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DOMESTIC RELATIONS

Adoption of Foreign Children: Surrender of Parental Rights

CODE SECTION: O.C.G.A. § 19-8-17 (amended)
BILL NUMBER: HB 1211
ACT NUMBER: 1454
SUMMARY: The Act provides that the State shall recognize an irrevocable release or consent to adoption executed by a child's guardian in a foreign country where the guardian's appointment has been certified by the appropriate agency or court of that country.
EFFECTIVE DATE: April 1, 1986

History

In the fall of 1985, several superior court judges in the metropolitan Atlanta area withheld approval of adoption in cases involving Korean babies.¹ The halt in such adoptions came after Attorney General Michael Bowers issued an informal opinion that the documentation being supplied by the Korean child-placement agency was insufficient to comply with state adoption law.² Attorney General Bowers noted that although the documents furnished evidence of the consent of the child's purported guardian, they failed to show that the guardian was legally appointed and that the rights of the natural parents had been adequately protected.³

Under existing Georgia law, adoption of a child with a living parent or guardian cannot occur unless the parental rights have been surrendered or terminated by due process of law.⁴ Exceptions to this requirement are permitted only when specific extraordinary circumstances exist, such as

1. *See More Metro Judges Balk at Approving Korean Adoptions*, Atlanta Const., Oct. 8, 1985, at 13A, col. 1. Each year since 1980, Children's Services International, Inc. has placed an average of 120 Korean babies for adoption in homes in Georgia, Alabama, and Florida. *Id.*

2. 1985 Op. Att'y Gen. No. U85-34; *see also Bill Would Fix Ga. Law That Leaves Adoption of Korean Babies in Limbo*, Atlanta Const., Dec. 21, 1985, at 2C, col. 1 (halt in Korean adoptions after issuance of Bowers opinion).

3. 1985 Op. Att'y Gen. No. U85-34. Under Korean law, illegitimate children are considered "nonpersons," which explains why that country's adoption laws do not require evidence of release or consent of the natural parents. *Id.*

4. O.C.G.A. § 9-8-3 (1982).

the parent's insanity or abandonment of the child.⁵

Prior Georgia law also recognized the decree of a foreign court, "issued pursuant to due process of law," terminating the parent-child relationship or establishing such a relationship by adoption.⁶ There was no provision recognizing the availability for adoption of a foreign-born child who had been officially released for adoption by his country without the formal consent of his or her natural parents.

HB 1211

The Act amends O.C.G.A. § 9-8-17, relating to the recognition and effect of foreign adoption decrees, to provide that the State will recognize "the clear and irrevocable release or consent to adoption" by a foreign child's guardian where the guardian's appointment was in compliance with the laws of the foreign country.⁷ Under the amended O.C.G.A. § 9-8-17(a), such a consent or release will satisfy the adoption requirements of Georgia adoption law. The Act also added O.C.G.A. § 9-8-17(b), giving retroactive validation to adoption orders entered before April 1, 1986, and O.C.G.A. § 9-8-17(c), making the new law applicable to adoption proceedings pending as of April 1, 1986.⁸

5. O.C.G.A. § 9-8-6 (1982).

6. O.C.G.A. § 9-8-17 (1982). Fulfillment of the due process requirement in the surrender or termination of parental rights was deemed necessary to discourage "the practice of the sale or kidnapping of foreign children for ultimate adoption in this state." 1985 Op. Att'y Gen. No. U85-34, at 208.

7. O.C.G.A. § 9-8-17 (Supp. 1986).

8. *Id.*