

Circuit Appeal  
1982 No.878 Sp.

THE HIGH COURT

001838

IN THE MATTER OF THE ADOPTION ACTS, 1952/76

AND IN THE MATTER OF N. AN INFANT

BETWEEN:-

N.B. AND T.B.



PLAINTIFFS

AND

AN BORD UACHTALA  
THE EASTERN HEALTH BOARD  
AND ST. LOUIS ADOPTION  
SOCIETY

DEFENDANTS

Judgment of Mr. Justice Barron delivered the 18th day of February 1983

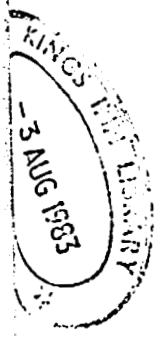
The infant in this case was born on the 6th December, 1977. His mother was then aged 20 having being born on the 8th July 1957. She was one of thirteen children and had left school at the age of 15 and acquired no skills other than a limited expertise in hairdressing. When she was 17 she became pregnant and left home during this pregnancy. She was not sorry to do so since she hated her father for his petty tyrannies and her mother for allowing them. Since then she appears to have cut herself off from her parents and has had to fend for herself.

The mother gave birth to a girl whom she called Lisa on the 11th March, 1976. She received no support from Lisa's father and has not seen him for at least six years and has no wish to see him again. Early in 1977 the mother became pregnant for a second time. The father on this occasion was

a chef some two years younger than herself. The infant was born two months premature and was kept in hospital for the first six weeks of his life. As the mother and father had nowhere to live they moved in together with the two children with the father's mother. This was not a success and after three to four months they were asked to leave.

The infant was brought to a home for unmarried mothers where he stayed for a short time while his mother obtained accommodation. She obtained a flat and he then went to live in that flat with her and Lisa. It is not clear when his father left his mother, but it seems to have been in or about the summer of 1978. During this period, the mother found that she felt different towards the infant than she did towards Lisa. She found herself apparently without any feeling for him and felt that she should give him up. She contacted social workers with the Eastern Health Board and sought their help. She told them that she wanted him to be adopted. Arrangements were made to lead to a placement. The consent to placement was signed on the 18th August, 1978 and the infant was taken into care by the Eastern Health Board. While in care he was visited by his mother. In December 1978 before any placement had been made, she withdrew her consent to placement and the infant was returned to her. At this stage, she hoped that she could have proper feelings for the infant.

She then had the infant for a continuous period of about sixteen



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months during which time she had several changes of address. Unfortunately, her attitude towards the infant did not change. While she was happy to have him back initially, these feelings changed. There were at least two separate periods during which the infant was abused. The social workers for the Eastern Health Board helped her over these periods. At the time the mother was not prepared to admit to the social workers that she was abusing her child. However, she did admit that her feelings for him were such that she was afraid that she would injure him. Because of these feelings, she again decided that the best future for the infant lay in adoption. She again approached the social workers in the Eastern Health Board and following her request the infant was taken into care on the 29th March, 1980. The consent to placement was signed on the 12th June, 1980.

The infant remained in care for almost a year. During this period, his mother visited him four times, the last being on Christmas Eve 1980. On the 16th March, 1981, the Applicants were introduced to the infant for the first time. Daily visits then took place first in the home run by the Eastern Health Board and then at the Applicants home. Finally, he was placed with the Applicants on the 25th March, 1981 and has remained with them ever since.

An application for adoption was made on the 2nd June, 1981. The social worker from the Eastern Health Board kept in touch with the mother

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and sought to obtain her consent to the adoption. In August 1981 the mother indicated that she wanted the infant back. Nothing was done on foot of this request save that it was clarified in September 1981 as meaning that the mother wanted the natural father to join in the ultimate decision. She felt at that time that perhaps the father would come back to her and that they could resume life together with the infant. However the natural father was not prepared to return and on the 12th November 1981 both he and the mother called to the social worker indicating that the mother was prepared to and wanted to sign the final consent on that day. This was arranged and the final consent was executed on that date.

The adoption procedure had not been completed when the mother indicated to the social worker that she wished to withdraw her consent to adoption. This she did in the course of a telephone call on the 30th April, 1982. She subsequently sought the return of the infant on the 10th June, 1982, and when the infant was not returned to her commenced proceedings in the Circuit Court against the Eastern Health Board under the provisions of the Guardianship of Infants Act. Those proceedings were issued on the 20th August, 1982. On the 18th October 1982 the Applicants commenced proceedings for relief under Section 3 of the Adoption Act, 1974. By consent the issues arising in both sets of proceedings have been dealt with

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in the hearing before me.

The Applicants are a married couple who already have two natural children of their own, a boy who is about ten and a girl who is just seven. They had always intended to adopt a child who might require some assistance and who might for this reason not be readily acceptable by most prospective adoptors. They are reasonably well off and are in a position to give a good and caring home to the infant. They appear to have a sound marriage and are a well adjusted, intelligent couple. They applied to the adoption society, who, having satisfied themselves that they were suitable, suggested the infant as being a suitable child for them. When they first saw him, he had very little personality and had a minor speech defect in that he spoke through clenched teeth. He also was very eager to please a characteristic which was also noted by the social worker appointed by the adoption board to assess the suitability of the adoptive parents for adoption.

The infant took to the Applicants and settled in quickly in his new home. He was delighted with his surroundings and got on well with the Applicant's son. His personality developed for the better and his minor speech defect cleared within six months with the care and assistance of the Applicants. Their daughter, however, was jealous of the newcomer and

it took between six and nine months for her to get used to the new arrival in the family. They all go to the same school and act like ordinary brothers and sisters. The infant is perhaps closer to the girl, since she is nearer his age, than to the boy. The Applicants do not wish to give up the infant. While it would be a wrench for them, they feel very strongly that it would be harmful and cruel to send the infant back to his mother.

The first issue which the Court must determine upon an application under Section 3 of the Adoption Act, 1974 is whether the mother has agreed to the placement of her child for adoption. This involves an inquiry into the facts in order to ascertain whether she has voluntarily given up her rights to custody of the infant: See G. v. An Bord Uachtala, 1980 I.R. 32 and S. v. Eastern Health Board an unreported decision of the President delivered on 28th February 1979.

In this case, the mother decided in August, 1978 that she wanted her child adopted. I have no evidence of the nature of the advice which she received at that time. She subsequently changed her mind. In March 1980, she again decided to have her child adopted. Her reasons were to her credit. She wished to protect her child and to do what was best for him. The social worker dealing with her explained the implications of adoption to her and allowed two months to elapse before requiring her to sign the form

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giving her consent to the child being placed for adoption. At this stage, the mother wanted her child to be adopted. It was a decision arrived at freely without any pressure being put on her to reach it.

Having signed the form the mother knew that the adoption process had commenced. She knew that her consent could be withdrawn at any time before the making of an adoption order. She also knew because the form was read to her and explained to her that if she refused her consent, or withdrew her consent once she had given it, the adoption board could dispense with her consent. The evidence suggests that the only thing she clearly took in was that she could change her mind. Nevertheless, if this is so, her intention in allowing the adoption process to proceed was positive and definite and was not conditioned by her belief that it was a revocable decision even though this belief might have been a source of some comfort to her.

From then on the social workers kept in continuous touch with the mother. They let her know how the child was faring in their care. As this period lengthened, the mother became anxious at the delay in placing the child and kept asking when he would be placed. When he was placed, she was given details of the proposed adoptors. This brought some change of heart, because in May 1981, the mother indicated that she wanted the

child back. At this stage, she was changing her mind again and thought that she might be able to keep him if the father returned to her.

However, he had formed another association and this plan was not possible.

Ultimately in November she realised this and came in with the father to sign the final consent. Her belief once she had done this was that there was nothing she could do after that and that she had finally given up her child. Even after this, the social workers kept in touch with her.

From these circumstances, it is clear that the mother wanted to give up her child for adoption, that no one pressed her to do so, and that, however unhappy it made her, it was the course she herself favoured. She knew what adoption meant and accepted ultimately that it was a final and irrevocable decision. In my view, from March 1980 when she contacted the social worker for the Eastern Health Board with her request to have the infant adopted she was prepared to and did surrender her right to custody of her child. She was accordingly a person who had agreed to the placing of the child for adoption.

I must now consider whether it is in the best interests of the child to make the Orders which the Applicants seek.

The mother is at present unemployed, although she does earn small sums in providing hairdressing services. She now lives in a two bedroomed



corporation home with her daughter Lisa. She appears to have overcome the many problems in her life and is in a position to make a new start. She has been a good mother to Lisa whom she is bringing up well. She could, subject to being able to control her feelings towards the infant, bring him up equally well, if he was returned to her. She was open and frank in her evidence and kept nothing back. Her present attitude is that the infant is her son, she loves him, and she never wanted to give him up. She says that she gave him up because she did not know what else to do, that she came to the social workers looking for help and that they failed her. She says that if she had been given advice how to deal with the infant and to overcome her feelings towards him her problems could have been solved. Since she did not get this advice, she placed him for adoption. She did not take him back before he was placed, because she knew that if she did so in another nine months her fear of harming him would again be so strong that she would have had to give him up again. She realises that if the infant comes back to live with her there will be problems, but that with the help of the social workers these can be solved.

Evidence has been given by three psychiatrists. Each has come to the same conclusion although with slightly different emphasis. The effect of this evidence which I accept is that the infant is now in the first secure

home which he has ever known, that he is an intergrated member not only of the Applicants home but also of their family in an extended sense. He is happy and well adjusted and regards this family as his family. He has had too many placements and upsets in his routine in the past. If he is moved now, he will have a grief reaction. This will manifest itself with tears, nightmares, bed wetting, loss of appetite and general misbehaviour. The longer term reaction could involve delinquency and general behavioural problems and he will run a serious risk of being unable to form lasting personal relationships.

If the infant is returned to his mother, there is nothing to suggest that she will be able to cope with him any better than she did in the past. Whereas in the past, the infant did nothing to cause his mother's rejection of him, the evidence shows that she would now have to deal with a child who will act up and cause her problems whatever her feelings towards him. It seems very unlikely given her past history that the mother will be able to cope with this situation. In the past with full support from the social workers she failed and with failure tended to blame them. There is a considerable risk that this pattern will repeat itself. While she is now in a better state to cope than she ever was, I accept the evidence that even with the full support of the social workers she is unlikely to

be able to manage her son and the problems that his return would bring.

All the doctors advise against moving the infant from where he is presently residing. It is clearly going to be bad for him if he is moved. At present his future is relatively well secured and he is happy and well looked after. If he is moved, his future with his mother will be relatively uncertain and he is unlikely to be happy with her. At best, she may be able to cope with help, but this is unlikely. Probably, it would be necessary for the infant to be put into care again. Even if the mother is able to cope, there is still the danger of long term delinquency and general behavioural problems. Even more serious is the risk that he would be unable to form lasting personal relationships. On this view of the case, it is clearly in his best interests that I should grant the relief sought by the Applicants and not return him to the custody of his mother.



*Henry Barron*  
11/4/83