

THE HIGH COURT

1983 No. 5624P. and 1984 No. 150Sp.

IN THE MATTER OF THE GUARDIANSHIP OF INFANTS
ACT 1964 and

IN THE MATTER OF THE CONSTITUTION AND

IN THE MATTER OF THE ADOPTION ACTS 1952 to 1976 AND

IN THE MATTER OF M. AN INFANT

BETWEEN:

S.M. and M.M.

Plaintiffs

and

GABRIEL MURPHY, ANGELA DOYLE, MARY DERICI,
ST. PATRICK'S GUILD AND AN BORD UCHTALA

Defendants

and

BETWEEN:

C. McM.

Plaintiff

and

S.M. AND M.M.

Defendants

Judgment of Mr. Justice Lynch delivered the 11th day of May, 1984.

This case concerns the future life of a child who is a boy.

The issues before me are first a claim by the adoptive parents

2.

of the child to authorise the Board to dispense pursuant to section 3 of the Adoption Act 1974 with the consent of the mother of the child to its adoption and, secondly, a claim by the adoptive parents and a cross-claim by the mother for the custody of the child.

THE FACTS

The child was born on the 30th March 1982 in the Coombe Hospital, Dublin and is therefore an Irish citizen pursuant to section 6(1) of the Irish Nationality and Citizenship Act 1956. The mother is from Northern Ireland and was born on the 21st April 1957. The mother has had two other illegitimate children, both girls and now aged 6 years and 4 years respectively. The elder of these two girls has been adopted by the mother's parents who are aged 56 years and 46 years respectively and who reside in Northern Ireland. The second of these daughters of the mother is at present the subject of an application for adoption in Northern Ireland by the mother's parents and this application has not yet been completed. The mother's father has secure employment at a good wage and he, his wife and a son aged 14 years, together with the two daughters of the mother, live in a

3.

three bedroomed semi-detached house with a good sized garden in an urban area. The house is subject to a mortgage repayable at £47 sterling per month.

When the mother left the Coombe Hospital she gave the child into the care of St. Patrick's Guild for adoption. When born the child had clasped hands and it was feared that this condition might be indicative of brain damage and hence the child was not placed for adoption as soon as usual but was, instead, kept in Temple Hill Nursery for observation. Fortunately the fears of brain damage proved groundless and the problem of the clasped hands disappeared and the child enjoys good health.

Once it was established that the child enjoys good health it was placed for adoption with the adoptive parents on the 20th November 1982. Between the time when the mother left the Coombe Hospital and the hearing of these proceedings the mother saw the child once only when she called to see it with her father in Temple Hill Nursery in or about July or August 1982. The mother's father has seen the child only on that occasion and neither the mother's mother nor any other member of the mother's family have ever seen it.

The adoptive father was born on the 25th February 1950 and is

4.

therefore 34 years old. He enjoyed steady employment until August 1983. On leaving school he first attempted to study for a bachelor of engineering degree in university but failed in this attempt. He then got a job for some years with Dublin Corporation and qualified as an engineering technician through Bolton Street Technical School. He had been in the employment of an engineering firm for three years up to August 1983 but unfortunately was made redundant in that month owing to the recession in the construction industry and has not been able to obtain employment since then. He has, however, been pursuing a course through AnCo in computers and computer based accountancy with a view to widening his range of employment opportunities.

The adoptive father enjoyed good health up to the age of 24 years when he began to get bouts of depression. He sought treatment from his general medical practitioner at that time and was prescribed anti-depressant drugs which he took for about 3 months per year for a period of 3 years until about the age of 27 when he stopped taking this medication. Some further 3 years or so later, that is to say at about the age of 30 or 31 years, he began to suffer from mood

swings in the opposite direction becoming elated. In view of this he sought treatment in St. Patrick's Hospital Dublin where he was an in-patient from April to August 1981 and where he underwent electro-convulsive therapy and medication.

The adoptive father is now on lithium tablets and a balance has been achieved as a result of which he now enjoys normal moods and his medical practitioner in St. Patrick's Hospital is confident that a recurrence of the mood swings is unlikely and, furthermore, that if he did suffer a recurrence a cure could rapidly be effected. This medical practitioner also gave evidence that the illness from which the adoptive father had suffered was no reason why he should not adopt the child.

The adoptive mother was born on the 29th August 1948 and is therefore now 35 years of age. She qualified in England as a nurse and practised there until early 1970 when she returned to Ireland. She continued nursing in Ireland enjoying a position in St. Vincent's Hospital until her marriage in July 1976. After her marriage she continued nursing for a time in St. Vincent's Hospital and then for a further period with a doctor in Blackrock, Co. Dublin.

As there were no signs of the adoptive mother becoming pregnant the adoptive parents underwent fertility tests which revealed that the adoptive mother would be incapable of conceiving. Following this discovery the adoptive parents decided that they would like to adopt children. On the 1st August 1980 a girl, now their daughter, was delivered into their care with a view to adoption, this daughter having been born on the 28th March 1980. This daughter suffers from a condition known as PKU which requires very careful dieting. With the aid of the adoptive mother's nursing experience and training this daughter is progressing very well. All of the evidence was to the effect that the adoptive parents were very suitable and successful as parents in relation to this daughter.

An adoption order was made by the Board in respect of this daughter on the 19th June 1981 in favour of the adoptive parents. At that time the adoptive father was an in-patient in St. Patrick's Hospital, Dublin, under treatment for the condition already referred to. This fact was not revealed by either of the adoptive parents to the Board which is indeed very regrettable and blameworthy. I

7.

accept that neither adoptive parent was asked about their state of health at that stage and neither of them stated anything positively false to the Board but nevertheless the failure to reveal this fact which was to their knowledge a material fact, remains blameworthy.

Subsequently, the adoptive parents applied to the Guild to adopt another child. On Friday the 19th November 1982 they were contacted by the Guild and asked if they would accept the child and it was explained to them that the child was now almost 8 months old. On Saturday the 20th November 1982 the adoptive parents indicated their wish to accept the child for adoption and it was delivered into their care and the child has remained ever since in the care of the adoptive parents with the exception of two days in August 1983 when it was given back at the request of the Guild to the care of the Guild and subsequently as a result of these proceedings was returned once again into the care of the adoptive parents.

The adoptive parents have been good parents to the child. However in the summer of 1983 the Guild and the Board received information about the adoptive father's illness and treatment in St. Patrick's Hospital and allegations against the adoptive mother to the effect

that she had a drink problem.

A particularly serious allegation was that the adoptive mother had on one occasion been so affected by drink that she had lain on the child when asleep and had thus endangered the life of the child. This allegation appears to have been in the nature of a hearsay allegation so far as the Guild and the Board are concerned and double, if not treble, hearsay so far as I am concerned. This allegation had not been put to the adoptive mother when she gave evidence and accordingly I required her to be recalled so that it could be put to her and she very clearly denied that there was any basis whatsoever for the allegation and I accept that there is no basis in fact for it.

The adoptive parents have had domestic disagreements from time to time and it is true that the adoptive mother is somewhat more easily affected by moderate consumption of alcohol and becomes more argumentative in such circumstances than the average person, but I am satisfied that she does not have a drink problem as such. It is clear that the adoptive parents and, more especially, the adoptive mother were under exceptional stress during the year 1983 and it was during that period from late 1982 till late 1983 that the domestic

9.

disagreements occurred between them which were the subject of the complaints to the Guild and the Board. The adoptive mother was not at all well during this period as became apparent when in November 1983 she had to undergo a hysterectomy operation. In addition the adoptive mother's father had been diagnosed in March 1983 as suffering from a terminal illness and, in fact, he died in January 1984.

These misfortunes explain to some extent, at any rate, the over-reaction of the adoptive parents to natural domestic disagreements and it seems to me that it is very unlikely that this situation will worsen but, on the contrary, it is likely that it will improve and indeed the evidence would suggest that there has been a marked improvement since the adoptive mother's operation in November 1983. The preponderance of evidence (which I accept) is that the adoptive parents enjoy a stable happy marriage which is likely to continue so.

The child has now been in the home of the adoptive parents as their child for almost 18 months. I accept the evidence that if the child were now removed from this environment and placed into another environment either by being given back to the mother and her family

or placed for adoption with other persons, this would probably result in grave psychological injury to the child possibly resulting in delinquency at a later age. The evidence also establishes that when the child was taken back by the Guild to Temple Hill Nursery for two days in August 1983 it was seriously upset and it took some four to five days to settle down again in the adoptive parents home when they recovered custody of the child. The child during that period showed great anxiety to see that each adoptive parent was present in the home at all times.

The adoptive parents home consists of a three bedroomed semi-detached house in a Dublin suburb. The house has a value in excess of £30,000 with a mortgage on it of £7,000 repayable at £87 per month but these repayments are temporarily reduced to £50 per month during the period of unemployment of the adoptive father. With a view to supplementing their income the adoptive mother has been trying to do some nursing on one or two nights per week, generally at week-ends and at times when the adoptive father would always be present to look after the two children.

The adoptive parents home is neat, clean, well furnished and

11.

excellently maintained. All aspects of the home are of a very high standard as the adoptive mother especially is very punctilious by nature. The child has got to know both the adoptive father's parents and family and the adoptive mother's parents and family though, as already stated, her father died in January 1984.

THE LAW

In the course of submissions by Counsel I was referred to the following cases.

G. -v- An Bord Uchtala (1980) I.R. 32.

The State (Nicolaou) -v- An Bord Uchtala (1966) I.R. 567.

S. -v- Eastern Health Board & Ors. (President 28th February 1977.)

O.N. -v- O.B. & Ors. (President 22nd January 1980).

McC. -v- An Bord Uchtala (1982) I.L.R.M. 159.

McF. -v- G. & G. (1983) I.L.R.M. 228.

N. B. and T. B. -v- An Bord Uchtala (Barron J. 13th February 1983).

The relevant provisions of the Adoption Acts 1952 to 1976 and the Guardianship of Infants Act 1964 have been quoted extensively in the judgments in some of the foregoing cases especially in G. -v- An Bord Uchtala and it is not necessary for me to quote them in this judgment.

The adoptive parents claim is primarily pursuant to Section 3 of the Adoption Act 1974. It is not in dispute that the adoptive parents have applied for an Adoption Order relating to the child and that the mother agreed to the placing of the child for adoption and

signed a consent to its adoption which she has since withdrawn. It follows that the only issue arising under Section 3 of the Adoption Act 1974 is whether it is in the best interests of the child to make or to refuse to make an Order under that Section.

I am completely satisfied that it is in the best interests of the child to make such an Order and accordingly I Order as follows:-

First, that the adoptive parents shall have custody of the child from the date of this judgment until Monday the 1st day of April 1985.

Secondly, that the Board be and are hereby authorised to dispense with the consent of the mother to the making of an Adoption Order relating to the child in favour of the adoptive parents during the period aforesaid.

The foregoing Orders dispose of the mother's claim to custody of the child under the Guardianship of Infants Act 1964 during the period aforesaid and permanently if an Adoption Order should be made by the Board during such period. If however an Adoption Order should not be made by the Board during such period then the question of the custody of the child on the expiration of the period aforesaid remains for determination.

It has not been suggested that the mother abandoned or deserted the child or was unmindful of her parental duties so as to forfeit pursuant to Section 14 or Section 6 of the 1964 Act her right to custody under that Act. In placing the child for adoption she acted in the best interests and for the purpose of ensuring the welfare of the child in the circumstances as she then saw them. In withdrawing her consent to the adoption of the child by the adoptive parents she also acted in the best interests and for the purpose of ensuring the welfare of the child in the altered circumstances as she then saw them in the light of the information that had been conveyed to her about the adoptive parents.

The mother has not therefore forfeited pursuant to Section 14 Section 16 of the Guardianship of Infants Act 1964 her right to the custody of the child under that Act but nevertheless under Section 3 of that Act the first and paramount consideration must be the welfare of the child. By the 1st of April 1985 the adoptive parents will have had custody of the child for two years and four months from the age of eight months to the age of three years. In these circumstances the Court would have to hear further evidence as to what would be in the

- 15 -

interests of the child and its welfare from and after the 1st day of April 1985 in the event of the Board deciding in the meantime not to make an Adoption Order relating to the child in favour of the adoptive parents.

I will therefore adjourn both the adoptive parents and the mother's claim to custody of the child pursuant to the Guardianship of Infants Act 1964 for mention on Wednesday the 3rd of April 1985. That date is during the first week of the Easter vacation in 1985 but the matter can be mentioned to the vacation Judge either to be finally disposed of if an Adoption Order has been made by the Board in the meantime in favour of the adoptive parents or if no such Adoption Order has been made then to give directions as to the further proceedings that may appear to be appropriate at that time.

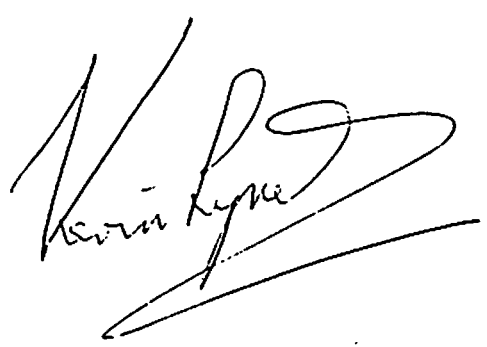
In addition all parties shall have liberty to apply in the meantime in case that an application regarding any matter appears to be desirable.

As regards the costs of the proceedings up to date provision has already been made for the mother's legal representation at the expense of the State and likewise for legal representation of the Guild and the Board by the Chief State Solicitor and Counsel

instructed by him. It seems to me that provision must also be made for the costs of the adoptive parents of these proceedings to date and I therefore propose subject to any submissions which may be made to me to the contrary to make an Order for the payment of the costs of the adoptive parents by the Board.

Such an Order is not to be taken as any reflection whatsoever on the Board or on the Guild. All parties to this case have acted completely bona fide and from proper motives but an injustice would be done if the adoptive parents had themselves to finance their own legal representation in these proceedings especially when the adoptive father is presently unemployed.

Dated the 11th day of May, 1984.



Kevin Lyne