

D.D

v AN BORD UCHTALA

1983 No. 601Sp. Ct. 5

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THE HIGH COURT

IN THE MATTER OF THE ADOPTION ACTS 1952/1976

BETWEEN:-

D.D. AND G.D.

Plaintiffs

and

AN BORD UCHTALA AND ST. LOUISE ADOPTION SOCIETY

Defendants

and

B. McG.

Notice Party

Judgment of Mr. Justice Murphy delivered on the 3rd October, 1984.

As in all adoption cases this is a very touching and tragic matter. It does, however, possess certain features which I find very comforting.

The tragedy started with the unhappy childhood of the natural mother. She was an orphan before she was ten years of age and she was brought up with relatives who were not sympathetic to her and who were unable or unwilling to provide adequately for her financial means. This unhappy background may well explain her subsequent misguided conduct. As a young woman she had a number of children outside of wedlock. Thankfully, current thinking and social reaction is more compassionate and supportive than it once was and there is not now the callous indifference to unmarried mothers that once prevailed. On the other hand I would not like to suggest that society does accept or should accept the birth of children outside of marriage as the norm. Our Constitution recognises the fundamental importance of the institution of marriage and of the family based on that institution. However, that constitutional provision is in no way inconsistent with the extension of sympathy and compassion to the unmarried mother and her family, particularly in circumstances such as the present.

One of the consoling features of this case has been the attitude

and conduct of Mr and Mrs D . The child was entrusted to them originally as foster parents and they are now seeking to adopt the child - D . From the evidence which Mr and Mrs D have given to me - from the account of two doctors; three social workers and, indeed, of the natural mother herself, Mr and Mrs D have proved to be the most compassionate, sympathetic and helpful of foster parents to D . Not only that it is clear that the D's had been for a considerable time similarly compassionate to, and supportive of, the natural mother herself dealing with the very serious problem which she endured. It is unfortunate that a difference has arisen between the adopting parents and the natural mother. This is perhaps understandable and may be unavoidable having regard to the existence of the present litigation and indeed the confusion and misunderstandings caused by the fact that the natural mother changed her mind on more than one occasion with regard to the course which she proposed to adopt in relation to her infant son.

It seems to me, however, that these matters should be put in perspective. It is not surprising having regard to her unhappy background that the natural mother at one time became more dependent on alcohol than was desirable. It is to her credit that she quickly recovered from that dependency. Again when drugs were prescribed for her to help her cope with a medical depression she declined to rely on such medication as she was afraid of becoming dependent on it. With regard to the manner in which she changed her mind about the adoption of D and the circumstances in which she instituted proceedings it may be said that these decisions gave rise to some difficulties and might have been interpreted understandably by the D's as being unhelpful and ungrateful, they did in essence reflect a concern which the natural mother has always shown for the

of the Adoption Act 1952 which sets out in the clearest possible terms the consequences of an Adoption Order: the rights gained by the adoptive parents and those lost by the natural mother and she was satisfied to consent to such an Order being made. Her attitude is reminiscent of that adopted by the true mother in the case in which Solomon gave his famous judgment in favour of a claimant who was prepared to forsake her child rather than see it injured. The natural mother in the present case is making a wise and noble sacrifice in the best interests of her child having considered carefully over a considerable period all of the consequences of so doing. I believe she should be congratulated upon her decision. Even more I am sure she will be compensated by the fact that she knows that the adoptive parents have the best interests of her son at heart and the determination to bring him up to the very best of their considerable ability.

Counsel approached me at lunchtime to discuss certain aspects of this matter. As a result the position is that an Order herein will be made on consent. It will be based on the proceedings instituted by Mr and Mrs D. . I will make an Order giving custody to the D. 's of D. for six months from to-day. The second part of the Order will direct the first-named defendants, An Bord Uchtála, to dispense with the consent of the natural mother to the making of an Adoption Order. There will be a period of six months for the Adoption Order to be made and the Order for custody in favour of the D. 's will endure for that period. I will give liberty to apply to all parties. I will also attach to the Order a note of the original documents signed by the parties under which the D. 's make it clear that they have been advised that it is in D. 's best interest that he should have some contact with his natural mother and that such contact should be under the control

of Ms Kelleher and Ms O'Connell and that the arrangement would include the frequency and duration of such visits. They would commence in April next. I will note the arrangement in this way but I am not disposed to say that the Order should be subject to such provision. I am directing the particular Order to be made as indicated above.

Finally, I have already commented upon the kindness and support which Mrs D extended to the natural mother before their relationship was upset as a result of the litigation herein. Having made a very favourable estimate of Mrs D's generous nature and the help and kindness which she did and could extend to the natural mother I would like to think that the contact between her and the natural mother could be resumed notwithstanding the rupture which occurred. I am sure that it would be very beneficial to the natural mother. However, in making that suggestion I recognise that I am exceeding my function.

affixed

20 1st December 1954