

THE HIGH COURT

[2017/315 SP]

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 54 OF THE ADOPTION ACT 2010

AND IN THE MATTER OF C., A MINOR

BETWEEN

CHILD AND FAMILY AGENCY AND L.F. AND S.F.

APPLICANTS

AND

THE ADOPTION AUTHORITY OF IRELAND

RESPONDENT

JUDGMENT of Ms. Justice Reynolds delivered on the 27th October, 2017

1. This is an application for an order pursuant to s. 54(2) of the Adoption Act 2010, authorising the respondent to make an Adoption Order in relation to C. in favour of L.F. and S.F., and further dispensing with the consent of the birth mother to the making of such order.

Background

2. C. was born on the 19th January, 2000. Her birth mother had been known to the Health Board since 1995 as there were serious child protection issues regarding her other children such as severe neglect and sexual abuse. These other children were children from a relationship between the birth mother and her then husband. There were also concerns regarding the birth mother's use of alcohol.

3. These concerns continued after the child, the subject matter of these proceedings, was born.

4. In the early months after the child's birth, it became increasing apparent that the birth mother was unable to adequately care for her and she was thereafter placed in the care of the then Health Board with the birth mother's consent.

5. C. was placed with her prospective adoptive parents since she was approximately nine months old and has remained in their care since that date.

Contact with Birth Father

6. The birth father is a former partner of the birth mother, that relationship having commenced after the breakdown of her marriage.

7. In recent years, the birth father indicated a desire to have a relationship with the child. However, C. at all times indicated that she did not want to have a relationship with her birth father, having had very limited contact with him over the years.

8. More recently, the birth father was contacted by the Adoption Services for the purposes of the within application. It is clear that he has now executed the necessary documentation stating that he has no objection to the proposed application.

Contact with Birth Mother

9. Whilst there was initially regular contact between the child and her birth mother, in her tender years this became more irregular from 2002 onwards. By 2006, there was very limited interaction between the mother and the child and by early 2013, the difficulties became even more manifest. Contact became intermittent and in late 2015 a full care order was made, precipitated by the birth mother's disengagement from the child's voluntary care arrangements.

Relationship with Prospective Adoptive Parents

10. Having been placed with her prospective adoptive parents since 2000, C. has become part of a family unit with her foster brother and her half-brother, who had been subsequently fostered by the second and third named applicants in 2004. Indeed, it is notable that her half-brother is the subject of a parallel application pursuant to s. 54(2) of the Adoption Act 2010.

11. C. has progressed well through the education system, particularly in circumstances where she has a mild learning disability. She has been fully supported by her prospective adoptive parents who have offered her love, attention, security and the support of a stable family home throughout her childhood.

12. They have demonstrated their full commitment to having her as a full member of their family and hold a valid Declaration of Eligibility and Suitability for Adoption. Further, they have at all times cooperated with the first named applicant herein.

Proceedings before this Court

13. The special summons issued on the 31st July, 2017 and the hearing proceeded before this Court on the 12th October 2017. All parties were legally represented, including the birth mother who was a notice party to the proceedings and who has withheld her consent to the proposed adoption herein. As already stated, the birth father has executed the necessary documentation indicating that he has no objection to the proposed application.

The Law

14. Section 54(2) of the Act of 2010 states the following:-

2. On an application being made under paragraph (a) or (b) of subsection (1), the High Court by order may authorise the Authority to make an adoption order in relation to the child in favour of the applicants, and to dispense with the consent of any person whose consent is necessary to the making of the adoption order, if—

(a) having due regard for the rights, whether under the Constitution or otherwise, of the persons concerned (including the natural and imprescriptible rights of the child), the High Court is satisfied that it would be in the best interests of the child to grant the authorisation, and

(b) it is shown to the satisfaction of the High Court as follows:

(i) that—

(1) for a continuous period of not less than 12 months immediately preceding the time of the making of the application, the parents of the child to whom the declaration under section 53(1) relates, for physical or moral reasons, have failed in their duty towards the child,

(2) it is likely that the failure will continue without interruption until the child attains the age of 18 years,

(3) the failure constitutes an abandonment on the part of the parents of all parental rights, whether under the Constitution or otherwise, with respect to the child, and

(4) by reason of the failure, the State, as guardian of the common good, should supply the place of the parents;

(ii) that the child—

(1) at the time of the making of the application, is in the custody of and has a home with the applicants, and

(2) for a continuous period of not less than 12 months immediately preceding that time, has been in the custody of and has had a home with the applicants;

and

(iii) that the adoption of the child by the applicants is an appropriate means by which to supply the place of the parents.”

The Evidence

15. A number of witnesses were called on behalf of the first named applicant in the proceedings to deal with the background history as already outlined in the foregoing paragraphs.

16. The second named applicant gave evidence on behalf of both foster parents confirming their earnest wish that the Adoption Order be granted. It is clear that they have fulfilled their role of parents to C. since she was placed in their care and have fully supported her and nurtured her interests, thereby enabling her to grow in a loving and caring environment.

The Birth Mother's Position

17. It was contended on behalf of the birth mother that due to the child's learning disability and her alleged lack of comprehension of matters, that she did not truly understand the nature, consequences and permanent effects of an Adoption Order. It was conceded that no access had taken place with C. since in or about 2014 to date and that a full Care Order was made on the 6th November, 2015 until the 18th January, 2018.

18. The birth mother further conceded that C. has been well looked after by her foster carers but contends that it is not in her best interests that the adoption proceeds, having regard to the nature, consequences and permanent effect of such an order.

19. In addition, the birth mother contended that there had been no abandonment of her rights in respect to her daughter and that the proposed adoption is unnecessary and not in the overriding best interest of the child.

The Wishes of the Child

20. Section 54(3) provides as follows:-

“Before making an order under subsection (2), the High Court, in so far as is practicable, shall give due consideration, having regard to the age and understanding of the child concerned, to his or her wishes.”

21. In this case, the Court was satisfied that having regard to the age and understanding of C., that it was appropriate to hear her wishes in respect of this application.

22. C. is now seventeen years and nine months old and impressed the Court as being a very pleasant, warm, mature and confident individual. She made it abundantly clear that she wishes to be adopted by her foster parents so that she can be fully integrated into the family unit. She is very aware that one of the other family members has already been adopted by them and that proceedings are before this Court in relation to an adoption application on behalf of her half sibling. Whilst she is fully cognisant of the fact that there is a full Care Order in place until she reaches her majority, she is adamant in her wishes that the adoption order be granted.

23. The Court is satisfied that it is C.'s fervent wish to be adopted by her foster parents and that she has a clear and cogent understanding of the nature of this application.

24. Further, the Court heard evidence from Ms. Byrne Lynch, Clinical Psychologist, who confirmed that despite C.'s mild intellectual disability, she had a full understanding of the nature of the within proceedings.

Findings

25. Having considered the evidence in this case, the Court is satisfied that the child's biological parents have demonstrated themselves to have failed in their duty towards her since her birth in January 2000 and have abandoned the custody and care of their daughter to her foster parents. They have made all of the crucial decisions regarding her health, education and welfare needs over the years. In the circumstances, the Court is satisfied this amounted to a real and objective sense of abandonment of their rights as parents.

26. It is clear that the birth mother had very challenging personal issues to deal with over the years and indeed significant health issues although in later years, she has rehabilitated herself in that regard. However, her opposition to the Adoption Order in itself does not contradict the fact of abandonment. Indeed, the Court is satisfied that her objections to the within application are misconceived in circumstances where it is clear from the evidence that the child has a very real understanding of the nature of the within proceedings.

27. Further, it is clear from the evidence that C. has been in the custody of and has had a secure and loving home with her foster parents and that her adoption by them is an appropriate means by which to supply the place of the parents.

28. In all the circumstances, therefore, I must grant the relief sought.