

# R (on the application of (1) Ainsworth T (2) Thermutis T (3) S v Newham London Borough Council (2008))

**[2008] EWHC 2640 (Admin); (2009) 1 FLR 311**

04/11/2008

## **Barristers**

John Tughan KC

## **Court**

Queen's Bench Division

## **Summary**

It was appropriate to quash the decision of a local authority not to approve an application to adopt a particular child as the local authority had not given clear and cogent reasons for rejecting the recommendation of a review panel to approve the individuals concerned as adopters.

## **Facts**

The first and second claimants (T) and the third claimant child (S) applied for judicial review of the decision of the defendant local authority not to approve T as adopters for S's half-sibling (K). T had adopted S and following K's birth had asked the local authority to assess them as prospective adopters of K. An adoption panel had met and concluded that T were not suitable as adopters due to concerns about corporal punishment, child safety, T's financial security and stability, their motivation to adopt, the impact the adoption would have on S and T's lack of understanding about adoption. However, an independent review panel later recommended approval of T as second-time adopters. Nevertheless, the local authority decided to ratify the recommendation of the adoption panel as T had provided conflicting information, it was concerned about K's safety and T were only willing to maintain minimal contact with the local authority. The local authority stated that it had essentially agreed with the adoption panel's concerns and decisions. T and S submitted that (1) the adoption panel had truncated the process of considering T's suitability and whether they should adopt K, and it should have taken the Adoption and Children Act 2002 s.1 into account under both heads; (2) that panel had not been made aware of positive information about T; (3) insufficient reasons had been given for rejecting the reasoning and recommendations of the review panel.

## **Held**

HELD: (1) The Adoption Agencies Regulations 2005 Pt 4 was concerned with the suitability of a prospective adopter to adopt children in general. Section 1 of the 2002 Act became relevant when the matching process was undertaken under Pt 5 of the Regulations between a child and his or her prospective adopter. The adoption panel had had to consider whether to recommend that T should be

approved as adopters. It had directed itself to consider the suitability of T to adopt a child under Pt 4 and not, additionally, to the matching process under Pt 5. In any event, suitability and matching could be considered by the adoption panel at the same meeting but it did not follow that it was to apply s.1 of the 2002 Act when considering suitability under Pt 4, although it had to apply it under Pt 5. (2) If there had been any unfairness or irrationality in the adoption panel's hearing in respect of the information allegedly not brought to its attention, it had had no impact on the local authority's final decision. (3) The local authority had failed to appreciate that the review panel had resolved the conflicting information in favour of T. The reasons for the review panel's decision were strong and powerful. The local authority had not met the weight of the review panel's reasoning head on or dealt with it by giving clear and cogent reasons for rejecting it. Furthermore, the local authority and the adoption panel had failed to have factored into its decision making that T had been entitled to assessment to determine whether they could be financially supported. Permission was, therefore, granted for T and S to bring judicial review proceedings on the ground of procedural unfairness, but the local authority's decision was quashed for Wednesbury unreasonableness, *R v Avon CC Ex p M* (1994) 2 FLR 1006 QBD applied. The local authority, therefore, had to make a fresh decision about whether T were suitable to adopt in general and, if that was favourable, whether there should be a further assessment or decision in relation to T adopting K.