

Re K (Adoption and Wardship)

[1997] 2 FLR 221

14/02/1997

Court

Family Division

Summary

Child brought from Bosnia

Facts

The child, born in March 1992, a citizen of Bosnia and a member of a Muslim family, was found in the summer of 1992 under a pile of bodies. Nothing was known of her family at the time and she was taken to an orphanage. A journalist took up her story and with the help of a charitable organisation arranged for her to come to England for treatment. Permission was given by the Bosnian Government, which appointed a guardian. An English couple, who had already adopted a Romanian baby and were bringing him up with their own young child, wrote to the charitable organisation agreeing to foster the child and recognising that although she had been orphaned there was a wider family to which she might return after the war. After leaving hospital the child went to live with the foster-parents, where she was cared for devotedly, became one of the family, speaking only English, and was baptised a Christian. The foster-parents applied to adopt her in August 1993, although they knew by then that all adoption from Bosnia had been stopped and that the child's grandfather and an aunt had been traced and wanted the child back. At the directions hearing a copy of the decision appointing a Bosnian guardian was exhibited; the county court judge directed that a letter be sent to the guardian seeking his agreement, the case to be listed if no reply was received within 28 days. He directed that it was not necessary to appoint a guardian ad litem. Subsequently the judge dispensed with the Bosnian guardian's consent and made the adoption order. The Bosnian guardian, supported by the grandfather, who was made an intervener in the proceedings, appealed and applied for the order to be set aside.

Held

Held (per Butler-Sloss LJ) - allowing the appeal - the adoption procedure had been fatally flawed, in that:

1. (i) the case should have been transferred to the High Court in accordance with the Practice Direction of 23 November 1993;
2. (ii) there had been failure to comply with the procedural steps set out in the Adoption Rules 1984, r 15(2) requiring each parent or guardian to be a respondent;
3. (iii) the failure to appoint a guardian ad litem had been a serious matter leading to the failure to contact the Bosnian guardian;
4. (iv) the Home Office, having granted leave for the child to remain in England, had not been served with the proceedings;

5. (v) there was no firm evidence of the death of the parents.

Since those procedural irregularities were sufficiently serious to amount to a denial of natural justice to the Bosnian guardian and through him to the natural family and the child herself, and having regard also to the public policy considerations involved in adopting children from overseas, the adoption order would be set aside and the adoption application reheard in the High Court.

After the hearing before the Court of Appeal the information obtained by the local social services and the Official Solicitor reflected adversely on the good faith of the foster-parents, who, faced with the determined opposition of those agencies, withdrew their application for adoption. The child was made a ward of court. It fell to the court to consider the appropriate order to make in the interests of the child.

Held (per Sir Stephen Brown P) – notwithstanding the appalling irresponsibility of the foster-parents' behaviour, and the wrong which had been done to the child's natural family, whose right to have the child returned to them was completely accepted, combined with the wrong done to the child who had been denied contact with her extended family, her Bosnian culture and her Muslim religion, nevertheless, the child's primary psychological attachment was now to her foster-parents and their family and her welfare required that she should remain for the foreseeable future in their care. Accordingly, care and control would be granted to the foster-parents, with substantial defined access to the natural family, wardship to continue. The foster-parents were to cause the child to receive appropriate instruction in the Bosnian language and the Muslim religion, and should report to the Official Solicitor in writing every 3 months as to the progress of her contact with her family and her culture, those matters to be listed for review by the President on the first open date after 30 September 1998.

Permission

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