

Re J (A Minor) (Adoption Order) sub nom In Re G (1998)

(1999) 1 FLR 400 : Times, October 14, 1998

24/09/1998

Court

Court of Appeal

Summary

Evaluating natural father's entitlement to consideration before making an adoption order for his natural child in favour of the mother and her husband.

Facts

Appeal by natural father of a boy aged 5 from an adoption order made by Guildford County Court in June 1998 in favour of the mother and stepfather granting only limited contact to the natural father. The parents of the child who were cohabitantes terminated their relationship in 1994, the father having successful weekly contact with the child. When the mother commenced cohabitation with her present husband, contact ended. The mother and the husband had a daughter in 1996 and applied for an adoption order in respect of the boy. A guardian ad litem was appointed who considered that the mother and stepfather needed the order for their own sense of security as a family but a report from a health professional supported the stance taken by the court welfare officer who recommended a residence order with the mother and supervised contact between the appellant and the child.

Held

HELD: (1) This was a case of extraordinary difficulty and it would have been appropriate for the judge to have transferred it from the county court to the High Court so that the Official Solicitor would have been guardian ad litem to the child under r.18 Adoption Rules 1984. (2) On advice the appellant had withdrawn his application for a parental responsibility order. His counsel rightly submitted that the entitlement of a natural father lacking parental responsibility and the statutory right to refuse consent, had to be evaluated on a wide spectrum. This father was manifestly entitled to greater weight than the judge had afforded him. His decision to withdraw his application for contact was an extremely important consideration. (3) The judge considered that the main factor in his decision was the mother's level of anxiety and feeling of insecurity. (4) He had erred in elevating that anxiety to the level of a key factor. (5) He had also erred in his preference for the guardian over that of other experts. (6) He had to weigh against the profound involvement of the guardian, the comparative difference between the expertise of the guardian and the mental health expert. It was that balance that the judge failed to perceive as necessary and had failed to undertake.

Permission

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