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Ruling Stakes Claim for N.Y. Priority in Resolving Adoption

By Joel Stashenko | February 17, 2010

The Court of Appeals yesterday refused to recognize the Cambodian government's award of custody a 7-year-old boy to Johnson & Johnson heiress Elizabeth Johnson in her dispute with former boyfriend Lionel Bissoon, a celebrity diet doctor. "It may be debatable...whether parental rights created by a Cambodian adoption should, under circumstances like these, be treated as valid in New York," Judge Robert S. Smith wrote for the unanimous Court. "But once parental rights have been validly established under New York law, between an adoptive parent and child who continue to live in New York, the choice of law governing the parental relationship is much less difficult: New York law applies."

ALBANY – The Court of Appeals ruled yesterday that New York courts, not the Cambodian government, should determine the custody of a 7-year-old boy caught in a tangled adoption dispute.

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"It may be debatable whether parental rights created by a Cambodian adoption should, under circumstances like these, be treated as valid in New York," Judge Robert S. Smith wrote for the unanimous Court in *Matter of Adoption of John Doe*, 20. "But once parental rights have been validly established under New York law, between an adoptive parent and child who continue to live in New York, the choice of law governing the parental relationship is much less difficult: New York law applies."

To decide otherwise would create "unacceptable uncertainty for every New York parent raising a child he or she has adopted in a foreign country," Judge Smith added.

Ms. Johnson had argued that decisions by two Cambodian agencies gave her legal custody of the boy she and Mr. Bissoon first tried to adopt in 2003 from an orphanage she had established in Cambodia.

But both Manhattan Surrogate Kristin Booth Glen and an Appellate Division, First Department, panel ruled (**NYLJ, Nov. 26, 2008**) that Mr. Bissoon was the “adoptive father” of the youth and agreed that the adoption decree initially granted to Ms. Johnson in Manhattan was correctly vacated.

In 2004, the Cambodian government approved the adoption by Mr. Bissoon as a citizen of the Caribbean nation of Trinidad & Tobago. Mr. Bissoon is a dual citizen of Trinidad & Tobago and the United States.

The plan was for Ms. Johnson to then adopt the child in New York. But the couple’s romance failed before that could happen. Nevertheless, Ms. Johnson forged ahead with the adoption herself during a period when she and Mr. Bissoon were still on “more or less friendly terms,” according to yesterday’s ruling.

Mr. Bissoon told Cambodia’s Ministry of Social Affairs, Labor, Vocation and Youth Rehabilitation in 2005 that he was relinquishing his recognition as father of the child. And Cambodian officials affirmed that Mr. Bissoon’s adoption and petition for parenthood was “null and void” and awarded adoption to Ms. Johnson.

Ms. Johnson’s petition to adopt the child referred to in court papers as “John Doe” was granted by the New York County Surrogate in April 2006. But four months later, Mr. Bissoon brought the challenge to the adoption, arguing that he was not aware that Ms. Johnson was seeking to adopt the child and that he remained the child’s legal father.

Surrogate Glen vacated Ms. Johnson’s adoption in October 2007, though she allowed the child to continue living with the heiress. Mr. Bissoon has continued since 2004 to have regular contact with the boy under arrangements approved by the surrogate, according to his attorney, **Bonnie E. Rabin**.

Judge Smith noted that he and his colleagues on the Court hoped there will be no need for further intervention by New York courts.

While Mr. Bissoon has contended that he is free to prevent any adoption attempt by Ms. Johnson and to seek to remove the boy from her home, Judge Smith suggested that the Court does not believe that would be in the best interests of the child.

“Since he says he does not want to [remove John Doe from Ms. Johnson's home], neither we nor the courts below have had any occasion to decide whether LMB's [Mr. Bissoon's] rights are as extensive as he claims,” Judge Smith wrote. “That question is academic, and we hope it will remain so.”

Mr. Bissoon told lower courts that he is not opposed to a two-parent adoption of John Doe, according to Ms. Johnson's attorney, Richard A. Greenberg.

Ms. Rabin, of Cohen Rabin Stine Schumann LLP, said Mr. Bissoon has fought to retain recognition as the father of John Doe to protect his right to see the boy and participate in his upbringing.

“My client is greatly, greatly relieved” and yesterday's ruling “assures that he can be with his son who adores him and whom he adores,” Ms. Rabin said.

Mr. Bissoon has been “clear from the get-go” that John Doe should be raised by both Mr. Bissoon and Ms. Johnson in a two-parent arrangement, Ms. Rabin said.

The Court also rejected Ms. Johnson's contention that not recognizing the Cambodian government's granting her adoption rights is a violation of the act-of-state doctrine, which generally denies jurisdiction to state and federal courts for challenges of administrative acts by foreign governments.

Mr. Greenberg, of Newman & Greenberg, said that could leave open an avenue of further court action for Ms. Johnson.

“We are disappointed with the result, but there remain a number of hopeful options for Ms. Johnson, including seeking review in the U.S. Supreme Court to decide new and important federal question of whether the act of state doctrine prohibits New York courts from disregarding the acts and wishes of foreign sovereigns,” Mr. Greenberg said yesterday.

Ms. Johnson is the sister of New York Jets owner Woody Johnson and an heir to the Johnson & Johnson health and medical products empire.

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