

T v C AND ANOTHER 2003 (2) SA 298 (W)

Headnote : Kopnota

A minor child was born to the second respondent and the appellant, out of wedlock, at a time when the relationship between them had already ended. Their relationship became increasingly acrimonious and, as a result, no father - son relationship had been established between the appellant and his son. The appellant remarried and three minor children were born to the appellant and his new wife. The second respondent married the first respondent and one minor child was born to them. When the second respondent's and the appellant's child was ten years old, the first respondent launched proceedings to adopt him. The appellant was not notified of the proceedings, nor was his consent obtained. The appellant discovered that an adoption order had been made in respect of the child only when he instituted proceedings himself, in order to gain access to the child.

The commissioner who made the adoption order had been under the impression that the child's father was unknown. Indeed, the child's birth certificate, which formed part of the evidence, reflected the natural father as 'unknown'. The second respondent admitted that she had been responsible for making this incorrect entry at the time of the child's birth.

The appellant had unsuccessfully sought the rescission of the order. His application had been dismissed on the grounds that: (1) he had failed in his duty to enter his particulars in the registration of the birth of the child and, as a result, the commissioner who granted the order had been under no duty to notify him of the proceedings (or, by implication, to obtain his consent); and (2) it would not have been in the best interests of the child that the order be rescinded.

Held, that because of the serious consequences which flowed from adoption, the applicant for an order of adoption (or the consenting parent, where only one parent had given consent) was required to observe the utmost good faith in placing material before the court. This included providing details regarding the identity and whereabouts of the other parent, if those details were known. Where the details were not available, the court had to ascertain what steps had been taken to establish them. The social worker who submitted a report on the adoption also had to demonstrate the utmost professional integrity in making every reasonable effort to obtain such details. (Paragraph [16] at 306D/E - F/G.)

Held, further, that the commissioner was absolved of the duty of notifying the natural father only where his identity or whereabouts could not be established. That being so, the requirement that the natural father enter the details contemplated in s 19A(2)(a) of the Child Care Act 74 of 1983 in the registration of the birth of the child was not a condition precedent for the giving of notice under s 19A(1). It followed that the commissioner's finding that the failure by the natural father to comply with this requirement disentitled him to be given notice had been erroneous. (Paragraph [14] at 306A - C.)

Held, further, that the second respondent had deliberately misled the court by informing the commissioner that the child's birth certificate referred to the natural father as being 'unknown'. The adoptive father had clearly been aware of the natural father's personal details. At the very least, the second respondent failed to correct the erroneous impression that the commissioner had regarding the natural father's identity. It was also probable that the social worker had similarly been misled. The consequence of that reprehensible conduct had been that no notice had been given to the appellant. There had been a duty on the second respondent to make the true facts available to the presiding commissioner. The failure to give notice, together with the fact that the appellant had been denied his right to consent to his adoption tainted the process. The proceedings had been clearly unfair. (Paragraph [17] at 306H - 307A/B.)

Held, further, that any decision relating to the rescission of an adoption order or an appeal against any such decision had to give primacy to the principle enunciated in s 28(2) of the Constitution of the Republic of South Africa Act 108 of 1996 that the interests of the child be accorded paramount importance in every matter concerning the child. The commissioner had correctly concluded that it would not be in the child's best interests to rescind the order. In accordance with the proviso to s 21(7) of the Child Care Act 74 of 1983, he did not have the authority to rescind the adoption order in circumstances where it was in the interests of the child that the order be confirmed. (Paragraphs [18] and [21] at 307C - C/D and G/H - H.)