

In the Court of Appeal for the Northwest Territories

Citation: *British Columbia (Director of Child, Family and Community Services) v Beauchamp*,
2020 NWTCA 7

Date: 2020 08 11

Docket: A1-AP-2019-000004

Registry: Yellowknife

Between:

The British Columbia Director of Child, Family and Community Services

Respondent
(Applicant)

- and -

**Custom Adoption Commissioner Mary Beauchamp, The Public Guardian and Trustee of
British Columbia, LM and RB**

Appellants
(Respondents)

The Court:

**The Honourable Mr. Justice Peter Martin
The Honourable Mr. Justice Frans Slatter
The Honourable Madam Justice Myra Bielby**

Memorandum of Judgment

Appeal from the Decision of
The Honourable Justice S.H. Smallwood
Dated the 22nd of May, 2019
(2019 NWTSC 19, Docket: S-1-CV-2017 000151)

Memorandum of Judgment

The Court:

[1] This is an appeal from a decision quashing a Certificate of Custom Adoption purporting to recognize the adoption of S.S. by the appellants.

[2] The relevant facts are these. The child S.S. was born in Victoria, British Columbia, in October of 2013. Three days later, the child was removed from the care of her parents by the respondent, the British Columbia Director of Child, Family and Community Services (the Director), and placed with the appellants as paid caregivers.

[3] On January 9, 2014, the British Columbia Provincial Court granted the Director sole interim custody of S.S., and on July 6, 2015, the court issued a Continuing Custody Order (CCO) making the Director the sole personal guardian of S.S.

[4] In time, the Director determined that S.S. should be adopted by the same couple that previously adopted S.S.'s biological siblings. She was placed with that family, who reside in Ontario, on September 29, 2016, and has resided with them continually since that date. This placement concerned the appellants who wished to adopt S.S. themselves. Of note, the child's biological parents and the appellants are of Metis ancestry and members of the British Columbia Metis Association.

[5] In pursuit of their desire to adopt S.S., the appellants initiated a number of actions in the British Columbia Supreme Court to secure the permanent guardianship of S.S. The first, described as Petition #1, was dismissed on its merits on the 2nd of December: *LM v British Columbia (Director of Child, Family and Community Services)*, 2015 BCSC 2261. That decision was subsequently upheld by the British Columbia Court of Appeal: *LM v British Columbia (Director of Child, Family and Community Services)*, 2016 BCCA 109.

[6] Petition #2, seeking the same relief, was dismissed as it was found to be *res judicata* and an abuse of process, *L.M. v. British Columbia (Director of Child, Family and Community Services)*, 2016 BCSC 275. That decision was also upheld on appeal: *LM v British Columbia (Director of Child, Family and Community Services)*, 2016 BCCA 367.

[7] On May 30, 2016, the biological parents of S.S. joined the litigation by petitioning the court for an order authorizing them to place S.S. with the appellants for adoption (Petition #3).

[8] On the 26th of October, 2016, before Petition #3 could be adjudicated, the appellants, S.S.'s biological parents and the British Columbia Metis Association joined in what is described as Petition #4, seeking a declaration that the appellants had already adopted S.S. by way of a Custom

Adoption Certificate. Petitions #3 and 4 were heard together and both were dismissed: *AS v British Columbia (Director of Child, Family and Community Services)*, 2016 BCSC 1788.

[9] That decision, too, was appealed but before the appeal could be heard, the appellants applied for, and received, a Custom Adoption Certificate from a Custom Adoption Commissioner in the Northwest Territories (the Commissioner), issued pursuant to the *Aboriginal Custom Adoption Recognition Act*, SNWT 1994, c 26 (ACARA). Although the Custom Adoption Certificate was issued in December 2016, it declared that S.S. was adopted by the appellants on December the 19th, 2014.

[10] In applying for the Custom Adoption Certificate, the appellants personally met with the Commissioner. They advised her of their wish to adopt S.S. with the consent of S.S.'s biological parents but did not advise the Commissioner that the Director was the legal guardian of S.S., or of any of the court proceedings that had taken place in British Columbia. Nor did they advise the Commissioner that S.S. had never resided in, or even visited, the Northwest Territories. In fact, they led the Commissioner to believe that S.S. was actually living with them at the time they applied for the Custom Adoption Certificate. The Commissioner has since sworn an affidavit reporting that she would not have granted the Custom Adoption Certificate had she been told that the Director was the permanent legal guardian of S.S.

[11] On hearing that the Custom Adoption Certificate had been granted in the Northwest Territories, the Director applied for a Judicial Review arguing that she, the Director, had not received notice that an application for an ACARA custom adoption was being made, and further, that she, the Director, was at all relevant times S.S.'s sole personal and legal guardian with the sole authority to authorize her adoption. The Director also argued this maneuver in the Northwest Territories was an abuse of process and that that jurisdiction had no authority to deal with the adoption of S.S. because she had never been a resident of that Territory.

[12] Following the judicial review, the Supreme Court of the Northwest Territories quashed the Commissioner's decision and vacated the Custom Adoption Certificate: *British Columbia (Director of Child, Family and Community Services) v Beauchamp*, 2019 NWTSC 19. The court determined that the failure to give the Director notice of the application for a custom adoption was a denial of procedural fairness and a collateral attack on the proceedings which had taken place in British Columbia, and finally that allowing the certificate to stand would amount to an abuse of process. That decision is the subject of this appeal.

[13] Unfortunately, one of the appellants, Ms M, has recently passed away. The remaining appellant, Mr B alone has carriage of the case now. He is self-represented but has filed a lengthy comprehensive factum, focusing on the integrity of Aboriginal Custom Adoptions.

[14] With respect, that issue is not before us now. The only issue for us to decide is whether the judge conducting the judicial review was correct in quashing the Custom Adoption Certificate for the reasons stated. We conclude she was. In our opinion, the appellants bringing that application in

the Northwest Territories without notice to the Director, while related proceedings were before the courts in British Columbia, did amount to procedural unfairness and an abuse of process.

[15] The matter is properly before the British Columbia courts, not those of the Northwest Territories. Simply put, the decision quashing the Custom Certificate of Adoption was correct and there is no basis for us to interfere. Accordingly, the appeal must be dismissed.

[16] A final issue. In furtherance of their appeal, the appellants have applied to introduce what they describe as fresh evidence, including a transcript of a taped telephone conversation they had with the Commissioner who issued the Certificate. That interception occurred without the Commissioner's knowledge or consent. That evidence is inadmissible because it fails the *Palmer* test and is not in any way relevant.

[17] The appeal is dismissed.

[18] As to costs, the Director is entitled to the costs of the appeal calculated in accordance with R.74, on the same scale as awarded by the chambers judge. No costs will be payable to the Custom Adoptions Commissioner, or the Attorney General of the Northwest Territories.

Appeal heard on July 22, 2020

Memorandum filed at Yellowknife, NT
this day of August, 2020

Martin J.A.

Authorized to sign for: Slatter J.A.

Authorized to sign for: Bielby J.A.

Appearances:

S. Toner/ J. Casebeer

for the British Columbia Director of Child, Family and Community Services and the Public Guardian and Trustee of British Columbia (via videoconference)

H. Fitzgerald

for the Attorney General of the Northwest Territories (via videoconference)

S. Laurella

for the Custom Adoptions Commissioner (via videoconference)

The appellant, RB, in person (via videoconference)

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