

ROYAL COURT
(Samedi Division) 177.

7th October, 1992

Before: The Bailiff and Jurats Coutanche
and Herbert

In re B, an infant

Advocate P.M. Livingstone for the natural mother.
Miss S.C. Nicolle, Crown Advocate, *Amicus Curiae*

JUDGMENT

The Bailiff: Mr & Mrs. X, are applying for an order from this Court allowing them to adopt 'B' an infant who was born on the 12th July, 1988.

Two days after the birth the child was removed from the natural mother under a Place of Safety Order. In October, 1988, the Court made a Fit Person Order in favour of the Education Committee.

The applicants have been foster parents to the infant since December, 1988. In October, 1991, according to the *guardian ad litem*, Brigitte Ahier's, report, the natural mother had contacted the children's department and asked that the infant be adopted. A provisional adoption order was signed by her. In December, she gave her legal consent in the presence of a senior childcare officer. A few weeks later, however, the natural mother said that she had changed her mind.

In January, at her request, a visit was arranged for the natural mother to see the infant at Brig-y-don in the presence of Mrs. X and Mrs. Andrews of the children's office.

According to the report prepared by Brigitte Ahier, which we have found most helpful, the visit appeared to be successful and it was hoped that the natural mother would be reassured about the adoption.

At the time the application was made for a *guardian ad litem* to be appointed in March, 1992, it was clear that the natural mother was going to oppose the adoption. The *guardian ad litem* attempted to interview the natural mother, who refused to meet Brigitte Ahier, saying that it would be too upsetting. Nevertheless, a letter dated 13th April, 1992, from Advocate Livingstone, acting for the mother, was received at the Judicial Greffe, confirming that the mother would consent to the adoption. In June the *guardian ad litem* spoke to the natural mother on the telephone. Although fearful that it might be thought that she was abandoning her child, the natural mother, according to the *guardian ad litem*, seemed happy with the decision after being reassured about the adoption. Since that time, however, the mother has again said that she wishes to oppose the adoption. It follows that, if the adoption is to proceed, then the Court, as a preliminary step, would have to dispense with the requirement of

consent by the natural mother, under Article 4 of The Adoption (Jersey) Law 1961. The Court has power, however, under Article 5 of that law, to dispense with that consent if it is satisfied in respect of the following matters, that the person whose consent is to be dispensed with -

"(a) has abandoned, neglected or persistently ill-treated the infant; or

(b) cannot be found or is incapable of giving his consent or is withholding his consent unreasonably."

Paragraph (2) of Article 5 reads as follows:-

"(2) If the Court is satisfied that any person whose consent is required by the said sub-paragraph (a) has persistently failed without reasonable cause to discharge the obligations of a parent or guardian of the infant, the Court may dispense with his consent whether or not it is satisfied of the matters mentioned in paragraph (1) of this Article."

Sub-sections 1(a) and (b) of section 5 of the Adoption Act, 1958, are in identical terms to Articles 1(a) and (b) of our law. Sub-section 2 of section 5 is shorter and merely says **"has persistently failed without reasonable cause to discharge the obligations of a parent."**

It may be said, therefore, that our law is so close to that of the English Act, upon which it has been modelled, that the Court is entitled to have regard to the English decisions on section 5 to assist it in the present application, and we have done so.

Miss Nicolle has said that it would be appropriate to rely on article 5(b), that is to say that the natural mother has withheld her consent or is withholding her consent unreasonably.

The standard work on children is that of H.K. Bevan, Professor of Law and Head of the Department of Law in the University of Hull. In "The Law Relating to Children", on pages 344 and 345, the author cites the leading case of *Re L* (an infant, (1962), 106 Sol. Jo. 611. In that case Lord Denning said this -

"A reasonable mother surely gives great weight to what is better for the child. Her anguish of mind is quite understandable; but still it may be unreasonable for her to withhold consent. We must look and see whether it is reasonable or unreasonable according to what a reasonable woman in her place would do in all the circumstances of the case".

His views were accepted as authoritative by the House of Lords in *re W (an infant)*, (1971) 2 All E.R.49 and at page 56 Lord Hailsham said this -

"In my opinion, besides culpability, unreasonableness can include anything which can objectively be adjudged to be unreasonable. It is not confined to culpability or callous indifference. It can include, where carried to excess, sentimentality, romanticism, bigotry, wild prejudice, caprice, fatuousness or excessive lack of common sense".

The author continues at page 345 -

"In applying the objective test, all the circumstances of the case must be considered, but the child's welfare is a factor

of great importance and is "decisive in those cases where a reasonable parent must so regard it".

In re W, the House of Lords approved also dicta of Lord Justice Diplock in Re C (an infant), (1964) 3 All E.R. at p.495. where he said -

"...one must look at the whole future of the child; not to mere temporary unhappiness or grief, however acute, if it is transient; not to mere material affluence in childhood or a better chance, through educational advantages, to achieve affluence later. Would a reasonable parent regard a refusal to permit the adoption of the child as involving a serious risk of affecting the whole future happiness of the child?"

The only Jersey case which touches on this matter is the case of in the matter of T (an infant), (Adoption Access applications) (1987-1988) J.L.R.677. That case concerned the issue of whether a natural parent of an illegitimate child should be given access to the child and thus prevent an adoption order being made. At page 686, line 40, the Court said this -

"This Court has a discretion to exercise and the interests of the child are paramount. We apply the test in Re G (A Minor) (2). The Court must balance the two considerations of (a) the advantages of the child retaining contact with his natural father as compared with (b) the advantages of being adopted by his mother and step-father without access being granted".

It is clear from that case that the Jersey authorities emphasize the interests of the child, perhaps rather more strongly than the English authorities, but perhaps it is a distinction rather than a great difference. Certainly, we have taken very

carefully into account the interests of the child in this case. We have looked at the reasons that the mother has advanced, however incoherently, before this Court, and on the instructions she has given to her advocate regarding her wish to oppose the adoption.

We want to make it clear that we do not attach any culpability to the mother. We are satisfied that she genuinely believes that she is being reasonable in opposing the application. We were able to ascertain, when she intervened during the hearing, that she regarded the child as a gift from the Almighty and for that reason felt it wrong for her to part with him.

Nevertheless we have to look at the facts in this case. Mr. Livingstone has informed us that one of the mother's reasons for opposing the application is her wish to have access to the child. Nevertheless, as I have said, the facts of this case do not support, in our view, the natural mother's present wishes. The child was taken away from her two days after birth, and has effectively been away from her since then. He has been with the putative adoptive parents since December, 1988, and apart from the visit to "Brig-y-don", which I have mentioned earlier, there has only been one other access arrangement for the natural mother. Furthermore, an attempt by Mrs. Andrews, over a period of several weeks, in 1988, to arrange constant access for the natural mother, came to nothing, through the mother's failure either to attend at the place of access or to contact Mrs. Andrews to make other arrangements.

A matter that cannot be overlooked is the effect of bonding on this child. He is already bonded, according to the evidence of Mrs. Andrews, very fully with the putative adopted parents and we find it difficult to see how, if the Order were refused, he could, at this stage, and after the history - we hesitate to use the word

neglect because we do not think that word is applicable to the attitude of the natural mother - but after a period of failing to see him, of failing to press to see him, and of failing even to press to set aside the order committing the child to the Education Committee, we cannot think that the chances of bonding with that child are likely to be very great.

Under all the circumstances, therefore, balancing, as the Court did in the Jersey case of Re T, the interests of the child and his welfare and eventual happiness, and taking into account the objective tests laid down by the English authorities which we are following, as well as having regard to the Jersey case, re T, we have come to the conclusion that it would be right to dispense with the consent of the natural mother and we accordingly do so.

AUTHORITIES

Adoption (Jersey) Law, 1961, Article 4.

Adoption (Jersey) Law, 1961, Article 5.

Bevan: The Law relating to Children, pages 341 to 351.

Re P (Infants) (1962) 3 All ER 789

Re W (an Infant) (1971) 2 All ER 49

Re D (a Minor) (1991) 1 FLR 48

In re T (an Infant) (1987-88) JLR 677

In re L (an Infant) (1962) 106 Sol.Jo.611.