

# Re M (A Minor) (Adoption or Residence Order) (1997)

**(1998) 1 FLR 570**

19/11/1997

## **Barristers**

Sam King KC

## **Court**

Civil Division

## **Summary**

Whether an adoption order should be made in a case where the mother withholds consent but the applicants have stated that residence with them can only continue if an adoption order is made. The child expressed a wish to be rehabilitated with her mother. The guardian ad litem was of the view that the discontinuance of residence with the applicants would pose a serious risk to the child.

## **Facts**

In 1994 the applicants ('A') fostered a child ('M') aged nine with a view to adopting her. The mother ('R') maintained contact with the child and a good relationship existed between the parties. The time came when A wanted to pursue the adoption. The local authority ('LA') however had not adequately prepared M for adoption and she expressed a wish to be reconciled with R, who consequently opposed the adoption. A offered to accept a residence order with contact for R but R refused. The matter came to trial and R changed her mind regarding the residence order and also offered to agree to a s.91(14) Children Act 1989 order. This offer was rejected by A who proceeded to apply for an all or nothing adoption order. The trial judge stated he would not consider a residence order in view of the wishes expressed by A. The LA were against an adoption order, the guardian ad litem was initially against the order but conceded in cross-examination that it was preferable to no further contact with A. The judge concluded that an adoption order should be made as the risks associated with the rehabilitation of M with R were too great in view of the fact that there would be no further residence with A. He bypassed R's lack of consent saying it was unreasonable of her to withhold it. In his judgment an adoption order was in M's best interests. R appealed against this decision. The issues before the court were whether the judge had correctly approached both the adoption issue under s.6 of the Adoption Act 1976 and the question of consent.

## **Held**

HELD: (1) The judge had erred in not considering the residence order option. Even though A had rejected this option it was still within his discretion to impose such an order. The judge's duty under s.6 of the 1976 Act was to have regard to all the circumstances of this case and by discounting the residence option he did not do so. (2) The judge was wrong to conclude that R's lack of consent was unreasonable.

He failed to weigh the considerations of R, M and the rest of the family into the balance. Had he done so he may have reached a different conclusion. (3) A rehearing was not found to be in the interests of justice. The court then went on to reach a fresh decision. (4) The lynchpin of the case was said to be the stance of A in wanting an all or nothing adoption order. (5) The question of whether this was an appropriate case for an adoption order was considered. An adoption order would prevent M from ever fully reconciling with R. This was clearly an important consideration for M who had expressed a wish to be reconciled. However, A's threat to break contact with M if an adoption order was not made was a serious risk to M's welfare. Under those circumstances this was an appropriate case for an adoption order. (6) The court went on to find that R's consent could not be dispensed with as it was not unreasonable for her to withhold it. (7) In view of the decision on consent an adoption order could not be made. (8) A residence order was made with a restriction under s.91(14) of the 1989 Act. (9) There was one dissenting judgment. Simon Brown LJ concluded that the risk of M being denied further contact with A was too high and that accordingly it was in her best interests to be adopted by A. It was essential that M remain in A's care. As the welfare of M was paramount it was concluded that R's consent should be dispensed with.

## Permission

Lawtel 