

CANADA / JUDGMENT

A.A.A.M. v. Director of Adoption

2017 BCCA 409

COURT

British Columbia Court of Appeal

DECIDED

10 November 2017

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2017 BCCA 409 A.A.A.M. v. Director of Adoption COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: A.A.A.M. v. Director of Adoption, 2017 BCCA 409 Date: 20171110 Docket: CA43708

Between: A.A.A.M. Respondent (Petitioner) And Director of Adoption Appellant (Respondent)

Before: The Honourable Madam Justice Saunders The Honourable Mr. Justice Frankel The

Honourable Mr. Justice Tysoe On appeal from: An order of the Supreme Court of British

Columbia, dated May 12, 2016 (A.A.A.M. v. Director of Adoption, 2016 BCSC 842 Vancouver

Docket S159020) Oral Reasons for Judgment Counsel for the Appellant: K. Chewka Acting on his

own behalf: A.A.A.M Place and Date of Hearing: Vancouver, British Columbia November 10, 2017

Place and Date of Judgment: Vancouver, British Columbia November 10, 2017 Summary: Appeal

by the Director of Adoption from an order allowing a judicial review of a decision to place a child with prospective adoptive parents who reside outside of British Columbia. The chambers judge

held the Adoption Act did not give the Director authority to make out-of-province placements.

Held: Appeal allowed. Recent retroactive amendments to the Adoption Act validate the Director's decision.

- [1] FRANKEL J.A.: The Director of Adoption appeals from the order of Justice Young of the Supreme Court of British Columbia dated May 12, 2016, allowing a petition for judicial review of the Director's decision to place. O., A.A.A.M.'s biological daughter, for adoption with prospective adoptive parents who reside in Alberta. The history of this matter as it is set out in detail in the chambers judge's reasons, indexed as 2016 BCSC 842.
- [2] Mr. M. did not file any material on the appeal but we nevertheless heard from him. He opposes the appeal on the basis that recent amendments to the relevant legislation are unfair.
- [3] The chambers judge held that by reason of s. 5(2) of the Adoption Act, R.S.B.C. 1996, c. 5, the Director could only place children with prospective adoptive parents who reside in British Columbia and that, therefore, O.'s placement was ultra vires the Director's authority. That section stated that "Each prospective adoptive parent must be a resident of British Columbia." As a result, the judge issued an order prohibiting the Director from consenting to O.'s the adoption in Alberta or removing her from her residence in Alberta.

- [4] I have referred to s. 5(2) using the past tense because on March 16, 2017, the Adoption Act was amended by the coming into force of the Adoption Amendment Act, 2017, S.B.C. 2017, c. 4. The Director's position on appeal is that by virtue of those amendments the chambers judge's order can no longer stand.
- [5] The following changes to the Adoption Act are relevant to this appeal:
- (a) s. 5(2) was repealed;
 - (b) s. 6(2) was amended to make it clear a child can be placed with prospective adoptive parents who reside in or outside of British Columbia;
 - (c) s. 77.2 was added, authorizing the Director to enter into agreements with prospective adoptive parents; and
 - (d) s. 102 was added, retroactively validating all out-of-province placements made prior to the amendments.
- [6] Section 102 provides:
- (1) This section applies if, before the date this section comes into force, a director, an adoption agency, a director of child protection or a parent or other guardian of a child placed the child for the purposes of adoption with a person who, at the time of the placement, was not a resident of British Columbia.
 - (2) Despite any decision of a court to the contrary made before or after the coming into force of this section, if a director, an adoption agency, a director of child protection or a parent or other guardian of a child placed the child for the purposes of adoption in the circumstances described in subsection (1) of this section, the person who placed the child is conclusively deemed not to have contravened section 5(2).
 - (3) A person has no right of action and must not commence or maintain proceedings for a remedy set out in subsection (4) of this section for the reason that the placement of a child in the circumstances described in subsection (1) of this section, but for subsection (2) of this section, would have contravened section 5(2).
 - (4) For the purposes of subsection (3), a person has no right of action and must not commence or maintain proceedings
 - (a) to claim damages or compensation of any kind from the government or any person,
 - (b) to obtain a declaration that damages or compensation is payable by the government or any person, or
 - (c) for any other remedy against the government or any person.

- (5) The adoption of a child by a person with whom the child was placed for the purposes of adoption and in the circumstances set out in subsection (1) of this section is not invalid by reason that, but for this section, the placement would have contravened section 5(2).
- (6) This section is retroactive to the extent necessary to give full force and effect to its provisions and must not be construed as lacking retroactive effect in relation to any matter because it makes no specific reference to that matter. [Emphasis added.]
- [7] There can be no question that the Legislative Assembly has the authority to pass retroactive legislation: *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49 at para. 69, [2005] 2 S.C.R. 473; *Barbour v. University of British Columbia*, 2010 BCCA 63 at para. 32, 316 D.L.R. (4th) 354, leave to appeal ref'd [2010] 1 S.C.R. vi.
- [8] Although Mr. M. submits we have the authority to refuse to apply the recent amendments, it is not open to us to do so. In our democratic society the courts are obligated to follow and apply the law unless it is successfully challenged as being unconstitutional. No such challenge has been raised here.
- [9] In light of the amendments, I agree with the Director that she must now be taken to have acted within her authority in placing O. in Alberta.
- [10] I would allow this appeal, set aside the chambers judge's order, and dismiss the petition. I would make no order as to costs.
- [11] SAUNDERS J.A.: I agree.
- [12] TYSOE J.A.: I agree.
- [13] SAUNDERS J.A.: The appeal is allowed. The order appealed is set aside and the petition is dismissed. "The Honourable Mr. Justice Frankel"

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