

THE HIGH COURT

FAMILY LAW

[2015 No. 46 M]

IN THE MATTER OF SECTION 54 OF THE ADOPTION ACT 2010

AND IN THE MATTER OF D.W. (A MINOR)

BETWEEN

THE CHILD AND FAMILY AGENCY

AND

A.T. AND J.T.

APPLICANTS

AND

THE ADOPTION AUTHORITY OF IRELAND

AND

D.W.

RESPONDENTS

JUDGMENT of Mr. Justice Henry Abbott delivered on the 27th day of August, 2015.

1. This application comes before the court by way of special summons wherein the applicant seeks the following reliefs:-

- a. An order pursuant to section 54(2) of the above entitled Act of 2010 authorising the respondent to make an adoption order in relation to the above named child, D.W., in favour of A.T. and J.T. of in the county of Dublin;
- b. An order pursuant to section 54(2) of the above entitled Act of 2010, dispensing with the consent of D.W. (Senior) of unknown address to the making of an adoption order;
- c. An order pursuant to Order 70A Rule 24(4) that the court may hear and determine the application without further notice to D.W. (Senior);
- d. An order providing for the costs of this application.

2. The child D.W. was born on the 7th November 1997 to V.A. and D.W. (Senior). It is appropriate to note that the birth parents of D.W. were unmarried though purported to demonstrate a relationship of certain proximity which gave rise to further children. This so-called *de facto* family unit shared a turbulent history wherein both birth parents suffered with alcoholism and associated difficulties which can be said to have contributed to them becoming homeless in or about March 2002.

3. Concerns were raised regarding the children's welfare by the Homeless Persons Unit in 2002 which suggested that the children had been neglected and left without food for long periods while their birth mother drank heavily in the company of their birth father. The children were exposed to risk behaviour, exhibited by their birth parents, and inappropriate contexts unsuited to their respective ages. It is said that during this period the birth mother of the minor D.W. indicated to the Social Work Department that she could no longer cope with caring for her children and that she requested that they be taken into care so to allow her to find appropriate accommodation.

4. The minor D.W. was placed, in the company of his siblings, with the T. family, the proposed adoptive parents to these herein proceedings, with whom he remains today.

5. The birth mother of the minor D.W. died in or about the 7th July 2008 due to alcoholic liver cirrhosis and associated complications. Searches have indicated that she died intestate and hence no testamentary guardianship arises.

6. The applicant seeks an order of this Court so to authorise the Adoption Authority to make the adoption order, in favour of the adoptive parents A.T. and J.T., where the birth parents of D.W. have failed in their duty toward him. Sect. 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.”

7. It is most appropriate for this Court to consider the rights of the child in addition to its consideration of the rights of the birth father and the birth mother of the child herein. While not limiting itself to the consideration of the rights of these central figures, it isolates these actors considerably who remain most at issue in the present circumstances. The rights of unmarried birth fathers have evolved, by way of precedent and legislative reform, in this jurisdiction since the seminal judgment of the Supreme Court in *State (Nicolaou) v An Bord Uchtála*, [1966] I.R. 567, which held that the birth father of an illegitimate child was not entitled to be heard prior to the making of an adoption order. This position was altered by sect. 5 of the Adoption Act 1998 which entitled the birth father of the child to be heard in the context of such an application. This entitlement was similarly included under sect. 43 of the 2010 Act. The views of the birth father in the present case were indeed expressed by a signed and completed NF2 form where he stated that he does not object to the proposed adoption of the minor D.W.. This Court is satisfied that, for a continuous period of not less than 12 months immediately preceding the time of the making of the application, the birth father of the child D.W., to whom the declaration under section 53(1) relates, for physical or moral reasons, has failed in his duty towards the child; it is likely that this failure will continue without interruption until the child attains the age of 18 years; 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, by reason of the failure, the State, as guardian of the common good, should supply the place of the birth father.

8. The birth mother of the child has demonstrated herself to have failed her child through alcohol abuse and the consequences of such abuse including the inappropriate care of her child, her negligence towards him and her decision to place him into care so to allow her to find accommodation in his absence. In considering whether such actions, at times constituting gross breaches of her duties as a birth mother, are sufficient to constitute parental abandonment for the purposes of sect. 54(2) of the 2010 Act, the natural and imprescriptible rights of the mother and her child must be balanced. Such would be the ordinary point of analysis; however, it is known that the birth mother died in or about the 7th July 2008 and it is at this juncture that the judgment departs.

9. This Court must be satisfied that for a continuous period of not less than 12 months immediately preceding the time of the making of the application, the mother of the child, to whom the declaration under section 53(1) relates, for physical or moral reasons, has failed in her duty towards her child; such being likely that the failure will continue without interruption until the child attains the age of 18 years; that the failure constitutes an abandonment on the part of the birth mother of all parental rights, whether under the Constitution or otherwise, with respect to the child; and, by reason of the failure, the State, as guardian of the common good, should supply the place of the birth mother. Death, in the absence of testamentary provision or the election of a testamentary guardian, has, in the special circumstances of this case, caused the mother of the child to have failed in her duty towards her child. Having failed to provide for her child, in any meaningful way which would influence the determination of this Court, the death of the mother has caused her failure, existent at the time of her death, to be ongoing and perpetual. Upon this basis the court is satisfied that the birth mother of the child D.W. has failed in her duty towards her child, and satisfied that such will continue until such time that the child will reach his majority. Such failure has indeed constituted abandonment on her part of all parental rights, they being now impossible to realise or indeed redeem.

10. This Court has heard the evidence of both of the second named applicants and is satisfied that they have provided and will provide a good home for D.W.. The minor D.W. has been in the custody of the prospective adoptive parents for many years and will be in such custody until he is eighteen years of age. Having considered the affidavits and other documents supplied to this Court and having heard in person the views of the child in addition to his affidavit, it is satisfied that it is in the best interest of the child D.W. to be taken into the T. family and that all such parental rights and duties which pertain to him such now be vested, by order of the adoption authority, with the adoptive parents A.T. and J.T.. Upon this basis, this Court makes the orders in the terms of the special summons and makes clear the path for the Adoption Authority to make such orders to facilitate this adoption.