

The Cour de Cassation - 6 February 2008, N Appeal No 07-12948

THE COUR DE CASSATION, FIRST CIVIL CHAMBER, gave the following judgment:

On the two grounds of appeals heard together:

The Court had regard to article 365 of the *Civil Code*.

The applicant for simple adoption is the only person invested with all parental authority rights concerning the adoptee, if he/she is not the partner of the mother or father of the adoptee.

To make an order for simple adoption, by Mrs X of Mrs Y's son, born on 25 July 2004, the judgment appealed from sets out firstly that the requirements of age and consent have been met. Further, the adoption is in keeping with the interest of the child, who will thus gain an additional parent conformably with the family setup in which he is growing up since he is being raised in the midst of a stable relationship between Mrs Y and Mrs X, who have formed the plan to educate him together and to be jointly responsible for his affective needs. He has been integrated into Mrs X's family and he will benefit from a double title to inheritance. Finally, Mrs Y is well aware of the fact that the adoption will lead to the transfer of parental authority rights to the benefit of the adoptive parent but that this element is not likely to be an obstacle to adoption since these rights can be partially or totally delegated to her, as allowed by the provisions of Article 377 of the Civil Code.

In so holding, while this adoption created a transfer of parental authority rights over the child, thereby depriving the biological mother, who intended to continue to raise the child, of her own rights, it followed that, even though Mrs Y had consented to the adoption, in granting this request, the Court of Appeal had misconstrued the provisions set out above.

FOR THESE REASONS:

SETS ASIDE AND ANNULS, in its entirety, the judgment appealed from of 14 February 2007 of the Court of Amiens, between the parties; restores in consequence, the proceedings and parties, to the position they were in before the judgment and, to regularise the situation, remits the cases to the Court of Appeal of Amiens, with a differently composed bench [...].