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THE HIGH COURT

1984 No. 591 Sp/Ct.5

IN THE MATTER OF THE ADOPTION ACTS, 1952 TO 1976
AND IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT, 1964
AND IN THE MATTER OF L. A., AN INFANT

BETWEEN

R.C. AND P.C.

Plaintiffs

and

AN BORD UCHTALA AND
ST. LOUISE'S ADOPTION SOCIETY

Defendants

THE HIGH COURT

1985 No. 20 Sp./Ct.6

IN THE MATTER OF THE ADOPTION ACTS, 1952 TO 1976
AND IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT, 1964
AND IN THE MATTER OF L. A., AN INFANT

BETWEEN:-

M. M.

Plaintiff

and

R.C. AND P.C. AND
AN BORD UCHTALA

Defendants

JUDGMENT of O'Hanlon J. delivered the 8th day of February 198

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These two sets of proceedings were heard together, and this judgment is common to both. In the first action the proposed adoptive parents of the infant, L.A., have applied for an order under section 3 of the Adoption Act, 1974, giving custody of the infant to them for such period as the Court may determine, and authorising the Adoption Board to dispense with the consent of the natural mother to the making of an adoption order in favour of the Plaintiffs. There is a further claim to custody of the infant pursuant to the provisions of the Guardianship of Infants Act, 1964, with particular reference to sections 14 and 16 of that Act.

In proceedings brought by the natural mother of the child, she claims custody of the child in her capacity as mother and guardian.

The mother was born in 1963. She is unmarried. The child was born on the 11th February 1984, and is now almost one year old. The relationship between the mother and the father of the child was one based on mutual friendship and attraction, but the mother does not appear to have contemplated marriage with the father, nor was I told that there had been a proposal of marriage from his side. Her present attitude towards him is that she would wish to continue on friendly terms with him, but would not wish to marry him. The father did not give evidence in the course of the present proceedings.

The mother was living at home with her parents while she was expecting the baby but did not confide in her mother

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until the pregnancy was about five months advanced, or even longer. Both her parents were, naturally, very upset to hear that she was about to have an illegitimate baby, but there were no recriminations and they appear to have been sympathetic and supportive at all times. As to whether she should keep the baby herself, or give it for adoption, they left the decision to herself without attempting to coerce her in any way, and it was never suggested that she could not bring the baby home if she wanted to do so. The family live in a fairly substantial four-bedroomed house in a Dublin suburb. The mother is the only daughter of her parents and she has four brothers whose ages now range from 22 down to 15, all of whom are still living at home.

The mother's parents are both in employment - her father being a service manager earning between £8,000 and £9,000 per annum and her mother doing part-time work for which she is paid about £70 per week, and which involves working away from home from 9.30 a.m. to 2 p.m. five days per week.

The mother herself has worked abroad as an au pair for over a year and looked after two young children, with whom she got on very well; since returning to Ireland she has pursued a career in dress designing, and trained as a machinist for a year and a half until she had to give up this work because of the impending arrival of the baby. She has done a good deal of work with textiles from her home and hopes eventually to set up her own factory and employ others to manufacture to her own designs.

If the baby, which is now in the custody of the adoptive parents, were to be returned to her, she would hope to bring

it up in her own home, and hopes that in the course of time she may marry someone who would love her sufficiently to accept her child as a member of the new family which would come into being on her marriage.

While the mother was expecting her baby she attended the Coombe Hospital periodically, and the hospital put her in touch with a social worker, Rosaleen Maguire, who discussed her problems with her, and who was described by the mother as being "very helpful". She told Rosaleen Maguire that she wanted to have the baby adopted after it was born, and Rosaleen Maguire then put her in touch with another social worker, Rose Smith, who was available in the mother's own area of Dublin. The mother also went, on her own initiative to St. Patrick's Guild, with a view to arranging for the adoption of the baby.

Rose Smith called on the mother in January 1984, and they discussed what courses were open to the mother after the birth of the baby. The mother was advised to make of her own list of the advantages and disadvantages of adoption, and then make her decision having considered all the options which were open to her. In order to shorten matters I may say that I have been favourably impressed by all the social workers who were in contact with the mother both before and after the birth of her baby, and continuing up to the time of her visit to the Adoption Board to sign the necessary documents to lead to adoption. I think she was treated at all times with great care and consideration and sympathy and I am not prepared to accept the suggestion made in the course of the case that she was in any way pressurised to

make or persevere in the decision to place the child for adoption.

In the weeks leading up to the birth of the baby the mother said she was very worried about the stigma and disadvantages of illegitimacy which would attach to the baby if she elected to keep it and mind it herself; "it seemed like I would never cope - I felt inadequate". At that stage she felt that adoption was the best course.

The baby was born on the 11th February 1984. Some days later the mother had further discussions with Rose Smith. She saw the baby every day while she remained in hospital. It was arranged that the baby would be placed with a foster-mother for the time being and a suitable family in Bray was chosen for this purpose. The mother, immediately after leaving hospital, developed back trouble of such severity that she had to be taken home by ambulance after attending her general practitioner, and thereafter spent most of the following month in bed. During this period she signed Form 10, the initial form of consent to placement of the child for adoption. Its meaning and effect were fully explained to her and she understood what she was doing. She said, however, that she never really wanted to give the baby for adoption. "I was forcing myself - I felt physically I wouldn't be able to cope".

When she had recovered sufficiently from her back trouble she went to see the baby and the foster-mother in Bray and thereafter came out three or four times a week while the baby remained in fosterage - that is, until the 18th April. In the meantime, the Plaintiffs in the first

proceedings had been chosen as prospective adoptive parents, and at the mother's request a meeting was arranged at which she and they attended, along with two of the social workers involved in the case. This meeting went off very well; the mother was happy about the people who were proposing to adopt her child, and discussed with them what she wanted for the baby's future - a two-parent family; a good religious upbringing; a home where the mother would not go out to work during the day; encouragement for any musical or artistic ability the child might evince as he grew up. She was reassured on these and other topics, even to the extent of the adoptive mother agreeing to give up her employment as teacher to look after the child.

The mother described her feelings at that stage in the following terms: "I was satisfied with them, and forcing myself to agree. I felt I was doing something I shouldn't do. I had no confidence in myself to look after the child." The social worker who accompanied her said: "She was sad, but contented about the adoptive parents when we left. She felt it was in his (the baby's) best interest to be placed for adoption." Custody of the child was then handed over to the adoptive parents on the 18th April 1984, and he has been in their care ever since.

Rose Smith, the social worker, remained in contact with the mother and saw her on the 25th April, 9th May and 23rd May. The mother had gone back to work in a very prominent ladies' fashion firm, and at that stage conveyed to the social worker that she would prefer to break off contact with her until the time came to sign the final form of consent

to adoption. This came up for discussion in July, 1984, when Rose Smith again contacted the mother, although not without some difficulty, and on the 17th July produced the form, explained its meaning and effect to the mother, and left the matter over to give her ample time to consider what she should do. The mother said she wanted to complete the form, but a further delay took place while an appointment was being made with the solicitor for the Eastern Health Board and the 20th August was eventually fixed as a date suitable for all parties. On that date, Rose Smith called to see the mother at her home in the morning, the appointment with the solicitor having been made for the afternoon. "She wasn't certain she wanted to sign. I discussed at length with her how and why she had made the decision, and told her it was up to herself if she did not feel ready to sign. She said she wanted to sign, and I arranged to call back that afternoon."

There followed the signing of the form in the presence of the solicitor for the Eastern Health Board, Mr. Denis Greene, who acted as Commissioner for Oaths in the signing of the sworn Consent to Adoption. I am satisfied that he went through it carefully with the mother before she signed, and that this procedure was repeated when she went to the Adoption Board and was interviewed by Mary Byrne, a Welfare Officer.

Ms. Byrne said: "I had no impression that she was being pressurised. She seemed to have made up her mind that adoption was the best course. She would not consider marrying the baby's father. She couldn't cope on her own. She felt very

strongly that the baby should have two parents. She said she had thought of changing her mind a couple of months previously, but had not done so because it would not have been good for the baby." That was Monday, 20th August. On the following Friday, August 24th, the mother 'phoned Rose Smith to say she had changed her mind. They met on the following Monday and the mother then said that she felt she could not live with her decision and wanted to withdraw her consent. She followed this up with a letter to the Adoption Board, dated 27th August, 1984, saying (inter alia): "After a lot of serious thought, I feel now that it is impossible for me mentally to go ahead with the adoption. I know that by signing the final consent I have already made a commitment to the adoptive couple. However, I would very much like to withdraw that consent."

In September, the adoptive parents commenced their proceedings seeking an order authorising the Adoption Board to dispense with the mother's consent, and in January, 1985, the mother's proceedings seeking custody of the child were instituted.

The situation of the adoptive parents must now be considered. They live in Co. Meath, where the husband carries on a successful business as publican. He is in his late-thirties and his wife is in her early-thirties. They have no children of their own, and apparently they have no real prospect of having children in the future. They married in August, 1980 and in August 1983 applied to adopt a child. The wife trained as a teacher and had experience teaching

abroad as a missionary teacher, as well as having some experience in Ireland looking after autistic children. She was employed as a teacher in a local school until the baby was placed with them for adoption and she then gave up her work to look after the child on a full-time basis. They have a comfortable home, with friends and related children living nearby who can provide a happy environment for the adopted child if left in their care and custody. They are both devoted to the baby, who has now been in their care for almost a year and seem to be ideally suited to the role of adoptive parents in every way. The baby has thrived while in their care, although suffering from a chest ailment which can be very distressing at times, and which has not yet yielded to treatment. If he becomes upset or agitated, this condition which is characterised by noisy breathing, becomes accentuated, but in general he is a happy, good-humoured and normal baby in every way. It is quite obvious that it would be a heart-breaking experience for these good people were they to lose the child at this stage, having loved and cared for him as their own child over the past year.

As to the probable consequences of taking the child from his adoptive parents at this stage and giving him back to the care of his natural mother, there was a conflict of opinion as between the consultant psychiatrist called on behalf of the adoptive parents - Dr. Una O'Donnell - and the consultant psychiatrist called on behalf of the natural mother, - Dr. Paul McCarthy.

Dr. O'Donnell saw the baby in the company of his adoptive

parents in October 1984. She was very favourably impressed by their total concern for him, and with the child himself, whom she described as a very active, bright child. The baby had a noticeable wheeze, and when left alone with her, at her own request, the baby became very distressed and the wheeze, or "strider" took about 15 minutes to settle down after the parents came back into the room again. She felt the condition was a stress-related one which might be seriously aggravated if the baby were taken from the care of his "psychological parents" - the adoptive couple - and given back to the natural mother.

She said the baby was very definitely bonded to the adoptive parents; that this takes place in the first six months of the baby's life, and if broken the child may be marked for life both physically and psychologically with a tendency to become a superficial adult, unhappy, and unable to relate on a deep level to another human being. She felt that boys were more vulnerable than girls in this respect, and her prognosis for the child's future, if taken from the adoptive parents at this stage, was a very gloomy one.

Dr. McCarthy was unable to concur in this prognosis. He felt that Dr. O'Donnell's fears could be borne out in the case of infants who had to spend long periods in orphanages or other institutions, or confined in hospital and cut off from their parents for a long time in their early childhood, but could not be substantiated where a baby was moved from one caring and loving environment to another - there was no reason to suppose that the child would not form a new bond with its natural mother. He accepted that there would be an initial period of stress and upset for the baby, but did not

anticipate that it should continue for more than a few days, and he was firmly of the view that there should be no long-term ill-effects if the natural mother and her family could provide the loving and caring environment which the child needed for its proper development.

The maternal grandmother gave evidence that she and her husband were whole-heartedly behind their daughter in seeking the return of the child, and would provide a home for her as long as she needed one and would support her in every way in looking after the baby if the mother's claim prevailed over that of the adoptive parents.

The mother's proposal is that she should continue to work from her home - she is already making a modest income by this means - and look after the baby, and endeavour to build up her business until she could employ staff and work in a largely supervisory capacity. She was described by different witnesses as a very talented young lady, who should succeed in her chosen career and Dr. McCarthy felt she was now being quite realistic in working out her possible future as an unmarried mother with a child to care for. The mother in explaining her decision to sign the final consent form, said "After I went back to work in April, I had a lot of time to think and I began to think a lot more clearly. I talked to a woman at work and I had very serious doubts (about adoption) I thought my doubts would go away and I would feel I had done the right thing when I signed the final consent, but this didn't happen. I had changed my mind, but panicked when I went to sign the final consent, and I felt the doubts would go away, and I did sign."

Prior to the enactment of the Adoption Act, 1974, the

natural mother could withdraw her consent to adoption at any time up to the making of the adoption order, and if she did the Adoption Board were deprived of jurisdiction to make the order. They could dispense with consent only in cases where the person whose consent was needed was incapable by reason of mental infirmity of giving consent, or could not be found. In some cases the natural mother kept postponing the giving of her final consent indefinitely, and adoptive parents were left in the agonising situation of becoming more and more attached and devoted to the adopted child, while never knowing when the child might be taken from them again. The amending Act of 1974 helped to provide a remedy for this very distressing situation by enabling the High Court, in an appropriate case, to authorise the Board to dispense with the consent of any person whose consent to the adoption would otherwise be necessary, "if it is satisfied that it is in the best interests of the child so to do."

Some effort was made in the present case to suggest that the apparent consent of the natural mother to the making of the adoption order was not a true consent, and that it was vitiated by pressure applied to her by one of the social workers or by other causes, but I have no difficulty in rejecting this suggestion, and insofar as it relates to the involvement of any of the social workers in the case I have already indicated that I regard it as an unfair and unworthy suggestion to put forward.

Undoubtedly, the natural mother's decision to place her child for adoption was affected by other circumstances which bore heavily on her at the time - the deep depression which affected her prior to and after the birth of the baby

and which even led her at one stage to contemplate abortion as a possible solution to her problems; the painful back condition which totally incapacitated her for several weeks after the birth of the baby; the uncertainty about her own future as an unmarried mother, and about her ability to make a living and fend for herself, while perhaps having to care for a baby at the same time. But I agree completely with the reservations expressed by Mr. Justice McWilliam about the weight to be given to such considerations, in McF. .v. G. & Ar (1983) ILRM 228, at p. 232/233:

"As regards the other aspects, fear, anxiety, poverty or other deprivations, I am of opinion that these considerations must be considered from a practical point of view. The mere fact of having an illegitimate child causes stress and anxiety and, if there were plenty of money, arrangements could be made for care and accommodation without the necessity of involving the Adoption Board at an early stage. But in most cases, there is stress and anxiety and there is not sufficient money and there is not adequate accommodation, and if absolute rules as to fear, stress, anxiety or poverty were to be applied there could hardly be a case found in which one or other of them would not be present so that it could be argued that a consent was not valid."

In the present case I am satisfied that the natural mother's consent to the placing of her child for adoption must be regarded as a free consent given in the full knowledge of the consequences following upon the placing of the child for adoption. I accept that she was torn by indecision at all

stages, and fighting to overcome a strong maternal instinct, but I am of opinion that she concluded that, when one looked objectively at her own circumstances, the best thing for the baby's future was to surrender it to the care of a good and loving couple who would adopt it as their own child.

The intervention of the natural mother by withdrawing her consent to adoption before an adoption order was made by the Adoption Board brought into play the provisions of section 3 of the Act of 1974, once they were invoked by the adoptive parents. The correct approach to the interpretation of these provisions has been discussed in several judgments, notably, S. v. An Bord Uchtala, (Finlay P. - 28th February 1979); G. v. An Bord Uchtala, (1980) IR 32, and the decision of McWilliam J. in McF. v. G. & Others, already referred to. The impact of the Constitution on the statutory provisions has never been fully clarified, but in my opinion the constitutional guarantees need not cause any great difficulty unless a situation arises where there is a suggestion of conflict between the rights of the mother and those of her child. I do not find that such a conflict exists in the present case, and therefore I propose to decide the action brought by the adoptive parents by a straightforward application of the terms of section 3 of the Adoption Act 1974.

I start off on the basis that the natural mother's consent is a prerequisite to the making of an adoption order, and that the consent is not forthcoming in the present case - having been given, but having been withdrawn before any order was made in reliance upon it. The High Court can only relieve from this requirement when it is satisfied that it is in the

best interests of the child so to do, and this appears to me to throw the onus of proof on the applicants for an order under the section to satisfy the court, as a matter of probability, that this is the true situation.

I have come to the conclusion that it is very hard to resist the claims of the natural mother in the present case. The adoptive parents appear to be as good a choice as one could make when placing this child for adoption but I cannot help feeling that a baby and growing child would always be better off with its natural mother if she is a devoted and concerned parent and can provide in a reasonable manner for the physical as well as the emotional needs of the child. If too long a period is allowed to elapse before the return of the child from the adoptive parents is sought, I accept that the bonds of attachment between the child and its psychological parents may have been so strongly formed as to be incapable of being broken without lasting damage to the child's personality, but I do not think, after carefully reviewing the conflicting medical testimony in this case, that that point of no return has yet been reached. I am prepared to act on the view expressed by Dr. McCarthy that the child should do well, if left with the adoptive parents, but should do at least as well if returned to the natural mother without further delay. If this is the correct view of the situation then the unfortunate adoptive parents cannot satisfy the onus of proof which they would have to meet in order to qualify for the relief they seek under section 3 of the Adoption Act, 1974. The evidence has satisfied me that the natural mother was longing to keep her baby from the first time she saw him in

the Coombe Hospital, and that it took the signing of the final consent to bring her face to face with the true situation - that she wanted desperately to keep the baby herself, and that it could be done if she were sufficiently committed and determined, and prepared to accept all the distress and difficulties which inevitably face the unmarried mother who seeks to bring up her own child and provide for her own needs at the same time. That is now her decision and I think that it is in the best interests of the child that she should be allowed to do so.

If the change is to be made, every week that goes by makes it more difficult to achieve it successfully. Once again I accept the view expressed by Dr. McCarthy that the transfer, if it is to take place at all, should take place immediately, and without protracting the procedure in any way, no matter how painful the break must be for the adoptive parents, and no matter how distressing the transition may be for the baby in the short-term.

The natural mother cannot be said to have abandoned or deserted her baby, or to have acted at any time in such a way as to suggest that she was unmindful of her parental duties. She is the guardian of the infant and a fit person to have custody of the infant and I consider that it is wholly consistent with the welfare of the child to return it to the natural mother at this stage.

I therefore find it necessary to refuse the application of the adoptive parents for relief under section 3 of the Adoption Act, 1974, and to award custody of L.A., the infant named in the title of these proceedings, to his natural mother.

in accordance with the provisions of the Guardianship of Infants Act, 1964, the transfer of the child to her custody to be effected with the least possible delay.

I conclude by expressing my deep sympathy for the couple who have sought to adopt the child and my hope that this shattering experience will not deter them from considering adoption again in the future. The evidence of the social workers was to the effect that the withdrawal of consent to adoption by the mother at such a late stage was almost unknown to them in their general experience of adoption procedures, and this knowledge may give the Plaintiffs the courage to try again in spite of the - for them - disastrous outcome of their first effort to provide a home and family for a child in need of care.

While the adoptive parents must now feel that the mother of the child has repaid their generosity and unselfishness by causing them much distress and unhappiness, I think it would be a wonderful gesture on their part if they could bring themselves to co-operate in every way to make the transfer of custody as painless as possible for the child concerned. For example, if the adoptive mother could bring the child to the natural mother's home and actually live there for a few days while the child became accustomed to his new surroundings and to being handled and looked after by people who initially will be strangers to him, it would seem to be an obvious way to minimise the stress and strain for the child. It would also give an opportunity to make the natural mother aware of the routine as regards feeding, clothing and other matters to which the baby is now accustomed. These are all

matters on which the parties could be advised by the expert counsellors who have been involved in the case already, but I accept that it would involve what may be a superhuman effort on the part of the adoptive parents to participate in such procedures at the very moment when they have to give up custody of the child, and I merely make the suggestion in the hope that they may find it in them to be able to comply with it.

R. J. O'Hanlon.

R.J. O'Hanlon
8/2/1985.

THE HIGH COURT

1984 No.

Sp.

R.L. & ANOR. -v- AN BORD UCHTALA & ORS.

M.M. -v- R.L. & ANOR. & AN BORD UCHTALA

Authorities relied upon by R.L. & anor:

Adoption Acts 1952 to 1976
especially sections 2 and 3 of 1974 Act and section 4 of
1976 Act

Adoption Rules, 1976 (S.I. No. 216 of 1976)

Adoption Rules, 1984 (S.I. No. 134 of 1984)

G. -v- An Bord Uchtala [1980] IR 32

S. -v- Eastern Health Board, Mr. Justice Finlay, 28.2.1979

McC -v- An Bord Uchtala [1982] I.L.R.M. 159

McF -v- Sacred Heart Adoption Society [1983] I.L.R.M. 228

B. & Anor. -v- An Bord Uchtala, Mr. Justice Barron, 18.2.1983

Kelly, The Irish Constitution 2 ed. pp 624-628

A.H. & Anor. -v- An Bord Uchtala, Mr. Justice McWilliam,
25.4.1983

M. -v- M. & Anor, Mr. Justice Murphy, 2.12.1982

M. & Anor. -v- An Bord Uchtala, Mr. Justice Finlay, 27.11.1984

Article 40, section 3

W.(P) -v- W(A), Mr. Justice Ellis, 21.4.1980 at pp