Re BJU to be called B
[2013] SGHC 138

Case Number	: Originating Summons No 170 of 2012 (Registrar's Appeal Subordinate Courts No 11 of 2013)
Decision Date	: 19 July 2013
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: V Ramakrishnan (V Ramakrishnan & Co) for appellants; E (father of infant) in-person (absent)
Parties	: Re BJU to be called B

Family Law – Adoption

19 July 2013 Judgment reserved

Choo Han Teck J:

1 This was an appeal by the appellants C and D who are husband and wife. When they married in 2004, D had a six-year old son named BJU from a previous relationship with the son's natural father E. D and the male appellant C have a son of their own F, born in 2006. D is a Senior Trust and Corporate Officer earning $4,700 a month and C is a hawker earning $2,678 a month. E, who was previously jailed for nine months for being absent from his national service duties without official leave, is currently serving a six-year prison sentence for a drug offence. He is due to be released in about two years' time.

2 C and D have changed BJU's name by deed poll to B so that his surname is the same as that of C and F. E had ceased having access to B since 2008 when he also ceased paying maintenance. C and D applied to adopt B as their son and a report by the Senior Child Welfare Officer ("SCWO") from the Ministry of Social and Family Development supported the application. However, E objected to the application and the judge below took into account E's objection and refused the application by C and D for an adoption order in respect of B and for a dispensation of the consent of E.

3 The judge below accepted the SCWO's report and recommendation, and noted that the relationship between D and E was a tumultuous one with frequent quarrels which she attributed to "their inability to cope as a very young couple". She took into account the "sadness" of E and the fact that B was brought up more by D's mother than by the appellants themselves. The judge below referred to s 4(4) of the Adoption of Children Act (Cap 4, 1985 Rev Ed) which provided that the consent of the natural parents must be obtained unless the person whose consent is to be dispensed with:

> (*a*) has abandoned, neglected, persistently ill-treated the infant or cannot be found and that reasonable notice of the application for an adoption order has been given to the parent or guardian where the parent or guardian can be found;
>
> (*b*) is unfit by reason of any physical or mental incapacity to have the care and control of the infant, that the unfitness is likely to continue indefinitely and that reasonable notice of the application for an adoption order has been given to the parent or the guardian; or

(*c*) ought, in the opinion of the court and in all the circumstances of the case to be dispensed with, notwithstanding that such person may have made suitable initial arrangements for the infant by placing the infant under the care of the authorities of a home for children and young persons, the protector under the Children and Young Persons Act (Cap. 38) or some other person.

4 The judge then held that E's "long incarceration" did not mean that he was not physically able to provide for the child since it was an incarceration that did not in her view amount to an indefinite period of time. In so far as s 4(4)(*a*) was concerned, she was of the view that the D's case was that E was a poor role model. She did not seem to disagree but held the view that it was his poor lot in life that had led E to lead a delinquent life. The judge noted that E was not asking for B to live with him. She also noted that C himself had served a short term of imprisonment for the offence of voluntarily causing hurt. She held that s 4(4)(*a*) "requires proof of abandonment, neglect or ill-treatment" but that these were not proved in the present case. As to s 4(4)(c) the trial judge held, citing *Hitchcock v WB and FEB and others* [1952] 2 QB 561, that it could not be said that E was refusing his consent in the present case "whimsically or arbitrarily or not in good faith". The judge also took into account the expressed desires of B but held that "the line between guardianship and adoption needs to be understood and respected. An adoption order will sever ties between father and child and [the court] was not satisfied that this would be in the long term interests of a child well into his teenage years." She saw in E a man "who was prepared to change". The appeal papers were served on E and the appeal was adjourned by me on 17 April 2013 so that E could attend. When the hearing resumed on 8 May 2013 E was not present.

5 I have no disagreement with much of what the court held below save to say that the conduct of the E has come close to the neglect and abandonment requirement of s 4(4)(*a*), but I am satisfied that the circumstances of the case are well within s 4(4)(*c*). C and D have already been married for almost ten years and B is 15 years old. He has lived without E almost all through his growing years. I interviewed B and found him to be mature, intelligent, sensible, well-brought up, and above all, happy. He declared that he was perfectly happy with life as it has been for him with C and D. The formal adoption could only add the seal to that happiness. As the law stands, while E's position should not be disregarded, it is the welfare of the child that is paramount. E and D were never married, but even if E wants to have access to B, the Family Court might still grant him access although the prospect of a fulfilling relationship between them seems merely a hopeful one from the eyes of E. B has indicated politely that he is not keen to see E.

6 I am of the view that the circumstances are unfortunate for E, but there are things that one cannot repair. The only question is whether the reasons given by the court below were sufficient to refuse the appellants' application. In my view, they are not. The application should be granted so that B's inclusion into the family of C and D will be complete in law and fact. For the reasons above I allow the appeal.

Copyright © Government of Singapore.