

**RE P; K AND K v P AND P**  
**[2004] EWHC 1954 (Fam)**

Family Division

Wilson J

28 July 2004

*Adoption - Application for permission to place under Adoption Act 1976, s. 11(1) - Relevant criteria*

The natural parents (the defendants) did not want a second child and, on discovering that the wife was pregnant, they contacted a married couple (the plaintiffs) to whom they were related and whom they knew were trying, unsuccessfully, to have a baby. The female plaintiff was the aunt of the natural mother and both couples were close, sharing a common cultural and religious heritage. Both couples agreed that the plaintiffs should adopt the baby. During the pregnancy the plaintiffs were assessed by officers of the local authority and found to be highly suitable potential carers and adopters. When the baby, now 4 days old, was born he went home with the natural mother but both couples were keen that he be moved to the home of the plaintiffs as soon as possible. An application under s. 11(1) of the Adoption Act 1976 was brought for the purposes of obtaining an order permitting the two couples to make arrangements for the adoption of the child and to place him for adoption. An officer of CAFCASS Legal informally advised the court.

**Held** - permitting the parties to make arrangements for the adoption and to place the child for adoption by transferring him into the care of the plaintiffs -

(1) It was clear that, in making arrangements for the removal of the baby to the home of the plaintiffs, all parties would be placing the baby for adoption and making arrangements for facilitating the adoption within s. 72(3) of the Adoption Act 1976. Under s. 11(1) of the Adoption Act 1976 no person other than an adoption agency should make such arrangements unless (a) the proposed adopter was a relative of the child, or (b) he was acting in pursuance of an order of the High Court. Since neither of the plaintiffs was a relative as defined by s. 72(1) for the purposes of s. 11(1)(a) it remained for the court to decide whether to make an order under s. 11(1)(b), having regard to all the circumstances, full consideration being given to the need to safeguard and promote the welfare of the child throughout his childhood in accordance with s. 6 of the Adoption Act 1976.

(2) In that context the court needed to be satisfied on the basis of an independent investigation that the putative adopters could offer practical and emotional care of the child and were fully aware of the nature and demands of adoption; that the natural parents properly understood the ramifications of their decision; that all parties in a placement within an extended family were aware of the implications involved and that without pre-empting the future decision of the court there were prima facie grounds for believing that an adoption order would be made.

(3) Since the court was so satisfied, the parties would be given permission to make arrangements for the adoption of the child and to place him for adoption by transferring him into the care of the plaintiffs.

**Statutory provisions considered**

Adoption Act 1976, ss. 6, 11(1), 72

Adoption and Children Act 2002, s. 92

**Case referred to in judgment**

*C (Minors) (Wardship: Adoption)*, *Re* [1989] 1 WLR 61, [1989] 1 FLR 222, [1989] 1 All ER 395, CA

*Caroline Budden* for the plaintiffs  
*Markanza Cudby* for the defendants  
*Julie Hine* of CAFCASS Legal appeared in order to assist the court

**WILSON J:**

[1] This is an unusual application brought under s. 11(1) of the Adoption Act 1976. The subsection reads as follows:

'A person other than an adoption agency shall not make arrangements for the adoption of a child, or place a child for adoption, unless—

- (a) the proposed adopter is a relative of the child, or
- (b) he is acting in pursuance of an order of the High Court.'

[2] The order sought is an order permitting four persons, none of whom is an adoption agency, to make arrangements for the adoption of a child and to place him for adoption.

[3] The child is a baby boy now 4 days old.

[4] The two defendants, being two of the four persons to whom I have referred, are the natural parents of the baby. They are a married couple, aged 34 and 24, who live together in Leicestershire with their older child, a boy aged 5. They are both in employment.

[5] The two plaintiffs, being the other two of the persons to whom I have referred, are a married couple, aged 37 and 40, who live together in West Sussex. They are both currently in work. The male plaintiff is a health insurance agent. They have no child. The female plaintiff is the aunt of the baby's mother and thus the great-aunt of the baby. The two families, who have British Indian ethnicity, are on close terms.

[6] Since 1995 the plaintiffs have been trying hard, but in vain, to produce a child. In recent years they have undergone in-vitro fertilisation (IVF) treatment but without success. In 2001 the baby's natural mother offered to contribute her eggs to the female plaintiff; but it transpired that she and they would not be a workable match.

[7] In December 2003 the baby's natural mother discovered that, notwithstanding that she had been taking contraceptive precautions, she was pregnant. The natural parents do not want to bring up a second child at this stage of their lives. At an early stage of the pregnancy they contacted the plaintiffs and offered to allow them to adopt the baby.

[8] After careful thought the plaintiffs gratefully and gladly accepted the offer.

[9] While the pregnancy continued the plaintiffs resolved that, following the birth, they should not take any step in relation to the baby which would fall foul of the law. They presented their proposals to the adoption team of the social services department of West Sussex County Council and, on the recommendation of the department, they also consulted solicitors. In anticipation that, following the birth, this application would be made, an officer of the adoption team made a preliminary assessment of the plaintiffs. On 13 July she wrote a report in which she indicated that, on a preliminary basis, she was satisfied that the plaintiffs would be highly suitable carers for the baby and, indeed, highly suitable adopters of him. Equally, an officer of the social services department of Leicestershire County Council made three

visits to the defendants, at one of which the plaintiffs were present. She wrote a report in which she concluded that, in making the proposal that the baby be adopted by the plaintiffs, the defendants had a full understanding of its implications and were making it freely; and she observed that the close ties between the families, including their common cultural and religious heritage, made the plaintiffs a good match for the baby. Just as the plaintiffs had consulted solicitors prior to the birth, so also did the defendants. Thus both the plaintiffs and the defendants have been in receipt of legal advice for several months in relation to their plan for the future of the baby.

[10] Four days ago the baby was born; and 3 days ago, together with the natural mother, he was discharged from hospital. He is living in the home of the defendants in Leicestershire. Both couples are keen that he should be moved into the home of the plaintiffs in West Sussex as soon as possible.

[11] Yesterday, in the urgent applications court, Miss Budden, on behalf of the plaintiffs, presented their originating summons to me on an unlisted basis. The defendants had been given informal notice of the hearing and were represented by Miss Cudby, who expressed their strong support for the application. Notwithstanding its ostensible merit and its urgency, I decided to adjourn the application until today so that an officer of CAFCASS Legal could address me, whether formally as guardian of the baby or informally as an adviser to the court from an expert neutral standpoint. I am happy to say that today Ms Hine, an officer of CAFCASS Legal, has appeared in court. She has read all the material filed in the proceedings. She has persuaded me that her contribution could conveniently be made informally as an adviser to the court and that there is no need to make the baby a third defendant to the summons and to appoint her as his guardian. I am indebted to Ms Hine for her short but effective submissions.

[12] It is clear that the present proposals of the two couples engage s. 11(1) of the Adoption Act 1976. I hold that, by causing or permitting his removal to the home of the plaintiffs in West Sussex, all four of them would be placing the baby for adoption; and equally that all four of them would be thereby making arrangements for his adoption. This latter conclusion is based on s. 72(3) of the Adoption Act 1976, which provides as follows:

'For the purposes of this Act, a person shall be deemed to make arrangements for the adoption of a child if he enters into or makes any agreement or arrangement for, or for facilitating, the adoption of the child by any other person, whether the adoption is effected, or is intended to be effected, in Great Britain or elsewhere, or if he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement or the making of any arrangement therefor ...'

I regard it as clear that, by entering into an agreement for his removal to the home of the plaintiffs, all four parties would be making an arrangement for facilitating the baby's adoption.

[13] There is no possibility that, within a timescale suitable to the needs of the baby, the proposed placement could become a placement by, for example, West Sussex County Council as an adoption agency. Anyway the natural parents are not prepared to relinquish the baby for the purposes of adoption

generally. Were he not able to be adopted by the plaintiffs, they would want to care for him themselves.

[14] Equally neither of the plaintiffs is a relative of the baby for the purpose of s. 11(1)(a) of the Adoption Act 1976. In s. 72(1) of the Act the word 'relative' is defined as follows:

"relative" in relation to a child means a grandparent, brother, sister, uncle or aunt, whether of the full blood or half-blood or by affinity ...'

In *Re C (Minors) (Wardship: Adoption)* [1989] 1 WLR 61, [1989] 1 FLR 222 the Court of Appeal held that the above words should be construed precisely and that accordingly in that case a great-uncle did not qualify as a relative for the purpose of s. 11(1)(a). It follows that neither the female plaintiff, as a great-aunt of the full blood, nor the male plaintiff, as a great-uncle by affinity, is a relative of the baby for present purposes.

[15] When, as is anticipated to take place in 2005, the Adoption and Children Act 2002 comes generally into force, the Adoption Act 1976 will be repealed. But, albeit with significant differences, the provisions of s. 11(1) of the Adoption Act 1976 will be replicated by those of s. 92 of the Adoption and Children Act 2002. Even had the baby been born after the new Act had come generally into force, that section would have required the parties to seek an order of the High Court analogous to the order now sought: see s. 92(1) and (2)(e), (f) and (g).

[16] There is apparently no reported case to guide me in deciding whether under s. 11(1)(b) to make an order which would make lawful the implementation by the plaintiffs and the defendants of their plan for the future of the baby. The only guidance is set out in s. 6 of the Adoption Act 1976, which provides as follows:

'In reaching any decision relating to the adoption of a child a court ... shall have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare of the child throughout his childhood; ...'

[17] I consider that, subject to my duly giving first consideration to the need to safeguard and promote the baby's welfare in the long term as well as in the short term, I need to be satisfied of the following matters:

- (a) that the putative adopters are immediately able and willing to offer a good level of practical and emotional care to the child;
- (b) that the putative adopters are aware of the nature of an adoption and of its demands and pitfalls as well as of its joys and are willing to commit themselves to the child in adoption;
- (c) that the natural parents freely and with a proper understanding of the ramifications of their decision consent to the placement of their child with the putative adopters and thus that, if and insofar as they have given such consent prior to the birth, they continue to do so in the changed circumstances following the birth;
- (d) that in a case such as this, where the proposed placement of the child is within the extended family, both sets of parents are fully aware of the extra dimension of sensitivity and complexity which

arises both from the alteration which any adoption order would make in the status of the child, namely from great-nephew to son and, conversely, from son (and brother) to cousin, and from his likely passage between the two homes with that altered status; and (e) that, without pre-empting the future decision of the court as to whether to make an adoption order, there are strong prima facie grounds for believing that such an order would be made.

[18] It seems inconceivable to me that a court could be satisfied of the above matters without an independent investigation of them such as in this case has been conducted on the ground by the officers of the two local authorities; and an appraisal by an officer of CAFCASS Legal seems, to put it at its lowest, highly desirable.

[19] In that I am fully satisfied of all the above matters and in that I am satisfied that my order will safeguard and promote the welfare of the baby throughout his childhood, I hereby grant permission to the parties to make arrangements for his adoption, and to place him for adoption, by causing him to be transferred into the care of the plaintiffs.

*Order accordingly.*

Solicitors: *Churchers* for the plaintiffs  
*Dawson Cornwell* for the defendants

PATRICIA HARGROVE  
*Law Reporter*