



## ADOPTION

WHAT ARE THE UNRESOLVED ISSUES – BOTH LEGAL AND PRACTICAL – OF BIRTH PARENTS BEING NOTIFIED ABOUT ADOPTION APPLICATIONS?

HOW ARE THE JUDGES REACTING?

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4 PAPER BUILDINGS

TEMPLE

# ADOPTION – THE BASICS

- FPR 2010 PART 14 – procedural framework for adoption hearings
- President's Guidance 10 April 2018 – Listing Final Hearings in Adoption cases
- Respondents to an adoption application – FPR 2010 r14.3(1)(2)(3)

# THE HEARINGS

## FIRST DIRECTIONS HEARING

- Court to give consideration to matters in FPR 2010 r14.8
- If birth parent attends hearing and seeks leave to oppose adoption under S47(3) ACA 2002 or otherwise informs court of a wish to oppose adoption application directions to be given for listing of that application, sometimes known as 'natural parent hearing' or first hearing
- If it appears that there is no opposition (and all other matters have been satisfied) court can list for final hearing

# APPLICATION FOR LEAVE TO OPPOSE

- Court shall never list a parent's application for leave to oppose the adoption application and final hearing of the adoption application on the same day
- If an application for leave to oppose is listed, determined and is unsuccessful the court may then list the application for final hearing
- No fewer than 21 days to elapse between refusal of leave and listing of final hearing – not appropriate to abbreviate this time period
- When dismissing an application for leave the court can indicate that on the current information available to the court an adoption order is likely to be made
- Re P [2008] EWCA Civ 535 – where placement order is in force, the court is not required to dispense with parental consent unless and until the parties have been notified of the adoption application, apply for and are granted permission to oppose the application

# CONDITIONS FOR MAKING ADOPTION ORDER S47 ACA 2002

S47 ACA 2002 which is subject to S52 ACA 2002 (parental consent)

- (1) An Adoption Order may not be made if the child has a parent or guardian unless one of the following three conditions is met:
- (2) In the case of each parent or guardian of the child the court is satisfied –
  - (a) that the parent or guardian consents to the making of the order
  - (b) that the parent or guardian has consented under S20 (and has not withdrawn consent) and does not oppose the making of the order
  - (c) that the parent/guardian's consent should be dispensed with

# CONDITIONS FOR MAKING ADOPTION ORDER

## S47 ACA 2002 (cont)

- (4) The second condition –
  - (a) the child has been placed for adoption by an adoption agency with the prospective adopters in whose favour the order is proposed to be made
  - (b) either –
    - (i) the child was placed for adoption with the consent of each parent or guardian and the consent of the mother was given when the child was at least 6 weeks old or
    - (ii) the child was placed for adoption under a placement order and
  - (c) no parent or guardian opposes the making of the adoption order
  
- (5) A parent or guardian may not oppose the making of an adoption order under the second condition without the court's leave

*{Third condition relates to Scottish Permanence orders and N.I. freeing orders}*

# DISPENSING WITH CONSENT: THE TWO STAGE TEST

S52(1) ACA 2002

- (a) Is adoption in the best interests of the child?
- (b) If so, is a ground for dispensing with consent established

RE B-S (Adoption: Application of S47(5)) [2014] 1 FLR 1035

(stressing the following points set out by the Supreme Court in Re B (Care Proceedings: Appeal) [2013] 2 FLR 1075

- although the child's interests are paramount a court must never lose sight of the fact that those interests include being brought up by the natural family unless the overriding requirements of the child's welfare make that not possible
- The court must consider all the realistic options before coming to a decision
- The court's assessment of a parent's ability to provide good enough care for a child must take into account the assistance and support that the authorities would offer

# NOTIFICATION OF FINAL HEARING

- FPR 2010 r14.15 – mandatory notice to parties of final hearing

Re W (Children) [2015] EWCA Civ 403

F seeking permission to appeal against adoption order

Adoption orders set aside:

- the trial judge had made the adoption orders without complying with r14.15
- the trial judge was wrong to consider F's application for permission under S47(5) and the adoption application on the same day
- an offer to care for the two children by a paternal aunt should have been considered to determine whether it was a sufficient change of circumstances to grant permission under S47(5) ACA 2002

# NOTIFICATION OF FINAL HEARING (cont)

- Re T (A Child) [2017] EWFC 19

Application to adopt a 4 year old child living with prospective adopters for 10 months prior to application

F successfully sought leave to oppose

M had not been served as whereabouts unknown but....

2 days before the hearing F's partner discovered M active on Facebook

M unaware of adoption application & believed child already adopted

Court reminded itself of rules of service (r14.3 and r14.5) together with r6.36 (power of court to dispense with service). Must be a judicial decision based on evidence of proper attempts at service.

# NOTIFICATION OF FINAL HEARING (cont)

- Re T (A Child) [2017] EWFC 19 (cont)

Court critical of LA and CG for not taking proper steps to locate M

Positive duty on CG to seek to ensure proper service on M

Facebook could be a route to someone whose whereabouts are unknown

Notwithstanding effect of delay on child and prospective adopters (and wasted costs) hearing had to be abandoned and matter re-fixed

- Re H (Adoption: Appeal) [2018] EWFC 8

Adoption order was made in favour of step-father in 2013.

F not served with notice of application and M and step-father had wrongly told SW that they did not know F's identity or whereabouts

F given leave to appeal (way) out of time pursuant to FPR 2010 r30.4 and 30.7

QUESTION - TO WHAT EXTENT WILL THE COURT PLACE A POSITIVE DUTY ON PARTIES TO TRACE PARENTS WHOSE WHEREABOUTS ARE UNKNOWN?

- AUTHORITIES MAKE IT CLEAR THE IMPORTANCE OF PROPER SERVICE/ NOTICE TO PARENT
- POSITIVE DUTY ON PARTIES TO TAKE REASONABLE STEPS TO TRACE MISSING PARENT
- BE IMAGINATIVE – SOCIAL MEDIA IS OBVIOUS ROUTE TO TAKE (and is an approach endorsed by the court) – Facebook, Instagram, Snapchat etc.....

## QUESTION - WHERE DOES THE BALANCE FALL BETWEEN ASSESSING POSITIVE CHANGE AND THE WELFARE OF THE CHILD?

Re L (Leave to Oppose Making of an Adoption Order) [2013] EWCA Civ 1481

- Disruption of the prospective adoptive family was relevant to whether M's prospects of opposing the adoption had 'solidity'
- When considering the prospects of success under S47(5) the judge is doing the best he/she can to forecast what decision the judge hearing the adoption application will make
- Judge must also consider whether the welfare of the child will be so adversely affected by an opposed application that leave should be refused

QUESTION - WHERE DOES THE BALANCE FALL BETWEEN ASSESSING POSITIVE CHANGE AND THE WELFARE OF THE CHILD?

Re LG (Adoption: Leave to Oppose) [2016] 1 FLR 607

F had failed to inform family of baby's existence

Child had been placed with prospective adopters for 8 months

F's family wished to care for child

F's application for leave to oppose granted as court satisfied there was sufficient change to open the door to further assessment

The greater the positive change the more solid are the parents grounds for seeking leave and the more compelling the grounds for leave to oppose become

Judge must consider welfare throughout the child's life

# QUESTION – WHAT ABOUT RELINQUISHED BABIES?

RA (Baby Relinquished for Adoption – Case Management) [2016] EWFC 25/ [2016] EWFC 47

- Baby relinquished at birth without knowledge of Latvian extended family (already 3 full siblings cared for by M in England)
- Initial assessment of MGM in Latvia positive
- Latvian authorities vehemently opposed adoption
- LA opposed delay on the basis that even if MGM was a realistic option overall welfare interests of child who was settled with prospective adopters
- CM decision – full assessment of MGM by Latvian authorities/instruction of expert on nationality/CG to undertake full analysis on adoption application

# QUESTION – WHAT ABOUT RELINQUISHED BABIES?

Contrast with decisions in Re TJ (Relinquished for adoption: sibling contact) [2017] EWFC 6

and

Re A (Relinquished Baby Risk of Domestic Abuse) [2018] EWHC 1981 (Fam)

# QUESTION – WHAT ABOUT RELINQUISHED BABIES?

“Cardinal principles”

- Each case is fact sensitive
- The outcome contended for in Re A (that putative father, maternal and paternal extended families should not be notified of adoption application) was exceptional
- The paramount consideration is the welfare of the child
- The court must have regard to the welfare checklist (S1(4) ACA 2002)
- The court must have regard to the wishes and feeling of the child’s relatives
- Respect can and must be afforded to M’s wish for a confidential and discreet arrangement for adoption of child (although wishes must be critically examined). M’s wishes carry significant albeit not decisive weight

# Cardinal principles (cont)

- Art 8 rights are engaged in this decision although where a natural parent wishes to relinquish a baby, the degree of Art 8 interference is likely to be less than where parent/child relationship has been severed against the will of the parent
- Adoption of any kind still represents a significant interference with family life and can only be ordered if necessary and proportionate
- A high level of justification is still required before a court can sanction adoption as the outcome and a thorough analysis (which is different from assessment) is necessary