

u AB STATE (C.M.) . GM ? M. ✓ 12
THE HIGH COURT

IN THE MATTER OF ARTICLE 40 OF THE CONSTITUTION
AND IN THE MATTER OF AN APPLICATION FOR AN ABSOLUTE
ORDER OF HABEAS CORPUS
IN THE MATTER OF C.M. AN INFANT

THE STATE AT THE PROSECUTION OF P.M.

Prosecutrix

and

G.M.

Respondent

AND 1984 No. 615Sp. THE HIGH COURT
IN THE MATTER OF THE ADOPTION ACTS, 1952 to 1976
AND IN THE MATTER OF C. AN INFANT

J.M. and M.M.

Plaintiffs

and

AN BORD UCHTALA

Defendants

Judgment by Finlay P. delivered on the 27th day of November 1984

In this case P.M. who is unmarried and is the natural mother of the Infant C.M. applied to me for an inquiry under Article 40 of the Constitution as to the legality of the detention of the Infant C.M. naming as a Respondent G.M., a Social Worker representing an Adoption Society.

Upon the return to that enquiry, the Respondent established that the Adoption Society which she represented had placed the Infant with prospective adoptive parents in pursuance of a purported agreement made by P.M., the mother, to place the child for adoption.

The prospective adoptive parents J.M. and M.M. then instituted proceedings under the Adoption Acts, 1952 to 1976 naming as Defendant An Bord Uchtala and claiming Orders under Section 3 of the Adoption Act, 1974.

As a procedural precaution, Counsel informed me that the mother P.M. instituted proceedings in the High Court by Summons under the Guardianship of Infants Act, 1964 seeking custody of the Infant. All these matters came before me and were heard together on oral evidence on the 6th, 7th, 9th and 12th November and I reserved Judgment.

FACTS ON FIRST ISSUE

The first issue which arises is whether P.M. validly agreed to place C.M. for adoption within the meaning of Section 3 of the Act of 1974 and my findings of fact on that issue are as follows:-

P.M. whom I will hereinafter refer to as the Mother, is now aged 28 years and on the 27th July 1983 gave birth to a son, C.M. whom I will hereinafter refer to as the Infant, in a Dublin hospital.

The Mother is the second eldest child in a family of 11 children and was born and brought up on a farm in the North of Ireland. After attending Primary and Secondary School in which she was successful, she went to a Catering College and obtained a Diploma in Catering. At about 18 years of age, she commenced her employment in the Catering Trade and from then was more or less constantly employed in various jobs and in various institutions in the North of Ireland, in the Republic of Ireland and for one year in 1977 in the United States of America. Upon her return home after the period in the U.S.A. the Mother in a short time obtained a job of a satisfactory and responsible nature in a restaurant in Northern Ireland. She appears to have remained in that job for approximately 3½ years and then of her own volition left it and

came to Dublin to take up a job as a Locum Cook in a Hospital. She remained in that job until the winter of 1982. Whilst she was employed in the Hospital, she became friendly with the father of the Infant and had a short intimacy with him having on her evidence intercourse with him on one occasion only. She severed her relationship with him within a week of having had intercourse and some five or six weeks later, having visited a doctor, was satisfied that she was pregnant.

The Mother then applied for and obtained a Senior Catering job with an Industrial Firm a short distance outside the City of Dublin and went to live in the town in which that firm was located. She there formed an immediate and close friendship with a girl aged about 30 years of age who rented her accommodation.

Upon discovering that she was pregnant, the Mother first informed the father of the child. He suggested to her that she should procure an abortion and she refused and she then severed all communication with him and has not seen or heard from him since.

The Mother at this time regularly went home to her family in Northern Ireland at weekends and shortly before Christmas of 1982 she informed her mother of her pregnancy.

I am satisfied that this caused a tremendous upset to her mother. One of the family had already had a child born to her out of wedlock some two years previously or so and on the same occasion as the Mother informed her mother that she was pregnant, the family had just been informed of the pregnancy of another sister who was unmarried. The father of the family was suffering from a condition of blood pressure at this time and the mother absolutely prohibited her daughter, who is the Mother of the Infant, from informing her father of her pregnancy or from

informing any other members of the family or discussing it with them lest he should hear. The Mother appears to have accepted this prohibition.

She continued to work at her work outside Dublin and around this time, apparently, of her own volition sought advice on two occasions from a Social Worker attached to the Eastern Health Board. I am satisfied that the intention of the Mother at that time was to try and keep the child and that it was in connection with that project that she sought this advice.

In December of 1982, she commenced to attend a Maternity Hospital and as it appeared from the forms necessary for her attendance there that she was an unmarried mother she was recommended to interview the Social Worker attached to that Hospital. The first interview between her and the Social Worker took place on the 15th December of 1982. I am satisfied that she was then quite adamant about keeping the child and that she obtained and sought detailed information with regard to the payments that might be available to her, the assistance in obtaining accommodation, support and other matters for that project. At that stage, she informed the Social Worker that none of her family were aware of her pregnancy.

Her next visit to the Social Worker in the Hospital was in February of 1983 when she informed the Social Worker that she had told her mother about her pregnancy but that she was now considering adoption, that she was in quite regular contact with her mother by telephone and that the reason she was considering adoption was her own isolation and lack of support from her family. The Social Worker explained to her that she was not a person concerned with adoption and that if she wanted to place the child in adoption, she would have to go to a Society or to make private arrangements. An arrangement was

made for her to return for a further visit.

The next interview between the Mother and the Social Worker in the Hospital was in May of 1983. I am satisfied that the Mother was then quite definite about adoption and had decided that that was the course which she wished to take. She was informed in broad and general terms by the Social Worker concerned with regard to the legal procedures involved in adoption and she was given the name of a number of Adoption Societies from which she chose the Adoption Society of which the Respondent G.M. is the principal Social Worker. I am satisfied on the evidence of the Social Worker in the Hospital that the impression made upon her by the Mother at this time was that she was a very mature and articulate person, that she queried any information that was given to her and that she had long interviews with her asking for a lot of information. In evidence, the Social Worker said that notwithstanding the number of persons she interviews in the course of a year in her work that she remembered this girl quite vividly by reason of the extent and persistence of her queries for information. At that interview in May of 1983, the Social Worker attached to the Hospital, made an appointment for the Mother to visit the Adoption Society which she, the Mother, had chosen and an interview took place on that day between her and G.M. the principal Social Worker attached to that Society. On the evidence, I am satisfied that prior to this meeting the Mother had discussed at some length her plans with regard to this child with the friend she had made, namely E.P. who lived in the same house and rented her accommodation in the town in which she was working. E.P. who was unmarried and aged about 31 years of age had a married sister who had adopted two children and who was a frequent visitor to the house. Her adoptions had taken place through the same Adoption Society as that chosen by the Mother when shown

the list by the Hospital Social Worker and it was for this reason that she chose that particular Society. Although the matter was in controversy, I am satisfied that she informed the Hospital Social Worker that her mother was the only member of her family who knew of her pregnancy that she was encouraged by her to contact other members of the family and to inform them but that she informed the Social Worker that she could not tell her father because his health was bad and there were other stresses in the family but she did not tell her that her mother had specifically forbidden her to tell her father.

G.M. the principal Social Worker of the Adoption Society concerned is a member of a Religious Order and has worked in the field of adoption as a qualified Social Worker for 18 years. She had an interview lasting about 40 minutes with the Mother on the 4th May 1983. Though there is a dispute about the contents and topics discussed in that interview I am satisfied that she informed the Social Worker then that she wanted the child adopted and told her that the child was expected on the 14th July. She told her about the suggestion of the father of the child that she should procure an abortion and her rejection of that. The impression she created on G.M. was of a confident and capable girl who knew her own mind. There was considerable discussion about the standards which the Society had in regard to adoption and what they looked for in adoptive parents. There was not a discussion at that meeting about any matter other than adoption. By arrangement, the Mother again visited G.M. for an interview on the 1st June 1983. She informed G.M. on that occasion that everything was going well with her ante-natal care. She discussed whether she would wish to see the baby in hospital and stated that she did not intend seeing the baby but that she would not panic if the baby was presented to her after the birth. She was, in the view of G.M., more sure than she had

7 -

been that adoption was the best for her child. I am satisfied again though the matter is in dispute that there was fully and amply explained to her by G.M. on that occasion the entire procedure with regard to adoption that before the child could be placed for adoption, Form 10 which is the form witnessing an agreement to place for adoption would have to be signed and that the Mother was particularly anxious that the child should be placed with prospective adoptive parents as quickly as possible after it had been born in the Hospital and expressly suggested to G.M. that she, the Mother, would 'phone her from the Hospital and would like to sign the form in the Hospital. She further informed her at that visit that she would be going home to the North of Ireland for several weeks after the child was born but would return after that to Dublin and be available to sign the form of final consent. At that interview at the instance of G.M. I am satisfied that there was a discussion about the alternative of keeping the baby but that the Mother resisted that discussion and tried to cut it short informing G.M. that she had already discussed that with the Hospital Social Worker. A question of fostering did not arise, largely because as a Social Worker with experience G.M.'s opinion is that any form of long-term fostering by which she means fostering for a year or more is not in the interest of any child. The Mother did agree, however, that if there was a delay in the placement of the child, that the child could be put in a nursery.

The child was overdue and the Mother was admitted to Hospital on 25th July 1983 and the child was born on the 27th July 1983. The delivery was normal and the child was healthy and normal and the Mother had no complications after the delivery. She was seen each day after her arrival to the Hospital by the Hospital Social Worker but these visits did not involve discussion of the future of the child but dealt with reassurance

to the Mother who was somewhat distressed and anxious at the delay in birth. The Mother did, however, inform the Hospital Social Worker after the birth of the baby that she was still feeling that adoption was right for her baby and that she did not have the baby with her or care for it because she did not want to get too attached to it, though she did go and see it and had a photograph of herself and the baby taken.

I am satisfied that as she had said she would, she 'phoned or caused a 'phone message to be sent to G.M. the Social Worker attached to the Adoption Society informing her of the birth of the child and asking her to come and see her. This she did on the 28th July, the day after the baby had been born, and had a general discussion with her not lasting very long and not dealing in detail with any matter. She then arranged at the request of the Mother that she would visit the next day bringing with her the form for agreement to place the child for adoption.

This she did and on the 29th July the form was signed by the Mother and witnessed by G.M. Again there is a dispute about the precise details of the conversation and discussion at that time but I am satisfied that G.M. explained to the Mother what the meaning and effect of a placement for adoption was and that in particular she explained to her that her further consent would be required; that that could be withdrawn at any time before an Adoption Order was made; and furthermore and most importantly, that after she had agreed to the placement of the adoption that the prospective adoptive parents could apply to the Court which could dispense with her further consent. The Mother then signed the form and repeated her request that the child should be placed with the prospective adoptive parents as soon as possible. There was a discussion prior to the signing of the form as to the

prospective adoptive parents whom the Society had in mind and I am satisfied that the Social Worker gave to the Mother as full as possible an account without identification of them, their situation including the fact that they had two older adopted children, and that they had been found by the Society to be extremely satisfactory and caring parents.

The Mother left the hospital on 31st July which was a Sunday. Prior to that she had been asked to give a name to the Infant whom it was intended to baptise, the Mother and all her family being practising Catholics and she being anxious that it should be baptised as a Catholic and also to provide immediate baby clothes for it. In evidence, the Mother told me that she resented both these requests but complied with them.

The Mother upon being discharged from hospital stated in evidence that she met her friend, Miss E.P. with whom she shared accommodation and they had a celebratory lunch and that she remained in Dublin for approximately a week and then returned to her family in the North of Ireland. The recollection of Miss E.P. on the other had was that after the celebratory lunch about which she agreed the Mother straight-away returned to the North of Ireland. I don't think this issue, which I found it difficult to resolve, affects the evidence in this case. On the 5th August 1983, which would have been the following Friday, the Mother called and interviewed G.M. at the Adoption Society premises. She called to ascertain whether the child had been safely placed with the prospective adoptive parents. The child had, in fact, been taken from the hospital to a Nursery on Monday, 1st August, and had not yet been placed though the prospective Adoptive Parents had

been informed and were ready to take care of the child. G.M. the Social Worker attached to the Adoption Society told me in evidence, and I accept it, that the reason she had delayed the placement notwithstanding the request of the Mother for an early placement was that she was anxious to obtain from the Mother a confirmation of her agreement to place the child for adoption. She was then told that the child would be immediately placed with the adoptive parents who had been described to her and she seemed reassured by that information. On the 12th August 1983 she rang G.M. and she was informed that the child had been placed with the adoptive parents and she seemed reassured by that information. On the 22nd August 1983, the Mother 'phoned the Adoption Society and, G.M. not being available, spoke to another Social Worker who gave evidence before me. I am satisfied that on this occasion the Mother stated that she was in good form that she just wanted reassurance about her baby's welfare and that she was told that all was well. She then said that she was definite about her decision about adoption but wondered whether it might be possible to see the child again before the Adoption Order was made if she felt strongly about that. It was explained to her although that question was not entirely ruled out that such an event would likely evoke deep anxiety in the adoptive parents which could be transmitted to the child. She said that she understood that and said that she simply needed reassurance and that she would 'phone G.M. for news later on. The following day G.M. 'phoned the Mother having missed her telephone conversation on the previous day and she appeared to be reassured that the baby was getting on well. On the 2nd September 1983 the Mother 'phoned again to speak to G.M. but she was not available.

There then arises what, in my view, is a fundamentally important piece of evidence. G.M. gave evidence, supported by a contemporaneous note made by her, that on the 6th September 1983 the Mother 'phoned

her that she informed her that she had got back her job in the North of Ireland and was starting on Monday, that she was coming to the hospital in Dublin on the following day the 7th of September and would sign the form of final consent. G.M.'s evidence is that that day the 7th of September 1983 the child would only have been just six weeks old, the statutory minimum period for the signing of a form of final consent and that in addition procedural formalities required to have a final consent available including the making of an application for adoption by the prospective adoptive parents and the granting to the case of a serial number by the Adoption Board were unlikely to be able to be completed by the following day. She informed, she says, the mother of these facts and felt that she would not be able to arrange for the signing of a formal consent on the 7th of September. The mother then informed her that she would come later on and do that.

The mother denies this conversation in its entirety stating that she cannot recall it occurring. She does so in the context of her evidence that at the time she signed the form 10 in the hospital that she fully understood that she was placing the child for adoption but that she knew in her heart that she would never give to that adoption the final consent and that as long as she didn't that she could get the child back when she had made her arrangements herself probably in a year or so. She further stated in evidence that she was anxious to place the child for adoption as it seemed to be the only way of putting it with a caring and proper family as distinct from in a nursery or institution.

I am driven to the conclusion that the account of this telephone conversation on the 6th of September 1983 given by G.M. is correct. Were I to conclude otherwise it would be necessary for me to come to the conclusion not only that her recollection was inaccurate but that she had actually invented something which never occurred at all, and furthermore that she had produced to me here in Court a note of her interviews with

the mother and telephone conversations with her which purports to be contemporaneous and which includes a note inserted in a different hand by the other Social Worker of the telephone conversation on the 22nd of August 1983 in which she has fabricated the discussion of the 6th of September 1983.

I am, therefore, satisfied as a fact that the mother on the 6th of September 1983 which was just short of six weeks after the birth of the child was offering to sign the form of final consent and had it not been for the unpreparedness of the Adoption Society to have that ready for her would probably have done so on the following day.

A limited number of further communications took place by telephone between the mother and the Adoption Society in the months of November and October of 1983 in which the mother was seeking reassurance about the well being of the child and was being given it. Eventually in December of 1983 the mother rang and contacted a member of the Adoption Society other than G.M. and asked about the child and also asked as to the possibility of obtaining a photograph of the child. This was arranged by G.M. after discussion with the prospective adoptive parents and was sent to the mother with a letter of the 19th of December 1983. That letter contained an account of how the child was getting on and was written by G.M. who had just seen the child. This letter was not acknowledged but it was received.

In the first three months of 1984 I am satisfied that G.M. 'phoned the home address of the mother on a number of occasions. She was, however, aware that possibly none of the members of the mother's family, except her own mother, was aware of the existence of the child and, therefore, would not state her identity or business on most occasions. She did not contact the mother. In March of 1984 G.M. wrote a letter to the mother at her home address asking her to get in touch with her. This undoubtedly

was because she had, for the first time, become apprehensive that the mother might not be going to give her final consent to the adoption, though the letter does not mention this.

The mother has denied receiving this letter and she had moved to a separate house of her own by that time. I am not satisfied that she received it, though I am satisfied it was sent.

In or about the month of June 1984 G.M. again rang the mother's home and on this occasion spoke to the mother of the family and being aware of her identity and of the fact that she knew of the child stated who she was, what her business was and that she was anxious to contact the mother so that she could sign the final consent. She was then informed that the mother had gone abroad on holidays and was in the process of considering what she should do about the child.

In July 1984 the mother, having 'phoned, arrived to the Adoption Society and interviewed G.M. and stated her intention of seeking to recover custody of her child. She asked G.M. to convey that request to the prospective adoptive parents and at G.M.'s suggestion, instead, wrote a letter to the prospective adoptive parents requesting the return of the child which G.M. delivered to them. I have carefully considered that letter and, in particular, one important paragraph of it in which the mother stated:-

"I signed the paper understanding that I was handing it over to adopted parents but did not have my mind made up if I was going to hand him over for good."

This concludes my findings of fact which are necessarily summarised on the evidence before me with regard to what I conceive to be the first issue in this case, namely, as to whether the mother has agreed to place the child for adoption within the meaning of Section 3 of the Adoption Act

1974. In S. .v. The Eastern Health Board in which I delivered Judgment on the 28th of February 1979 and which is unreported having quoted the decisions of O'Higgins, C.J., Walsh, J. and Parke, J. in G. v. An Bord Uchtala 1980 Irish Reports, I summarised my view of the effect of that decision by which I am, of course, bound in the following words:-

"Having regard to these decisions I am satisfied that the test which I must apply to each of the separate alleged agreements to place for adoption are that they must have been made freely with full knowledge of their consequences and under circumstances when neither the advice of persons engaged in the transaction nor the surrounding circumstances deprive the mother of the capacity to make a fully informed free decision. I am not, however, satisfied that evidence that in any particular case a mother either soon or later after the making of such a decision changed her mind is of itself evidence of the invalidity of the agreement to place."

Having carefully reconsidered the decision in G. .v. An Bord Uchtala and also the decisions to which I have been referred of my colleague McWilliam, J. in McC. .v. An Bord Uchtala 1982 ILRM and McF. .v. G. & G. & Others 1983 ILRM, I can see no reason to depart from my previous view with regard to what is the real issue under Section 3 of the Act of 1974.

On this issue so framed I have come to the conclusion that the mother did, within the meaning of Section 3 of the Act of 1974, validly agree to place her child for adoption. I am satisfied that I must, in reaching that decision, have regard, not only to the circumstances surrounding the actual signing by her of Form 10, but also to all advice and decisions which she had considered and made prior to that time and also to her conduct thereafter including statements made by her thereafter.

which touched on the question as to whether her agreement to place was a fully informed and valid agreement within the definition which I have quoted. G.M. stated in evidence that it was most unusual for her to accept or agree to the signing of a Form 10 within such a short time of the birth of a child as occurred in this case. She stated that she would not have done so in this case were it not for the two lengthy previous interviews she had had with the mother and the estimate she then made of the maturity and decisive nature of her mind and of the decision which she had reached. I accept this evidence as being her genuine attitude at that time and it is reinforced by her evidence which I also accept that notwithstanding an immediate availability of prospective adoptive parents that she did not, in fact, authorise the placing of the child with them on its discharge from hospital on the 1st August but rather kept it in a nursery until such time as further contact had been made with her by the mother confirming her attitude to the placement. This further contact, I am satisfied, took place on the 5th of August 1983.

I have very carefully considered the evidence consistently stated by the mother that whilst she was fully aware that she was agreeing to place the child for adoption that she was doing so under circumstances in which she knew she would never consent to its final adoption and in which, by implication more than expressly, she stated that she was not aware that without that further step on her part the child could ever permanently be adopted. In effect and without the expression being intended to be perjorative the mother's evidence is that she was making use of the adoption procedure so as to provide for her child the best possible care and custody for a period of possibly up to a year while she could organise her own life in such a fashion as to be able to recover custody and care of it. If she truly had that intention at the time she agreed to the placing of this child for adoption it would be inconsistent with a full understanding by her of the right of prospective adoptive parents

under Section 3 of the Act of 1974.

My acceptance, however, of the fact that on the 6th of September 1983 she sought to make an arrangement for the purpose of signing the final form of consent is wholly inconsistent with an intention of that description on her part at that time. I am, therefore, driven to the conclusion that she truly agreed to place this child for adoption within the interpretation of Section 3.

SECOND ISSUE ARISING

Having regard to my decision that the mother of the child has agreed to the placing of it for adoption so as to bring into operation Section 3 of the Act of 1974, the next issue which falls to be decided is as to whether it is in the best interests of the child for me to make an Order that it should remain in the custody of the prospective adoptive parents for a specified period and whether it is in the best interests of the child for me to make an Order that the consent of the mother to the adoption should be dispensed with by the Adoption Board. In his Judgment in G. v. An Bord Uchtala Walsh J., expressed the view that each of these two possible Orders must separately be decided upon. None of the other Judgments would appear to refer to that particular point in that decision.

On the facts of the present case, however, I am satisfied that there could not be any possible or arguable basis on which an Order for custody under Section 3 of the Act of 1974 should in my discretion be made by me unless at the same time I was making an Order dispensing with the consent of the mother.

On this issue I find the facts to be as follows:-

PROSPECTIVE ADOPTIVE PARENTS AND THEIR HOME

The prospective adoptive parents are both aged thirty-seven years and have been married for approximately thirteen years. They live in a good and sufficiently roomy house valued at about £25,000.00 and subject to a mortgage

of over £6,000 00. The husband is in good steady employment and the wife is and has at all material times been a wholetime mother and housewife. They have already adopted a son who is now aged approximately nine and a daughter who is now aged approximately six. Both of these children are healthy normal children who have, on all the evidence before me, done extremely well under the care of their adopted parents who have had each of them from a very young age. The younger of these two adopted children has been in the care of her parents since the end of 1978 and an Adoption Order in respect of her was made in April 1979. I am satisfied that shortly after the finalisation of that adoption the parents sought through the Adoption Society, with which I am concerned in this case another child which they were prepared to take on adoption. No child became available to them until August of 1983 when the infant was placed in their care on the 6th of August 1983. He has since that time been constantly in their care. For the first seven months of his life the infant, though not suffering from any serious or dangerous disease, suffered consistently from colics. This made him, I am satisfied on the evidence, a particularly difficult infant to rear and the prospective adopted parents informed me and I believe that for a considerable period there was so much trouble in trying to look after him at night that they evolved the system of one sleeping in a spare room so as to look after the infant and the other getting a night's sleep in rotation. Although, from time to time at present, the infant still suffers from colics, the consistent or persistent onset of this disease ceased after approximately seven months. I am satisfied on the evidence which I have heard including the evidence of Doctor McQuaid that this is not a serious condition with any longterm consequences and is something which frequently occurs in young children without any real medical explanation. I am also satisfied, however, that as far as this individual child is concerned it has had two consequences. It has made the child particularly close and clinging to its present custodial parents. Secondly, it is part, as I understand the medical evidence, of the

syndrome of what is known to the profession as a "difficult child." The child is admirably described by the prospective adopted parents as "a regular little bully" and is clearly assertive. I have evidence that he is not an easy child to leave for short periods to other child minders other than either of the two applicants for adoption. I have evidence, which I accept, that he relates extraordinarily well with the two elder children in the family who are particularly devoted to him. Those children notwithstanding their ages are already aware of their status as adopted children and have, I think with wisdom, been informed as to the possibility of this infant being taken from the care of their family. Doctor McQuaid expressed the view that any change of custodial care at this time which is when the child is fifteen months old and has been in the same care since it was ten days old would have immediate disrupting and harmful affects on the child's development with the significant risk of longterm damaging affects as well. Doctor McQuaid conceded in cross-examination that the fact that it is an assertive type of infant even at this age might make it more adaptable and less vulnerable than a sensitive or introverted child but expressed a separate fear that the difficulty of caring for it having regard to its innate personality as well as difficulties arising from the disruption consequent upon a change of custody would cause reactions in those trying to care for it which would endanger the child.

MOTHER'S PROPOSALS FOR THE CARE OF THE CHILD

I am satisfied that the mother has now acquired a house subject to a mortgage in an estate in a small community about twenty-two miles from where her family resides in the North of Ireland where she has been living since approximately March of this year. She is at present working at a good salary in a local catering establishment. She has a net income of £98.00 a week and after the payment of mortgage repayments and other overhead expenses has an income of just under £50.00 per week. If she were to

regain custody of her child it would be her intention immediately to cease employment and she would then be entitled to social welfare payments totalling just under £36.00 a week and to the payment by the Department of Health and Social Services in Northern Ireland of the amount of her mortgage and to the payment of an allowance towards repairs and insurance. She might also be eligible for grants for furniture or household items which need to be replaced. The house is at present furnished adequately and fully. The purchase of the house was arranged and secured with financial assistance from her own family. She has already made friends with one or two of her neighbours and is confident of their support should she have the tasks arising for a single parent. She would intend living on her own with the child and has, at present, no plans or ideas about marrying. She would expect that her sisters or brothers would constantly visit her and that she would constantly visit with her child at her family home which is, as I have said, twenty-two miles distance away. One of her sisters who is unmarried and has a three year old child is living approximately two or three miles from where she is presently residing.

One disturbing element in the proposals made by the mother for the care of this child is that up to the 1st of November of this year, notwithstanding her commencement of these proceedings in September 1984 the mother had not informed her father of the existence of the child and her original proposal undoubtedly was that she should reside with the child twenty-two miles from the family home in which her father resided and continue to conceal from him and possibly from other members of the family the existence of the child hoping that in time she would find it possible to apprise him of that fact and introduce him to the child. It was only, I am satisfied, when a Social Worker whom the mother contacted in the North of Ireland and in the area in which she is now residing, in July of this year, stated that she could not recommend the proposals as being suitable for the care of the child that at her insistence the

father was informed of the existence of the child and of the entire of these proceedings on the 1st November this year. I heard the father in evidence and I am quite satisfied that the secrecy and concealment from him was almost certainly mistaken and his attitude is caring and relaxed and, in my view, supportive towards the situation as he now knows it.

I have no doubt that the mother now genuinely expresses a deep affection for this child and that she is a determined person who is anxious to provide for it in the best possible way. I am also satisfied that, with the exception of my reservations concerning her priorities in failing to insist on informing of her father before such a recent time, she has faced up with reality to difficulties which will probably occur were she to obtain custody of the child and, in particular, was proposing a gradual transference of custody which showed that realisation.

I have very carefully considered the importance or potential importance of a blood link between the child and her parent which is referred to in the Judgments of Henchy J. and Kenny J., in G. v. An Bord Uchtala. In the evidence before me in this case, however, I find no strong or serious support for the importance of that as a feature in the future welfare of the child. Doctor McQuaid did not consider nor express any view that it was of significant importance. Miss Lefroy, an extremely experienced adoption worker who gave evidence on behalf of the mother expressed the view that in her experience, at least, it was not of importance unless there had been, after birth, a period of custody and care by the natural mother which formed an original bonding subsequently interrupted by placement in fosterage or for adoption.

Having very carefully considered all this evidence and the considerations which apply and accepting that the only standard which I am entitled to apply having regard to my decision that Section 3 of the

Act of 1974 is operative are the best interests of this child I have come to the conclusion that the best interests of this child would not warrant removing it from the custody of the prospective adoptive parents nor refusing to dispense with the consent of the mother to adoption. There are, in my view, many probable disadvantages and even more potential disadvantages in a transference of custody and I have been unable to delineate any real or solid probable advantage to the child in such a transference.

Lest, however, my decision in this difficult case should be appealed and lest the Supreme Court should conclude that I erred in law or on my view of the facts in holding that the mother had validly agreed to place the child for adoption I think it is proper that I should express a view with regard to the provisions of The Guardianship of Infants Act, 1964 which would then become material.

Firstly, I am satisfied that the mother, on the evidence before me, has neither abandoned nor deserted this child. What I am satisfied were her searching enquiries as to the type of home in which it would be placed with prospective adoptive parents, her concern that that should be done without an intervening period in any form of institutionalised nursery, her further and continuing enquiries as to its progress and as to how it was, all indicate a caring and concern for the welfare of this child which is wholly inconsistent with my understanding of either abandonment or desertion. I am, therefore, satisfied that the first part of Section 14 of The Guardianship of Infants Act, 1964 does not become operative. I see no evidence on which I could base any conclusion that the mother has so conducted herself that I should refuse to enforce her right to custody of this infant were that right not superseded by the provisions of Section 3 of the Adoption Act, 1974. The second half of Section 14, therefore, does not become operative either.

With regard to Section 16 although the mother has allowed the infant to be brought up by another person at that person's expense the considerations which I have already set out indicate to me that I could not be satisfied that she was unmindful of her parental duties in so doing.

I am, therefore, satisfied that if it were concluded on appeal that Section 3 of the Act of 1974 did not become operative; or that it was not in the best interests of the child that an Order dispensing with the mother's consent to its adoption should be made; or if the Adoption Board does not make an Order for the adoption of this child by the prospective adoptive parents, then in any one of such three events there is nothing in the evidence before me which would lead me to conclude that the mother is not entitled to custody of this child.

I will, therefore, make an Order pursuant to Section 3 of the Adoption Act, 1974 as follows:-

- (a) giving custody of the child to the applicants J.M. and M.M. for a period of twelve months from this date and,
- (b) authorising the Bord to dispense with the consent of the mother to the making of an Adoption Order in favour of the applicants during that period of twelve months.

approved.
J. A. Finlay
11.11.1985