

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
JUDGMENT

W.P.No.62973/2024

Nazir Ahmad etc. **VS.** The learned Additional District
Judge, Kasur etc.

Date of hearing	20.02.2025
Petitioners by	Mr. Muhammad Tahir Chaudhary, Advocate
Respondents by	Mr. Farman Ahmad Bhatti, Advocate

Ch. Muhammad Iqbal, J:- Through this constitutional petition, the petitioners have challenged the validity of judgment dated 04.10.2024 passed by the learned Additional District Judge, Kasur who accepted the guardian appeal of the respondents No.3 & 4, set aside the order dated 31.05.2024 passed by the learned Guardian Judge, Kasur and by accepting the guardian petition of the respondents No.3 & 4, handed over the custody of minor girl to her real parents.

2. Brief facts of the case as contended by learned counsel for the petitioners are that the respondents No.3 & 4 (hereafter referred as respondents) were blessed with twin daughters on 11.07.2018, namely Midhat Azhar and Seerat Fatima. The petitioners are the maternal uncle and aunt of the minors. That the petitioners approached respondents and beseeched that they want to adopt one of their daughters and asked to give temporary custody of their daughter Midhat Azhar to them. The respondents being close relative of the petitioners accepted the request of the petitioners with the condition that as and when they demand

return of custody of the minor, the petitioners would accordingly hand over the minor to them. That on 25.03.2021, the respondents asked the petitioners to return the custody of the minor girl but they refused which gainsayal culminated into filing of the application for custody of the minor on the ground that they are the real biological parents of the minor as such her custody may be given to them.

The petitioners filed contesting written reply thereto inter alia on the ground that they are providing excellent facilities such as provision of good standard nourishment, clothing, schooling as well as hiring of life insurance policy of substantial amount to safeguard future of the minor girl and she is being brought up in well off/elite manner, thus her welfare lies with them and finally prayed for rejection of application. The learned Guardian Judge, Kasur framed issues, recorded evidence and dismissed the petition of the respondents vide order dated 31.05.2024. The respondents filed an appeal which was accepted vide judgment dated 04.10.2024 by the learned Additional District Judge, Kasur who by setting aside the order dated 31.05.2024 of the learned Guardian Judge, Kasur allowed the petition of the respondents. Hence, this petition.

3. Arguments heard. Record perused.

4. The respondents [No.3 & 4] are admittedly the real biological parents of the minor girl namely, Midhat Azhar. This fact has not been denied by the petitioners as such admitted facts need not to be proved. Reliance is placed on the cases of Mst. Nur Jehan Begum through LRs v. Syed Mujtaba Ali Naqvi (1991 SCMR 2300) and Mst. Rehmat and others Vs. Mst. Zubaida Begum and others (2021 SCMR 1534). Thus, as per respective divergent assertions of the parties, the core controversy revolves around issue No.i which is as under:-

- i. Whether the welfare of the minor namely Midhat Azhar @Zainab lies in custody of the petitioner? OPA

Adopting a minor is a profound and selfless act that offers a child a new chance at love, security, and a stable home. Though adoptive parents provide emotional support, care, and guidance, often forming deep, lasting bonds with the child. However, it is essential to recognize that the love and affection shared between a child and their biological parents hold a unique and irreplaceable place in a child's life. The affection between biological parents and their child often carries a sense of familiarity and instinctive connection, influenced by biological and evolutionary factors. These natural connections may form a foundation of trust and comfort that, for many, remains an essential part of their emotional makeup, even if their biological parents are not in their lives. While adoptive parents can provide a loving and supportive home, they may never fully replicate the biological ties and the shared experiences that come with being part of the same family tree. The memories, genetic traits, and inherited emotional bonds are aspects that cannot be recreated through adoption. Adoption is not about replacing the biological parents but rather about extending a circle of care and love to a child who may not have had the opportunity to experience it otherwise. A child's connection to their biological parents remains a crucial part of their identity, even when they grow to form meaningful and fulfilling relationships with adoptive families. The petitioners are maternal uncle & aunt of the minor girl and in the presence of real parents of the minor, the custody of the minor girl cannot be handed over to the petitioners as the welfare of the minor best lies with her real parents. Reliance is placed on cases cited as Shabana Naz Vs. Muhammad Saleem (2014 SCMR 343) and Mst. Beena Vs. Raja Muhammad and others (PLD 2020 SC 508). The Hon'ble Supreme Court of Pakistan in this regard has held in

a case cited as Mrs. Shaukat Khalid Vs. Additional District Judge, Rawalpindi and 2 others (1991 SCMR 19) as under:

“4. Learned counsel for the respondents made a categorical statement that the minor is now living in a very happy and cordial atmosphere. Be that as it may even if it would have been little indifferent, she sharing with her own parents, their joys and worries, would be more natural than her passing these very important years of adolescence with a foster-mother. And this is in accord with the principles enunciated by Islam and contained in Quran and Sunnah. The adopted parents have never been treated as the same or equal to the real parents. In this context, therefore, we do not accept the contention of the learned counsel that it was "unnatural" to transfer the custody of the minor from her foster-mother to real mother and father. What Islam enjoins and teaches, in our system of law, is natural and not unnatural. Similarly his reliance on a stray case where some exception might have been made on account of extraordinary circumstances of the case for making a departure from the normal rule, is of no avail to the petitioner. As already found in the foregoing discussion in the present case it is in the welfare of the minor to remain in the custody of the natural parents. It is in accord with natural and also with the law.”

Further reliance in this regard is placed on judgments cited as Miss Nancy Ruth Baney Vs. District Judge, Islamabad and another (PLD 2011 Islamabad 6) and Jamshed Vs. Saleemuddin and 4 others (PLD 2014 Sindh 120).

5. It is important to mention here that under Section 17 of the Guardian and Wards Act, 1890 the parameters for welfare of the minor are given and under Section 25 of the Act *ibid*, the Guardian Judge can grant custody of the minor to the person fulfilling the said parameters. For ready reference, Sections 17 and 25 of the Act *ibid* are reproduced as under:

“17. Matters to be considered by the Court in appointing guardian.”(1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any

existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) ... [Repealed]

(5) The Court shall not appoint or declare any person to be a guardian against his will.

...

25. Title of guardian to custody of ward.__ (1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.”

(emphasis supplied)

Admittedly, the respondents are real parents of the minor and as per Sections 17 & 25 of the Guardian and Ward Act, the welfare of the ward/minor lies with her real parents and accordingly order was made as per law by the appellate court. The parents are natural guardian of the minor/ward and the petitioners are maternal uncle and aunt who are not substitute of the parents of the ward. The welfare of the minor girl lies with the biological parents. The parameters of Sections 17 & 25 of the Act *ibid* fulfilled by the respondents being parents of the minor, as such judgment passed by the appellate court is in consonance of Sections 17 & 25 of the Act *ibid* which does not require any interference through this constitution petition. This Court has elaborately discussed this issue in its order dated 04.10.2022 passed in Writ Petition No.7422/2022 titled as Mst. Shahnaz Mai Vs Additional District Judge etc. The Hon’ble Supreme Court of Pakistan in a case cited as Rahimullah Choudhury Vs Mrs.

Sayed Helali Begum & Others (1974 SCMR 305) has held that Section 25 of the Act *ibid* recognizes a right of the guardian that his ward who leaves or is removed from his custody be returned into his / her custody, but subject to his welfare. “Welfare” being a question of fact will have to be resolved on the material placed before the Guardian Judge and not on the basis of mere presumption. Reliance in this regard is also placed on judgments titled as Mst. Farah Mehnaz and others Vs. Safeer Hussain Jaffar and others (2013 CLC 235) and Shahida Adnan Vs. Additional District Judge and others (2021 YLR 1915).

6. The learned Guardian Judge, Kasur has failed to appreciate the legal and factual aspects of the case and dismissed the petition of the respondents whereas the appellate court, after discussing the facts as well as evidence of the parties and law, through a well-reasoned judgment has rightly allowed the appeal of the respondents and accepted their petition as prayed for. It is well settled law that in the event of conflict of judgments, findings of appellate Court are to be preferred and respected, unless it is shown from the record that such findings are not supported by evidence. Reliance is placed on the cases reported as Muhammad Hafeez & Another Vs. District Judge, Karachi East & Another (2008 SCMR 398) and Rao Abdul Rehman (deceased) through legal heirs Vs. Muhammad Afzal (deceased) through legal heirs and others (2023 SCMR 815).

7. Resultantly, this writ petition being devoid of any merits is hereby **dismissed**. No order as to costs.

(Ch. Muhammad Iqbal)
Judge

Approved for reporting.

Judge