

1969
Dec. 4

[VASSILIADES, P., TRIANTAFYLIDIS, LOIZOU, JJ.]

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IN RE
KYRIACOULLA
ADAMOU
HJIGEORGHIOU
AN INFANT

IN THE MATTER OF THE ADOPTION LAW, CAP. 274,

and

IN THE MATTER OF KYRIACOULLA ADAMOU
HJIGEORGHIOU, AN INFANT,

and

XENIS ANASTASSI CHRISTOFOROU AND ANOTHER,
Appellants-Applicants,

(Civil Appeal No. 4805).

Adoption—Adoption order—Consent to adoption order—Dispensing with such consent: “in any case that the person whose consent is required cannot be found.....”—Whereabouts of father of the child unknown—Father’s consent required—But it may be dispensed with—Not necessary for this purpose to establish the death of the father—Sufficient to establish that he cannot be found—Matter governed by the combined effect of sections 4(4)(a) and 5(1)(c) of the Adoption Law, Cap. 274.

Consent to adoption order—Dispensing with—See supra.

In this case the adoption order was refused on the ground that the consent of the infant’s father could not be dispensed with because there was no available evidence establishing in law the death of the father, but only evidence tending to establish that the father, whose whereabouts have been unknown since 1967, could not be found at the time when the matter came up before the Court below (March 15, 1969).

Allowing the appeal the Court:—

Held, (1) In our view the matter is governed by the combined effect of sections 4(4)(a) and 5(1)(c) of the Adoption of Children Law, Cap. 274; as a result a consent to the adoption order, which is required under section 4(4)(a), can be dispensed with by virtue of section 5(1)(c) “in any case that the person whose consent is required cannot be found.....”

(2) That was the proper legal basis on which the matter ought to have been dealt with *viz.* whether or not there was evidence to satisfy the Court below that the father of the child could not be found, so that his consent to the adoption order applied for might be dispensed with under section 5(1)(c) *supra*.

(3) The proper order to be made by us is that the case be sent back to the Court below (the District Court of Famagusta) so that it may hear evidence as the appellants may wish to adduce to satisfy it—if they manage to do so—that the father of the child cannot be found; then the District Court may, in the proper exercise of its powers under section 5(1)(c) of the statute (*supra*), dispense with the father's consent.

Order accordingly.

Appeal.

Appeal by applicants against the judgment of the District Court of Famagusta (Georghiou, P.D.C.) dated the 15th March 1969 (Adoption Application No. 7/68) refusing their application for an adoption order under the provisions of the Adoption of Children Law, Cap. 274.

P. Eleftheriou, for the appellants.

Appellant No. 1 present.

The mother of the infant present.

VASSILIADES, P.: The judgment of the Court will be delivered by Mr. Justice Triantafyllides.

TRIANTAFYLLIDES, J.: In this case the appellants appeal against the refusal of the learned President of the District Court Famagusta to make an adoption order under the provisions of the Adoption of Children Law, Cap. 274.

The whereabouts of the father of the infant, in respect of whom the adoption order was applied for, have been unknown since March 1967; and on the 15th March, 1969, when the matter came up before the Court below at Famagusta, counsel for the appellants had available two witnesses who were expected to give evidence establishing that the father could not be found.

It seems, unfortunately, that both the Court and counsel for the appellants were, at the time, under the impression that

1969
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KYRIACOULLA
ADAMOU
HJIGEORGHIOU
AN INFANT

there was required evidence establishing in law the death of the father of the infant; and as such evidence was not, indeed, available the adoption order was refused.

In our view the matter is governed by the combined effect of sections 4(4)(a) and 5(1)(c) of Cap. 274; as a result a consent to the adoption order, which is required under section 4(4)(a), can be dispensed with by virtue of section 5(1)(c) “in any case, that the person whose consent is required cannot be found.....”

That was the proper legal basis on which the matter should have been dealt with, *viz.* whether or not there was evidence to satisfy the Famagusta Court that the father of the child could not be found, so that his consent to the adoption order might be dispensed with.

In the circumstances we think that the proper order to be made by us is that the case be sent back to the Court below so that it may hear such evidence as the appellants may wish to put before it in order to satisfy it – if they manage to do so – that the father of the child cannot be found; then such Court may, in the proper exercise of its powers under section 5(1)(c), dispense with the father’s consent.

Order accordingly.