

2003 CarswellAlta 8, 2003 ABPC 3, 8 Alta. L.R. (4th) 268

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Alberta (Director of Child Welfare) v. H. (C.)

IN THE MATTER OF THE CHILD S.H., BORN JULY 24, 1994 A CHILD WITHIN THE MEANING OF THE
CHILD WELFARE ACT

(Alberta) The Director of Child Welfare (Applicant) and C.H. (Respondent)

Alberta Provincial Court

Carruthers Prov. J.

Judgment: January 6, 2003

Docket: Calgary N17059

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Counsel: *Ms V. Faulkner*, for Applicant

Ms D. Castle, for Respondent

Subject: Family

Family law --- Children in need of protection — Application for permanent custody — Miscellaneous issues

Child was made permanent ward with access by mother to be at discretion of Director of Child Welfare — Child had special needs and it was anticipated at time of making of permanent guardianship order that she would not be easily adoptable — Access to mother was continued for that reason but access was not exercised by mother — When prospective adoptive parents were found, mother requested access by way of annual letter and picture — Prospective adoptive parents opposed access by mother on basis that it could inhibit adoption as provision of annual letter and photograph could place adoptive parents in untenable position regarding child — Director applied to vary order by deleting access provision — Application granted — Primary goal of Child Welfare Act was to find adoptive home where children may reside permanently and not to maintain children in care of Director of Child Welfare permanently — Adoption was in child's best interests — Not open to court to assess reasonableness or unreasonableness of request made by the biological mother — Assessment was to be made of effect of request on mind of prospective adoptive parent — From perspective of adoptive parents, request for access would "affect course of" adoption and therefore would interfere with it — Section 72 of Act provided that on adoption, for all purposes child becomes child of adoptive parent and all connection with biological parent ceases — Court may not vary that provision to provide for even limited connection between biological parent and child — Child Welfare Act, R.S.A. 2000, c. C-12, s. 72.

Cases considered by *Carruthers Prov. J.*:

Alberta (Director of Child Welfare) v. S. (N.A.), 2000 ABPC 66, 2000 CarswellAlta 456 (Alta. Prov. Ct.) — referred to

C, Re, 2 R.F.L. (5th) 358, 1999 CarswellAlta 1126, 74 Alta. L.R. (3d) 1, (sub nom. "A" (Re)) 181 D.L.R. (4th) 300 (Alta. Q.B.) — referred to

S. (C.R.M.), Re, 1996 CarswellAlta 278 (Alta. Prov. Ct.) — referred to

S. (V.) v. Alberta (Director of Child Welfare) (August 6, 1996), Doc. Edmonton 9603-09040 (Alta. Q.B.) — referred to

Statutes considered:

Child Welfare Act, R.S.A. 2000, c. C-12

Generally — considered

s. 2 — considered

s. 33 — referred to

s. 34(8) — considered

s. 34(12) — considered

s. 34(13) — considered

s. 34(14) — considered

s. 72 — referred to

s. 75 — considered

Words and phrases considered:

adoption

. . . I interpret the word adoption to mean not just the mechanical process of the adoption but also the development of the attachment and relationship between the adoptive parents and the child.

APPLICATION by Director of Child Welfare to vary permanent guardianship order by deleting access provision.

Carruthers Prov. J.:

1 S.H. was made a permanent ward by Order of the Court on May 24, 2000. That Order provided that access to the child shall be at the discretion of an Alberta Child Welfare Director.

2 The Director of Child Welfare now brings an application to vary that Order by deleting the access provision. The reason for such application is that the child, now eight years old, has been matched with adoptive parents.

3 The child has special needs and at the time of making the Permanent Guardianship Order (PGO), it was anticipated that she would not be easily adoptable due to her special needs. Access to the mother was therefore continued although such access has not been exercised and there has been no contact between the child and her biological mother since sometime prior to the granting of the PGO.

4 The Child Welfare worker described the child and her situation as follows:

S. is a very nice looking young lady, she is very open and forthright, she's honest. She's very polite, S. has a lot of challenges, she has speech and language deficits that have largely been overcome through therapy, however, very significant vocabulary deficit, which they're still working with. She was diagnosed with Attention Deficit Disorder and is on Ritalin just during the week, it helps her to focus and has made a tremendous difference in school.

She has been diagnosed by Metagene (phonic) Clinic with a neuro-behavioural disorder. We have an alcohol exposed child. In layman's terms, that means S. does have significant deficits such as she has serious emotional behavioural social challenges that she has, you know, even on Ritalin. Is easily distracted, has a lack of background memories or information. She has limited common sense in decision making. She has deficits in social judgment, she has — has difficulty learning from past experiences, she easily is over excited, over stimulated. She internalizes and externalizes a lot of her — the — layman's terms, what Dr. Johnson said was that with a diagnosis of that, that it is at this time too early to distinguish whether the cause is environmental, genetics or exposure to alcohol.

5 The biological mother consents to the adoption but has requested that she have contact with the child by way of an annual letter and a picture of the child sent to the post-adoption registry in Edmonton. She has taken the position that it appears that the child is doing well and she would like the adoption to proceed, but she just wanted some information to know that the child is doing well (Transcript, 2:21-25).

6 The prospective adoptive parents did not appear but have tendered a letter through the Child Welfare worker as follows:

Sept. 19, 2002.

We are adamantly (sic) opposed to "Access". It is intimidating, makes us feel uncomfortable and is causing stress to us. We never planned to be involved with the birth family, as stated in our Home Assessment. "Access" could inhibit this adoption. "Access" would not be in the best interest of our family.

Sincerely,

The Adoptive Parents.

7 The applicable provisions of the *Child Welfare Act (CWA)* are as follows:

Matters to be considered

2 A Court and all persons shall exercise any authority or make any decision relating to a child who is in need of protective services under this *Act* in the best interests of the child . . .

Permanent guardianship order

34(8) On making a permanent guardianship order or at any time during its term, the Court, on the application of a director, a former guardian of the child, the child if the child is 12 years of age or older or any other person with whom the child has a significant relationship, may make an order prescribing the access to be provided between the child and the former guardian or that other person.

(12) The Court shall not make an order under subsection (8) unless it is satisfied that the access provided by the order will not interfere with the adoption of the child.

(13) If an order is made under subsection (8), a director, the child if the child is 12 years of age or older, or the person to whom access is provided in the order may apply to the Court for a review of the order.

(14) On hearing an application under subsection (13), the Court may continue, vary or terminate the original order.

8 In addition section 75 *CWA* creates a comprehensive procedure for matching applications for voluntary disclosure of identities of adopted persons and applicants who are part of the biological family of an adopted person.

9 I have also considered a number of cases referred to me by counsel and cases which I have located independently. In particular I have considered and followed *S. (V.) v. Alberta (Director of Child Welfare)*, [1996] A.J. No. 708 (Alta. Q.B.); *Alberta (Director of Child Welfare) v. S. (N.A.)*, [2000] A.J. No. 562 (Alta. Prov. Ct.); *C, Re* (Alta. Q.B.); *S. (C.R.M.), Re*, [1996] A.J. No. 336 (Alta. Prov. Ct.).

10 Additionally counsel for the respondent biological mother referred me to some articles relative to the concept of open adoption which, while interesting, were not of particular relevance to this case.

11 The scheme of the *CWA* provides that children in need of protective services come into the care of the Director. There are three levels of intervention in the family of which PGO is the most intrusive. A child cannot be in care of the Director on a temporary basis for more than two years, with the provision that there may be limited extensions in certain circumstances (section 33). A child is therefore entitled to permanency within a reasonable time whether that be in the care of the Director or placement in an adoptive home.

12 From sub-section 34(12) *CWA* I infer that adoption appears to be the preferred option.

13 Adoption may not forever foreclose contact between an adopted person and a family member as provisions are made in section 75 *CWA* for the creation of a post-adoption registry to which parents and children may voluntarily subscribe.

ANALYSIS

14 Firstly I find that the test to be applied in a s.34(13) application is the same as the test in s.34(8); that is, the test found in s.34(12): that the Court shall not make an Order under sub-section (8) unless it is satisfied that the

access provided by the Order will not *interfere* with the adoption of the child.[my emphasis]

15 I find that reading the *CWA* as a whole and applying a purposive approach to its interpretation, the primary goal of the legislation is to find an adoptive home where the children may reside forever and not to maintain children in the care of the Director of Child Welfare forever.

16 The first test is to determine whether the termination of access is in the best interests of the child. I find that it is in the best interests of this child that she be adopted. This point was conceded in argument by counsel to the biological mother of the child. It is also consistent with the scheme of the *CWA*. Given the condition of the child and the preparedness of the potential adoptive parents to proceed the test would be satisfied even if the biological mother had maintained her access to the child and had not conceded the point.

17 Having thus found that it is in the best interests of this child to be adopted the question left is whether the mother's request for an annual letter and picture to be forwarded to the post-adoption registry, constitutes interference with the adoption.

18 The prospective adoptive parents did not appear at the hearing, wishing to preserve their anonymity, but through their letter and through their discussion with the Child Welfare worker it is clear that they felt that the provision of that information would put them in an untenable position vis-a-vis the child. The Child Welfare worker testified that they were of the view that if they provided the information to the biological mother and did not tell the child then the child, in later life, might ask what else had been withheld; and if they told the child that they were providing the information to the biological mother then the child might be encouraged to seek to reconnect with her biological parent prior to the time she was an adult and thereby create conflict within the adoptive home.

19 On reflection it is my view that the question of whether there is or is not interference is a subjective test. The phrase must be interpreted as if the words "in the mind of the adoptive parent" were part of the section.

20 The scheme of the *CWA* also inclines me to the view that the word interference should be interpreted broadly rather than narrowly. A number of definitions of the word were offered, both in argument and by reference to cases, but I prefer the definition which I found in the Shorter Oxford English Dictionary, Oxford University Press 1973, as follows:

Interference of things, activities, etc.: — to come into collision or opposition so as to affect the course of . . .

21 Therefore it is not open to the Court to assess the reasonableness or unreasonableness of the request made by the biological mother but rather the Court must assess the effect of the request on the mind of the prospective adoptive parent. I find from that perspective that the request for access would "affect the course of" the adoption and therefore would interfere with it.

22 In this context I interpret the word adoption to mean not just the mechanical process of the adoption but also the development of the attachment and relationship between the adoptive parents and the child.

23 The *CWA* is clear that on adoption for all purposes the child becomes the child of the adoptive parents and all connection with the biological parent ceases (s.72). It is not open to the Court therefore to vary those provisions to provide for even a limited connection.

24 Finally I have considered the provisions of section 75 *CWA*. There are provisions there established that if

the biological mother wishes she may provide information to the post-adoption registry, and the adopted person may, upon reaching the age of majority, provide information to the registry and thereby contact may be established.

25 In the result the application of the Director should succeed and the application to terminate access be granted.

Application granted.

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