, pleading fraud and dishonesty, and sought a post-adoption contact order under s 51 ACA 2002. Mr and Mrs A accepted the facts alleged, but disputed (in effect) that they were acting fraudulently or dishonestly (§22) in any non-disclosure.

Dismissing the applications, Munby P said as follows:

The law in this area was not in dispute. There is a “very high bar” against any successful challenge to an adoption order. Fraud was one ground on which an adoption order could be set aside: *In re B (Adoption: Jurisdiction to Set Aside)* [1995] Fam 239. What must be demonstrated is that the adoption order was “obtained by” fraud – simply demonstrating fraud or dishonesty on its own is not sufficient (§19, 29). Where fraud is alleged, a prima facie case of fraud must be established before the test set out by Baroness Hale in *Sharland v Sharland* [2011] UKSC 60 could apply. An applicant who could not demonstrate a prima facie case of fraud would not be permitted “to interrogate the defendant, embarking upon a fishing expedition in the hope that enough may turn up to make the charge ‘stick’” (§24, 28).

It was trite law that a continuing duty of disclosure applied pending the handing down of judgment (§25). In the court’s view, there were two “fundamental difficulties” standing in the way of the father’s allegations of fraud and dishonesty, which meant he could not make out a prima facie case of either (§27):

First, as to the non-disclosure of the job offer, this was not fundamentally inconsistent with anything Mr or Mrs A had said in the course of their evidence, nor with any assumption articulated in the April judgment.

Second, any deliberate decision to conceal information at the medical appointment occurred after the judgment was handed down. The decision to conceal this information was not, in the court’s view, a response to the April judgment.

Further, the court’s decision to make an adoption order was not dependent on Mr and Mrs A following through on contact between W and her birth family, but rather on the detriment to W if she were taken away from her adoptive family (§26, 29). The order was therefore not “obtained by” Mr and Mrs A on grounds affected by any non-disclosure. The father’s applications were, accordingly, dismissed.

To read the judgment, please click [here](#).

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