

AW (A Child – Application to Revoke Placement Order – Leave to Oppose Adoption) [2013]

[2013] EWHC 2967 (Fam)

16/08/2013

Barristers

Paul Hepher

Court

High Court (Family Division)

Summary

Application for leave to apply for revocation of placement order and application for leave to oppose adoption

Facts

The proceedings concerned applications in relation to a two year old child, AW, who was the subject of care and placement orders made in September 2012. The parents initially sought to appeal those orders, but at a hearing on 5th December 2012 withdrew their applications for permission to appeal on the basis of an indication from the Court that they should instead apply for revocation of the placement order. On 6th December 2012 the Mother's solicitors prepared but did not issue an application for revocation of the care and placement orders, which was served on the Local Authority on 7th December 2012. On four successive occasions between then and April 2013 the Mother's solicitors wrote to the Local Authority to seek a reasoned response to the application for revocation, without, it was said, a response. On 2nd April 2013 the Adoption Matching Panel met and approved Mr and Mrs A as suitable adoptive parents for AW. On 4th April, the local authority's Solicitor wrote to the mother's legal team saying that AW had been matched with adopters and that there was a plan for her to be placed the following Thursday.

On 8th April, the parents' application for revocation of the placement order was sealed. The following day, the mother's Solicitor confirmed to the Local Authority that the revocation application had been submitted and asking that AW should not be placed until the outcome of the hearing. On 15th April, the local authority's Solicitor wrote saying she had informed the parents' Solicitors on the 9th April that the child was due to be placed for adoption on Thursday 11th April. However, the letter went on, "*we informed you on 10th April that the child was placed on that morning.*" On 18th April 2013, the South London Family Proceedings Court determined that there was no jurisdiction to proceed with the parents' revocation application.

The parents promptly indicated that they would seek judicial review of this decision. In response, the local authority itself applied (not needing leave to do so) for the revocation of the placement order, on

the basis that its doing so would avoid judicial review proceedings which could take several months and would enable a substantive hearing of the merits of the parents' case.

That application came before Pauffley J and was listed for a three day hearing in August 2013. The week before the hearing, the prospective adopters applied for an adoption order. It was suggested at the outset of the hearing by Counsel for the adopters that to permit the application of the local authority to proceed would be in effect to permit the parents to apply to revoke the placement order in a manner which circumvented both s24(2) and s47(5) of the Adoption and Children Act 2002. The Court was invited, however, to deem an application as having been made by the parents for leave to oppose the adoption (which was possible now that an adoption application was before the Court), it being noted that the tests for leave to revoke a placement order and leave to oppose adoption are analogous.

Held

On the first day of the hearing before Pauffley J, it was ordered that the parents' deemed application for leave to oppose the adoption be heard at the same time as the local authority's revocation application, so as to allow for a substantive hearing which did not offend the statutory code.

Considering the two stage test, Pauffley J held:

1. In relation to change of circumstances, there had been progress from the parents and indeed the local authority had agreed to their keeping their further child, MT, in their care. However, their progress had halted to the extent that the local authority was questioning whether it had made the correct "call" in relation to MT. The parents had stopped engaging with psychological work, there had been a decrease in compliance with MT's Child in Need Plan, and the parents had chosen to conceal, until shortly prior to the hearing before Pauffley J, the fact of the Mother being pregnant again. This regression was considered by the Judge particularly disappointing in light of the high quality of social work which had been provided by the local authority in the case. Pauffley J found that there had not therefore been a change of circumstances of a nature and degree sufficient to open the door to the exercise of judicial discretion.
2. In relation to the welfare limb of the test (which was considered only for completeness, as there had not been found to be a sufficient change of circumstances) Pauffley J considered each of the factors in the welfare checklist contained in s(4) of the Adoption and Children Act 2002. She described the prospective adopters, Mr and Mrs A, as being a "superlative" couple and concluded that it was plain that AW's overriding need was to remain with Mr and Mrs A on the basis that she would become their adopted child.

The application for leave to oppose the adoption was therefore refused.

Permission

Family Law Week 