

A Council v (1) M (2) A (3) B (3) C (By Their Children's Guardian) sub nom Re B (Children) (Foreign Adoption: Refusal of Recognition) (2013)

[2013] EWHC 1501 (Fam)

06/06/2013

Barristers

Alex Verdan KC

Court

High Court (Family Division)

Practice Areas

Public Children Law

Summary

A child's adoption in Kazakhstan was not recognised in the United Kingdom where the adoption process in Kazakhstan was not substantially the same as would have applied in the UK at the time and where, as a result of the potential adoptive mother's conviction for child cruelty, recognition was contrary to public policy and the child's best interests throughout her life.

Facts

The applicant (M) sought a declaration that her adoption of a child (C) in Kazakhstan be recognised in the United Kingdom. C, by her guardian, cross-applied under the Family Law Act 1986 s.57 for a declaration that she was not an adopted person for the purposes of the Adoption Act 1976 and the Adoption and Children Act 2002.

M, a Kazakh national, had married a British citizen (F) in the UK. The couple adopted two girls (X and B) from overseas. The adoptions were recognised in the UK as overseas adoptions occurring in a designated country. M and F divorced in 2000. M subsequently planned another overseas adoption and decided not to follow the UK system but adopt via United States procedures. In 2005, she adopted C in Kazakhstan on the basis of a United States social worker's report. M mistreated C in a number of ways amounting to cruelty and made X, when aged 16, impregnate herself with donor sperm in order to bear a child for M to bring up as her own. After X had a child she revealed what had occurred. When placing C in local authority care with foster parents, the court made declarations including that family life existed between M and C pursuant to the European Convention on Human Rights 1950 art.8 and between C and X and B. M was convicted of child cruelty and sentenced to over five years' imprisonment. As a result, it was not open to her to apply for a UK adoption order and she therefore sought recognition of C's Kazakh adoption. Her application was supported by B but opposed by the local authority. It was common ground

that C's case met the required criteria that the adoption order had been lawfully obtained in the foreign jurisdiction and that the concept of adoption in that jurisdiction substantially conformed to that in the UK. It fell to be determined whether (i) the adoption process undertaken in Kazakhstan was substantially the same as would have applied in the UK at that time; (ii) there was any public policy consideration militating against recognition of C's adoption; (iii) recognition was in C's best interests.

Held

(1) For a foreign adoption process to be recognised, it had to have been substantially the same as would have applied in the UK at the time, *Valentine's Settlement, Re* [1965] Ch. 831 followed, *R (A Child) (Recognition of Indian Adoption), Re* [2012] EWHC 2956 (Fam), [2013] Fam. Law 274 applied. When M brought C into the UK, the Adoption (Bringing Children into the United Kingdom) Regulations 2003 were in force, which required prospective adopters to apply to an adoption agency for an assessment of their suitability and, before the child's entry into the UK, for the UK to have issued a certificate confirming to the relevant foreign authority that the adopters had been assessed and approved as eligible and suitable to be adoptive parents. M had deliberately chosen not to follow that course and, accordingly, the adoption process that was undertaken was not substantially the same as would have applied in the UK at the time. Although non-recognition of C's Kazakh adoption would engage her art.8 rights, the requirements for recognition of a foreign adoption were necessary and proportionate to the legitimate aim of securing safeguards for children concerned in intercountry adoption (see paras 57, 60, 66, 72, 76 of judgment). (2) M's criminal conduct towards X and C was capable of amounting to a reason for declining recognition. While the primary focus of any public policy consideration would be on events surrounding the adoption itself, subsequent events should not be ignored. M's behaviour disqualified her from adopting in the UK and made any endorsement of her parental status repugnant. There was a strong argument that recognition of the adoption should be refused as a matter of public policy (para.83). (3) Under s.1 of the 2002 Act, in coming to a decision concerning C's adoption the court's paramount consideration was her welfare throughout her life, having regard to the welfare checklist factors. In the circumstances, the impact of a refusal of recognition on the sibling relationships in C's case was slight, and any reinforcement of the relationship between C and M would be strongly against C's interests. M remained a potentially dangerous and destabilising influence and could not be trusted to promote C's welfare at any foreseeable stage in the future. Furthermore, recognition of the adoption would have the practical effect of conferring parental responsibility on M, which was not in any way in C's interests. C's adoption by M in Kazakhstan was not an adoption that was recognised by UK law (paras 85, 89-92, 94).

Application refused, cross-application granted

Permission

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