

## RE S & T (Children) (2015)

**[2015] EWHC 1753 (Fam)**

19/06/2015

### **Barristers**

Robin Barda  
Mark Jarman KC

### **Court**

Family Division

### **Practice Areas**

International Children Law  
Public Children Law

### **Summary**

A couple who lived in the US failed in their application under the Adoption and Children Act 2002 s.84 for parental responsibility of their two great-nieces, who they wished to remove from the UK and adopt in the US. The fact that they had never had a home in the UK prevented them from demonstrating to the local authority the suitability of their home environment under s.42(7)(b). Further, the children's father opposed the application and the circumstances did not justify the court dispensing with his consent.

The maternal great-aunt and great-uncle of two young children applied for parental responsibility under the Adoption and Children Act 2002 s.84. The children were UK residents, but the great-aunt and great-uncle lived in the US and were seeking to adopt them there.

### **Facts**

The children were aged four and three. Their parents had married in Pakistan and had moved to the UK shortly before the second child was born. Six months later, the father removed the children to Pakistan without the mother's consent. They were returned but the father remained in Pakistan. The mother died nine months later and the children lived with their maternal uncle. The great-aunt and great-uncle wanted the children to live with them in the US. Under US law that meant they had to adopt the children in accordance with the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption 1993. As part of that process, they made the s.84 application. The English court permitted the children to stay with the great-aunt and great-uncle in the US while the case proceeded, on condition that the children remained wards of court and habitually resident in England. The father returned to the UK and opposed the s.84 application and prospective adoption as he wanted the children to live with him. An independent social worker considered that he had spent quality time with the children but lacked insight into their long-term welfare and was not a suitable full-time carer. The children's guardian believed it was best for them to live with the great-aunt and great-uncle in the US rather than with the father in Pakistan. The issues were whether (i) the great-aunt and great-uncle could

satisfy the requirements of s.84 when they had never had a home in England; (ii) the father's consent to the adoption could and should be dispensed with.

The father submitted that under art.4(c)(2) and art.16 of the Convention, the adoption could not proceed without his consent.

### **Held**

(1) The great-aunt and great-uncle could not meet the requirements imposed by s.42(7)(b) and s.44(9)(b) in relation to s.84 of the Act and the corresponding Adoptions with a Foreign Element Regulations 2005 reg.11. As they did not have a home in England, they could not show that they had given a relevant local authority sufficient opportunities to see the children in their home environment, *SL (Adoption: Home in Jurisdiction)*, Re [2004] EWHC 1283 (Fam), [2005] 1 F.L.R. 118 applied, *A LBC v Department for Children, Schools and Families* [2009] EWCA Civ 41, [2010] Fam. 9 followed. Nothing in the Convention justified a departure from that conclusion. The provisions were clear: if the great-aunt and great-uncle were to salvage their application they had to first establish a home in the UK, even if only on a temporary basis (see paras 45-48 of judgment). (2) The court had the power to dispense with the father's consent to a s.84 order and an adoption order in accordance with s.47(2)(c) and s.52(1), as recognised by reg.11(1)(p) of the Regulations. Where the court used that power to dispense with a parent's consent, that consent was no longer necessary within the meaning of art.4(c)(2) of the Convention. As to whether the father's consent should be dispensed with, the local authority had doubts over whether the welfare threshold for making a care order was met. An adoption order was only being considered at the instant hearing because of the requirements of US law. The evidence, including the conclusions of the social worker and children's guardian, fell far short of meeting the standard required to dispense with the father's consent and satisfy the case for adoption. Children were not to be adopted merely because the parenting was less than perfect, perhaps only barely adequate. In the father's case, it could not be said that "nothing else would do", *P (Children) (Placement Orders: Parental Consent)*, Re [2008] EWCA Civ 535, [2009] P.T.S.R. 150 and *B-S (Children) (Adoption: Leave to Oppose)*, Re [2013] EWCA Civ 1146, [2014] 1 W.L.R. 563 applied. On that basis, with no realistic prospect of the court ever being satisfied that the father's consent should be dispensed with, the proceedings would be brought to an end. An order would be made to return the children to England and facilitate their gradual return to the father's care (paras 51-55, 66, 73-79).

Application refused

### **Permission**

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