

Re L (Adoption: Contacting Natural Father) (2007)

[2007] EWHC 1771 (Fam); (2008) 1 FLR 1079

20/07/2007

Barristers

Joy Brereton KC

Court

Family Division

Summary

An unmarried mother who had concealed her pregnancy from everyone, who wanted her baby to be placed for adoption and who had consistently asserted that she did not know the identity of the child's father, could not be compelled by the court to provide information by which he might be identified. The court, exercising its inherent jurisdiction, ordered that the local authority need not take any further steps to identify, inform or consult him regarding the birth or the adoption placement.

Facts

The court reconvened as part of a series of hearings arising from an originating summons issued by the applicant local authority for an order that it need not take any further steps to identify the father of a baby in its care (L). L was 13 months old at the date of the instant hearing. Her mother (M) had concealed her pregnancy from everyone, presenting at hospital already in labour and leaving within two hours of giving birth. M had been resolute from the outset that L should be adopted and did not see L after the birth. M professed to be unable to provide information that would enable L's father to be identified and was adamant that her own family should know nothing of L's existence. It seemed that M's relationship with the father had lasted only a few weeks and he too was unaware of the pregnancy and of L's existence. M had persistently made it clear that she wanted nothing to do with L and did not want to work with the local authority in planning her future. The local authority, mindful of its obligations to the father, and unable to progress matters in any other way, had invoked the assistance of the court, which had made L a party to the proceedings and appointed a guardian. The issue for determination was whether M could be compelled to reveal the identity of her baby's father. At an earlier hearing, the court had ordered that a further attempt should be made to obtain information from M about L's father, but M had insisted that she had no further information to give. The local authority and the guardian suspected that she was able to identify him but was unwilling to do so.

Held

HELD: There was no effective mechanism by which the court could compel M to disclose details of the father's identity and the court, exercising its unfettered discretion, ordered that the local authority should not take any further steps to identify him or to inform or consult him regarding L's placement for

adoption. The local authority's duty under the Children Act 1989 s.22(4), being qualified by the words "so far as is reasonably practicable" was, in the instant case, so qualified as to be non-existent. The powers of a judge exercising the inherent jurisdiction were theoretically limitless and a mother could, strictly speaking, be ordered to disclose the name of her child's father, but whether it was appropriate and prudent to exercise such a power was a different matter. Enforcement of such a request presented a difficulty; it may be that M genuinely had nothing more to disclose or that she genuinely believed that it was not in L's interests to know her father. There would be little to gain from putting M on oath, as she had already said in court that there was nothing more to tell. The prospect of cross-examining her as to the nature, extent and duration of her relationship to elicit the identity of the father was very disturbing. The court had to be wary of seeking to open windows into people's souls in matters so personal and intimate. Contempt would only be proved if the criminal standard of proof was satisfied, and even if it was proved that she was lying, punishment would be unthinkable. The court could only seek to persuade, but it could not seek to force or coerce, R (A Child) (Adoption: Duty to Investigate), Re (2001) 1 FLR 365 Fam Div applied.

Application granted