

IN THE EASTERN CARIBBEAN SUPREME COURT
ST VINCENT & THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHAP2022/0001

BETWEEN:

JN

Applicant

and

[1] JP

[2] JJ

(A Minor)

Respondents

THE ATTORNEY GENERAL

Interested Party

Appearances:

Ms. Vynette Frederick of Fredericks Attorneys for the Applicant
Ms. Ladhail Horne and Ms. Moureeze Franklyn Crown Counsel of AG's
Chambers for the interested party
Ms. Moureeze Franklyn Guardian Ad Litem for the JJ the minor child
Ms. Tonya Da Silva of Duane Daniel's Chambers for JP the respondent

2023: November
2024: January
June 12
September 30
November 15

[1] **Stephenson J.:** Adoption is "... theoretically a procedure whereby children are
to be provided with the warmth, love and security which are associated with

being a part of a family, so that in placing a child with a family, extreme care and caution should be exercised by those involved in the decision-making process.”¹

- [2] An adoption order is a serious step which involves the severance of legal ties between the biological parents and a child, it also operates to terminate the parental responsibilities of the natural parents. Adoption into the right home and by the right applicants can provide a child with a secure status and loving parents. It is clearly the court’s primary obligation to ensure that any order it makes will at all material times promote the best interests of the minor child.
- [3] By the very nature of the Adoption Order, it is incumbent upon the court to be satisfied that it is justified to make an order which operates to exclude the natural parent or parents of a child.
- [4] Intricately involved in the granting of an adoption order is the question of parental consent.
- [5] Before the court is an application to dispense with the parental consent of the father of the child JJ subject of the adoption application. In an effort to protect the interest of the minor child the subject of the application the names as they appear in this judgment have been anonymised and the parties and the child will be referred to by their initials only.
- [6] The application to dispense with the consent was duly filed on behalf of the JN who is seeking to have the adoption application made in her favour. The respondent to the application is JP the father of the child the subject of the adoption application. The Attorney General has been added as an interested party representing the Social Welfare department.

¹Elements of Child Law in the Caribbean Zanifa Mc Dowell at page 196

[7] At the first hearing of the application on the **23rd November 2023** this court ordered submissions to be made by applicant and the interested party. Written submissions were filed as ordered and the court also heard oral submissions on behalf of the applicants, JP who has not consented to the adoption and on behalf of the Social Welfare Department. The court also heard sworn testimony from the parties and one witness in the matter.

[8] This is the court's judgment on the matter.

[9] As was stated, the court is being called on to *determine whether the consent of the father JP should be dispensed with in the application for the adoption of JJ pursuant to Section 106 of the Children (Care and Adoption) Act 2010 (The Act)*.

[10] It is proposed to set out the law regarding dispensing with consent in divorce proceedings. Thereafter, the court will consider the facts attendant to the application and apply the law thereto in concluding whether or not the order to dispense with parental consent is to be made.

What is adoption?

[11] It is the state's submission that Adoption involves the permanent severance of all family ties of a child and is one of the most serious of all court orders, the consequences of which the rights and responsibilities of a parent or parents to a child are severed and other persons now assume those rights and responsibilities.

[12] "Adoption is the formal process effected by order of court, by which a child is brought permanently into the family of the adopter. As a general rule the child ceases to be the child of the person who was his or her parent before the

adoption order was made and that person ceases to be the parent of the adopted child.”²

The Children (Care and Adoption Act 2010)³

[13] In Saint Vincent and the Grenadines, The Children (Care and Adoption) Act 2010 (The Act) was passed by the House of Assembly on the 30th day of August 2010 and assented to by the Governor General on the 7th day of October 2010. This Act was stated to come into operation on a day to be fixed by the Governor General by proclamation published in the Gazette. The Act was passed to provide for the care and protection of children, the operation of adoption service and other related matters.

The 1989 United Nations Convention on the Rights of the Child

[14] Consideration must also be given to the 1989 United Nations Conventions of the Rights of the Child (the UNCRC) which St. Vincent and the Grenadines ratified on the October 26th 1993, after becoming a signatory on the 20th September 1993. Counsel noted that having signed and ratified the Convention St Vincent and The Grenadines is bound by the provisions of the convention.

²Re: Private International Family Law by Winston Anderson at page 172

³ Act number 15 of 2010 Laws of Saint Vincent and The Grenadines

Definitions:

What is a child? A child under the UNCRC a child means “every human being below the age of eighteen years unless under the law applicable to the child majority is attained earlier”. The Act defines a child as person who is under the age of 18 years.⁴

[15]What is a parent? Under the Act⁵ parent is defined as follows:

“Parent includes

- (1). A natural or adoptive parent who has the parental responsibility of a child;
- (2). A person, who has stood in loco parentis to a child for a period of not less than one year and who has a continuing relationship with the child; or
- (3). A legal guardian of a child who has custody or guardianship rights of the child, but does not include a person acting as a care giver on behalf of the Director.”

[16]What is a foster parent and what are a foster parent’s rights? The Act is silent on the definition of a foster parent. A foster parent however, has been described as a person who is charged with bringing up a child that is not one’s own by birth.⁶

[17]Section 49 (1) of the Act provides *“The person in charge of the childcare service or the foster parent with whom the child is placed under a care order has the parental responsibility for the care of the child”*this, to this court’s

⁴Ibid section 2

⁵ Act Number 15 of 2010

⁶Oxford Dictionary and Thesaurus

mind operates to create the obligation for the foster parent to care for a child placed in his or her or their care as a parent would.

[18]What is meant by “Parental responsibility”? Parental responsibility is a term used to describe the duties, powers, rights and authority that parents have in relation to their children and their property. Section 2 of the Act provides

“(a) the duties, powers, responsibilities, and authority,

and

(b) includes the rights and obligations

Which by law in force in Saint Vincent and The Grenadines, the parent of a child has in relation to that child.”

[19] Obligations and responsibilities:

(1). The UNCRC provides that

“State Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately, and a decision must be made as to the child's place of residence⁷.”

(2). The appointment and responsibilities of the Director is provided and laid out in the Children (Care and Adoption) act.⁸

Consent:

⁷ The UNCRC Article 9(1)

⁸ See Sections 6 and 7 of the Act

[20] Section 105 of the Act speaks to the question of consent in adoption proceedings. Section 105 (5) defines consent as is required for adoption proceedings as follows:

“In this section “consent” means the permissions given unconditionally and with full understanding of what is involved ...”

The requirement for consent and the dispensation of same

[21] It is noted that there is a requirement for consent to be given prior to making of the adoption order.⁹ This consent can be dispensed with pursuant to Section 106 of the Act. Section 106 of the Act states that an application must be made for the order to dispense with the consent and lays down the factors to be considered. It is noted that the court “may” also consider any recommendation in a report filed by the Adoption Committee or parent of the child.

[22] What are the matters for the court to consider when there is an application to dispense with parental consent? Section 106 (1) of the Act provides that:

(1) *On application the Court may, by order, dispense with a consent required under section 104 if:*

(a). *The Court is satisfied that it is in the best interests of the child;*

(b). *The person whose consent is to be dispensed with is not capable of giving an informed consent;*

(c). *Reasonable but unsuccessful efforts have been made to locate the person whose consent is to be dispensed with;*

(d). *The person whose consent is to be dispensed with:*

i. *Has abandoned or deserted the child;*

ii. *Is not capable of caring for the child; or*

⁹ Re: Section 104 (1) of the Act

- iii. *Has not made reasonable efforts to meet his or her parental obligations with respect to the child: or*
- (e). Other circumstances exist which in the opinion of the Court justify dispensing with the consent.

...

- (3) Before making an order under this section, the Court may consider the recommendation in a report filed by the Adoption Committee or a parent of the child”

[23] The application under consideration of this court is for the dispensation of the father JV. JV has refused to give his consent to the adoption of his daughter JJ.

The evidence

[24] The applicant JN also gave sworn testimony and was cross examined by counsel Ms Da Silva representing JP. JP and Ms P also gave sworn testimony and they were cross examined by Ms Frederick representing JN

(1) JN

[25] JN has applied to the court to adopt JJ and has also applied for the parental consent to be dispensed with. JN has filed an affidavit setting out her case to the court. The relevant averments are as follows:

- (1). JJ was placed into her custody on the 3rd December 2021 by the Child Care and Development Unit;
- (2). She was formally granted custody by the Family Court on the 24th May 2022;

- (3). That she was informed by the social workers in JJ's case that her mother was found to be incapable of caring for her and the authorities stepped in and JJ was initially placed at and housed at the St. Benedict's Home.
- (4). That during her residence in the children's home no steps were taken by the father JP to visit or see the infant child who was then a ward of the home.
- (5). That when JJ came into her care and control JJ displayed several inappropriate and anti-social behaviors some of which were sexual in nature. JJ was also not speaking and was temperamental and seemingly did not react to danger in a normal way. The applicant noted that if in the course of playing JJ fell and hurt herself, she did not react or even cry.
- (6). That when JJ was taken into her custody, her skin and hair were not cared for nor was she up to date with the required vaccinations.
- (7). Over the period of time that JJ has been with the applicant and her family she has blended into the family structure and there has been a reversal of her negative behaviours. She has started to speak, is now calm, understanding and confident.
- (8). That JJ addresses her as mummy which she did from the first day she came into her care.
- (9). That JJ at her home is exposed to a healthy, loving, and stable family environment where there is emotional security, comfort and the existence of a spiritual foundation.
- (10). JJ has been enrolled in school and has made tremendous progress in her development and is thriving in the environment.
- (11). The applicant expressed fear that should the current status quo be changed JJ would retrogress into her previous behaviours and that she will suffer greatly if she is removed from the environment and the family that she has adapted to and come to know and love and who love her in return.

[26] On 12th June 2024 the applicant was cross examined by Counsel Ms. Da Silva who appeared on behalf of JP.

[27] The applicant confirmed that JJ was placed in her care by the welfare department who informed her of the circumstances of JJ being placed in their care. JN said that the Welfare department never discussed JJ's father with her neither was his name or whereabouts disclosed to her.

[28] When challenged about her statement regarding the fact that JP never went to visit JJ against the background that she said she never discussed JJ's father with the welfare department JN told this court that she learned about JP when the matter got to the court and that fact that JP had taken no steps to visit JJ or ask about her.

[29] JN agreed with counsel that her averments regarding JJ's bonding and comfort level with her and her family is a statement of her view. She also said that she was not familiar with JP and told this court that and her belief about JP gaining custody as stated in her affidavit would not be in the best interest of JJ as she questioned where was he in the first place and why was JJ in care of the welfare and foster care in the first place.

(ii) JP

[30] JP the father of JJ swore to an affidavit in opposition to the application¹⁰ to dispense with his consent and in opposition to the application for adoption.

[31] He averred as follows:

[1]. That he shared an intimate relationship with JJ's mother which resulted in JJ's birth. That early in her life whilst she was still in the custody of her

¹⁰ Affidavit filed on the 17th January 2024

mother, he visited the infant, and the infant would spend time with him and his family.

- [2]. That in 2021 (when JJ was two years old) he was made aware by neighbours that the welfare department had custody of JJ. When he received this information, he called the Department to enquire after her status and was told that she was at Georgetown.
- [3]. That he enquired if he could see the child but was told he could not as he was not recorded as her father and he was further informed that she would not be moved from the welfare department until she was three years old.
- [4]. That over the years he made enquiries about his daughter and was unable to get any assistance. He said he was informed by the welfare officer that JJ was placed at the Salvation Army, and he sought to visit her and to take pampers and he was denied access to the child as it was not believed that he was JJ's father.
- [5]. That in 2022 a DNA test was conducted, and the results obtained stated and confirmed that he was the biological father of JJ. A copy of the DNA results was exhibited by the deponent.
- [6]. That he was made aware that JJ was placed in the custody of the applicant in June or July 2022 he approached the Family court for custody of JJ and he is now requesting custody or in the alternative access to see her.

[32] Mr Prescott was summoned to the court to be cross examined on the contents of his affidavit. Under cross examination Mr Prescott told this court that:

- [1]. He said he was involved with JJ's mother for a couple of years, and he knew where she lived during that time. He agreed that she lived in a little board structure on a piece of land near to a little stream with no utilities.
- [2]. That he was not aware that JJ's mother gave birth to 13 children, but he does know that she had other children and that JJ was her last child.

- [3]. He admitted to knowing two of her children and that he began a relationship with JJ's mother when she was pregnant with her second to last child.
- [4]. That he would stay at JJ's mother's dwelling sometimes.
- [5]. He said he did not know that JJ's mother struggled with any mental health issues and denied that had he known that she used to "trip" out when she was pregnant. Had he known, he would not have put himself with her.
- [6]. He says that he knew when JJ's mother was pregnant with JJ however he did not go to clinic with her as he was busy working.
- [7]. He said that he knew that JJ lived in the house with her mother and at least three other children and that he visited her at the mother's house and that he would sometimes take JJ to spend time with his mum, his sister, his aunt and grandmother.
- [8]. That his mother was now deceased, but he could not say when she died, but, that before she died she used to go with him to pick up JJ.
- [9]. When asked about whether his name was on JJ's birth certificate, he admitted that his name was not on the child's birth certificate and that was because her mother registered her birth without him being present. His words were that *"her mother leave and go without me"*.
- [10]. He denied that he did not put his name on the baby's birth certificate because he did not want to bear any financial responsibility for the child.

[33] When asked about the period that JJ was in the home in Georgetown and whether he took any steps to have his name inserted onto JJ's birth certificate his response was again that the mother had to go with him in order for him to do so.

[34] Mr Prescott under cross examination also admitted that JJ's mother got a little crazy after JJ was born. This is after telling the court that he did not know of her having mental issues.

[35] When pressed further under cross examination, Mr Prescott told this court that at present he lives with his girlfriend who he has not brought to the court to take part in the proceedings.

[36] Upon completion of the cross examination by counsel Frederick in answer to a few questions by the Court JP admitted that his sister who seems to be of better means than him does not have children and that he wants JJ for her, meaning his sister.

(iii) Ms P

[37] JP's sister (Ms. P) also swore an affidavit in support of her brother's application.

Ms. P averred as follows:

- [1]. That she is the aunt of JJ and in fact it was she who gave her niece her name.
- [2]. That she was aware of her brother's attempts and efforts to see his child since her birth and that her brother has always take an interest in JJ's welfare.
- [3]. That when JJ was an infant she was brought to the home by her father and would spend time with the family and she was in fact taken care of by the deponent and her grandmother when the father was at work.
- [4]. That when JJ was about three or four months old, she observed JJ's mother behaving strangely which she found frightening and that she and her family thought it best that JJ be placed under their care and control.
- [5]. Thereafter, JJ was living with her and her mother, and her brother would be present and helped to look after and maintain JJ. That whilst in her care JJ was showed age-appropriate videos on the deponent's tablet.
- [6]. That JJ was removed from their home by her mother and Ms. P's mother would visit them and bring JJ to their home so they could and did spend time with her.

[7]. That after this, she understood that JJ was taken to the welfare by her mother who told the authorities that JJ had no father. That attempts were made by the family and the father to see and get custody care and control of JJ but to no avail.

[8]. That she knows that her brother used to take pampers and feed to the Salvation Army for JJ and that he was denied the opportunity to see her.

[9]. That in 2022 she became aware that JJ was placed with the applicant and that she is aware that her brother filed an application in the family court for the custody of JJ and that he did a paternity test which came back that he was in fact the biological father of JJ.

[38] Under cross examination by Counsel Frederick Ms. P told this court that JJ was about three to four months old when she observed JJ's mother to be tripping out. She said that after the death of her mother JJ's mother came for her. It is noted earlier she said that JJ's mother came for JJ and that after that her mother would go for JJ. The discrepancy is noted.

[39] Ms. P told the court under cross examination that she sought out the police and the welfare department to find out what to do for her brother's name to go on JJ's birth certificate after JJ's mother was tripping out. She said that she was told that her brother was told that he would have to do a paternity test which he did.

[40] Ms. P told the court that she knew that JJ's mother's situation was not good as she had plenty children. She agreed with Counsel Frederick that she and her brother used to care for JJ. This witness also said that she would not be happy if she was told that JJ was happily settled with the applicant JN. However, she said her concern is for JJ to know who is her true family.

[41] Ms. P was adamant in cross examination that she did take steps to find out how to get back JJ but she was never advised to go get a lawyer. Further, that she

only thought about going to a lawyer when the matter came to the High Court. Ms. P said in the three years that JJ was with the applicant JN, she never thought about getting a lawyer to get JJ to be with her true family.

[42] Ms. P told this court that she is in a better position than her brother job wise and that her living conditions were better than his to look after JJ.

[43] Ms. P told the court that she did not have any children of her own and that what she really wanted was for JJ to know her family.

The submissions:

[44] Counsel Fredericks on behalf of the applicant submits in this case that the court must decide what is in the best interest of the minor child.

[45] The applicant JN having had custody care and control of JJ is now seeking to adopt the minor child who was placed in her care on the 3rd December 2021 by the Child Care and Development Unit. She was granted formal custody on the 24th May 2022 by order of the Family Court.

[46] The history of JJ's care proceedings is that her mother was found to be incapable of caring for her when she was about one year old and she was placed in the St Benedict's Children's Home in Georgetown and subsequently with JN.

[47] JN has told this court that she was informed by the welfare authorities that the father was aware that JJ was at the Children's home but that he made no attempts to visit or see her whilst she was there.

[48] That over the period of time JJ has been in the JN's care she has improved and has integrated into the deponents family and at school she has caught up and her development is now on track.

[49] JN has placed before this court evidence as to the condition of the child when the child was first placed with her and the developmental progress the child has made as well as the fact that the child has bonded with her family.

[50] The applicant has averred that the father has never made any effort during the period that the child has been placed in her care.

[51] Counsel Frederick on behalf of the applicant submitted that the court is required to consider the circumstances that caused the child to be put into care and what was the father's involvement in her life prior to her being placed into care. Further, the father's current circumstances must be assessed.

[52] It was submitted by counsel that the mother's mental health status prior to her becoming pregnant is to be assessed and an assessment must be done to have her ability to consent assessed.

[53] Counsel urged the court to also take into consideration the human rights of the natural parents of the child in making the order to dispense with their consent as measures to deprive a parent of his or her family life with the child should only be applied in the exceptional circumstances of the child which can only be overridden by what is in the child's best interest. **(Re: Johansen -v- Norway¹¹)**

[54] Counsel Frederick submitted that in this case the mother was mentally ill before the child was born and that the father knew of the mother's diagnosis and did nothing to remove the infant child from the mother's care because at the time he was purportedly indigent. It was also contended by Counsel for the applicant

¹¹ (1996) 23 EHHR 33 @ para 78

that the father took no responsibility for the child and only appeared to do so when the child was placed in the care of the applicant and had bonded with her and her family and that the application for the adoption of the minor child was imminent.

[55] There is no evidence before the court to substantiate counsel's factual contentions relevant to dispensing with the father's consent. The provisions of the Children (Care and Adoption) Act is clear as to what the court is to take into consideration when making the order.

[56] The court having considered the provisions of the Act and noting that the Act calls on the court to take into consideration a report from the Welfare, the court at the second hearing of the application ordered that a 'Social Inquiry report to be provided to the court for the said child subject of the application'

By the court

[57] There is no dispute before the court that Jovando Prescott is the biological father of JJ. The applicant has made an application to adopt JJ and seeks an order to dispense with the father's consent. The court can only dispense with the consent of the parent if it is satisfied that the parent has abandoned, neglected or persistently ill-treated that child.

[58] This is a finding that the court cannot take lightly and that any inaction on behalf of the parent must evince a high level of culpability.

[59] Having seen and heard the evidence of the witnesses this court is inclined to accept the evidence of the applicant regarding JJ's condition when she first came into her custody and the fact that much work has been done to address her antisocial habits and behaviours and also her personal hygiene and health.

[60] This court finds that from birth the father has made no real and meaningful effort to be part of his daughter's life and still does not really want to be part of his life, but he wants the child to be given to his sister who is childless and that he would spend time with the child from time to time.

[61] It is clear to this court that Mr Prescott has not played any significant role in his child's life from her birth to the present day. This court is of the view that the times when the child did visit his family was upon action taken by his mother who is now deceased. It is also clear to this court that the child does not know the father and he agrees with that.

[62] The court cannot dispense with parental consent of a child in the making of an adoption order unless the court is satisfied that:

- (1). The parent cannot be found;
- (2). Is incapable of giving agreement;
- (3). Had persistently failed without reasonable cause to discharge their parental obligations and responsibility for the child;
- (4). Has abandoned or neglected the child;
- (5). Has persistently and/or seriously ill treated the child.

[63] Volume 21 Halsbury's Laws 3rd Edition paras 231 to 233 cites *Re: W (an infant)* [1971] AC 682 [1971 2 All E R 49 and the dicta of Lord Hailsham of St Marylebone when he said

“The contest between foster parents and natural parents all perfectly sincere in their motives, ... the decision is one which must cause pain in whichever direction the dispute is resolved and in any tribunal charged with the decision must cause anxiety and a deep sense of responsibility. ...”

[64] The case at bar falls to be considered under the **Child Care and Adoption Act**. The duty of the court is set out in Section 83(1) of the Act which provides *inter alia* it is in

the best interest of the child both in childhood and later in life this must be the paramount consideration.

[65] In adoption cases it is noted that what is in issue is the parent child relationship itself where both the parent and the child have legitimate rights. The test that is the “welfare of the infant test” can be found in custody cases in the UK. As this is the applicable test in that jurisdiction in that regard. In the UK in custody cases the *“best interest of the child is of paramount consideration.”*

[66] The rights of parents in custody matters are to be exercised not in the best interest of the parents but for the welfare of the children themselves. One has to give the concept of what is in the best interest of the child a wide interpretation. It is the child’s material and physical well-being, education, health happiness and moral well-being that falls to be considered.

[67] What constitutes the best interest of the child is to be determined by the court upon a careful consideration of all the facts and circumstances of the case.

[68] The Adoption Act in Saint Vincent and The Grenadines has laid down the principles to be applied in relation to the making of an Adoption Order. The Act also lays down what has to be considered in determining the best interest of the child. (Section 83 (1) and (2).

[69] It is noted that Adoption is to be regarded as a service for the child and not the persons wishing to acquire or care for the child. (Section 88 (1)(b).

[70] What would be in the best interest of the child in childhood and later in life must of necessity depend upon the facts and circumstances of each case. The Court is mandated to take into consideration the factors listed in Section 83(2). This section is couched in mandatory language. The court is always charged with the duty of making a decision that is in the best interests of child.

[71] The court is to consider the following:

- (1). **The age of the child:** If the child is of full age or tender years. Where a child has attained the age understanding and intelligent discretion or maturity, the child should be consulted. This however, is not conclusive of the matter but is an important factor to be taken into account in coming to a conclusion.
- (2). **The attitude of the person wishing to adopt:** The willingness of the applicant is very important as, for it to be otherwise can and will hold back the proper welfare of the child and not be in the child's best interest.
- (3). **The nature of the relationship of the child and the applicant:** An existing relationship with the applicant is important. The degree of affection between the applicant and the child is to be considered.

The powers of the court:

[72] It must be borne in mind that the High Court at all material times possesses "*inherent powers*" which are necessary for the proper administration of justice. The inherent powers of the court are necessary to the court's existence. The powers it is noted can neither be given nor taken away from the court by legislation. It is trite law that it is incumbent on any judicial officer to be judicious when exercising the court's inherent discretion.

[73] In exercising its judicial discretion, a judge must be guided by the principles of law and equity so as to do what is fair and just in the circumstances of the case, it is important that a judge not act capriciously and arbitrarily in exercising judicial discretion. Every effort must be made to avoid acting in a manner that will result in a miscarriage of justice.

[74] It is to be noted that pursuant to provisions of the Conventions of the Rights of the Child (The CRC), the best interests of the child is considered a general principle which

guides the interpretation of the Convention. As it regards adoption Article 21 of the CRC speaks to the best interest of the child. Saint. Vincent and the Grenadines is a signatory to the said Convention and is therefore bound by its provisions.

[75] The best interest principle is to guide the court in making all decisions that touch and concern children and their rights. The provisions regarding adoption and dispensation of parental consent in adoption matters has been considered at length by the Canadian Courts. The law regarding adoptions and dispensation of parental consent is grounded on the principle of that is in the best interest of the child as against the welfare principle applicable in the United Kingdom.

[76] In arriving at its conclusion this court has considered the law as stated and applied in the Canadian cases as the legislation is similar to the provision of the Saint Vincent and The Grenadines legislation. The Canadian Cases though not binding on this court were persuasive and of benefit to the court.

[77] In **RC & TG -v- AC & BD 2017 ONSC 6960 (CANLII)** the infant child lived with the applicants (The proposed adopters) for three years. During that period of time, he developed a strong sibling relationship with the other children in the home. An application was made to dispense with the parental consent. The court conducted a review of the Canadian Law and held that the onus was on the party seeking to dispense with parental consent to satisfy the court that making the order sought would be in the best interest of the child.

[78] The court must consider the best interest factors as set out in Section 88(2) of the Act in determining whether it is appropriate to dispense with the parental consent. The court must be satisfied that the applicant has established the best interest of the child beyond the mere balance of probabilities. This is because the very nature of the adoption order is a final order that once properly made is irrevocable.

[79] In applying the best interest test as it applies to adoption matters it is incumbent on the court to weigh the advantages of dispensing with the parents' consent. There must be a balance of what will the child gain or lose. There must be logical and forceful benefit to the child for there to be an adoption order, which we know terminates the blood relationship with the blood parents. Will there be a positive contribution to the welfare of the child by dispensing with the parental consent?

[80] According to the Canadian decision which this court found to be very instructive and helpful in considering the application at bar. The court should review the past, present and future circumstances which have or may affect the welfare of the child. The court must then determine whether the child will benefit by permanently cutting the parental tie. **Re: Stoodley -v- Blunden (1980) CanLII 3761.**

[81] In **R.C. & T.G. v. A.C. & B.D 2017 ONSC 6960 CANLII** it was held that the exclusive focus is the child's best interest, not the rights of the natural parents. The behaviours of the parent is also relevant if the non-consenting parent continues to engage in conduct that can be considered as harmful and not beneficial to the child. **Re: S(R) -v- W (B) 2011 ONCJ**

[82] The child's existing family really must be taken into consideration, **Re:Lott -v- Macrae 2005 CANLII 7569 (on SC), [2005] OJ NO 1060, 2005.** Where the relationship between the father and the child is nonexistent (as is in the case at bar) the courts have been influenced to dispense with the father's consent. **Re: Smith -v- Harvey 1974 CANLII 2162 ON CA [1974] OJ No. 1291**

[83] Where a biological father has shown a genuine interest in a child even though separated and the child has an emotional attachment to the natural father the courts have been very reluctant to dispense with the father's consent. This is not the certainly not the case in the case under consideration by this court.

[84] The court must consider the child's existing family reality. **Lott v. MacRae** [2005] O.J. No. 1060, 2005 CarswellOnt 1069 (Ont. S.C.J.).

Re: Baby JJ

[85] Considering the facts as have been adduced in the case at bar the court makes the following finding with respect of the child's best interests.

- (1). The adoption order is to be regarded as a service to the child;
- (2). Baby JJ has lived with the applicant from since she was placed with her as an infant and she is well integrated and bonded with the family;
- (3). The applicant's home and family is the only home that JJ has a memory of and at this stage she has also bonded with the immediate family's church family, she appears content and to be thriving;
- (4). The family that she lives with has all the appearances of being a stable family unit;
- (5). The child has no relationship with the father who has not been involved with her since she was an infant; and
- (6). The child will benefit from the secure relationship which she has formed with the applicant through adoption.

[87] Should the court dispense with the consent of Mr. Prescott in the case at bar?

Applying the facts of this case to the case at bar this court is satisfied that under the provisions of the Adoption Act (The Act) the court can and will dispense with his consent.

[88] The question of whether or not Mr. Prescott as a parent has persistently failed without reasonable cause to discharge his responsibilities as a parent under law is a question of fact for the court to consider and find. This court finds that based on the evidence adduced Mr. Prescott has made no real effort to locate his child,

build a relationship with her or discharge any of his paternal obligations such as to maintain the said child. *He has not made reasonable efforts to meet his parental obligations with respect to the child.*

[89] This court is not satisfied that Mr. Prescott has any real personal desire to build a relationship with his child but is withholding his consent as he wants his daughter for his sister and he is prepared to visit the child sometimes. It is noted that this is a situation where the minor child is not living with the mother or that the minor child can possibly live with the mother.

[90] This court is satisfied that Mr. Prescott's has abrogated his duties to his daughter. Mr. Prescott's actions towards his daughter in this court's view could best be described as being passive and indifferent. He went for her with his mother in what appears to be an interest shown by the grandmother, since his mother passed there is no evidence that he made any effort to locate and visit or to insert himself into his daughter's life and now he wants the child for his sister.

[91] It is this court's view that Mr. Prescott has persistently failed to discharge any obligation he has as the biological father of the child without reasonable excuse. It is worth repeating that Mr. Prescott took no steps to develop or maintain a relationship with his daughter. By his own admission his daughter does not know him. He has simply paid no attention to his daughter or take any positive steps to ascertain her welfare or whereabouts.

[92] Based on the facts before the court, this court is of the respectful opinion that Mr. Prescott has neglected and abandoned his child within the meaning of the Act. Further, this court is satisfied that the applicant has been dedicated to JJ's well-being and welfare, education and overall social rehabilitation and that she and her family love JJ.

[93] This court is of the view that the applicant is capable of providing a good home for JJ and all of her social and religious needs and that she along with her family have

been and would be able to continue providing a stable and healthy environment for JJ.

[94] This court is not satisfied that Mr. Prescott as a father is prepared to or is even capable of providing a wholesome healthy environment for JJ. By his own admission he currently lives with another partner in a house which has no amenities, no plumbing and relies on electricity from a solar panel. He has withheld his consent not for his own purposes but for his sister who is childless to be able to have JJ.

[95] This court cannot ignore the fact that JJ is also well settled and acclimated to her current surroundings and family and is thriving as a healthy child.

[96] It is noted that since this matter is before the court and whilst waiting on the decision, the father along with his sister took the mother of the child who according to the social welfare report adduced and accepted by the court is not capable of giving informed consent to the adoption of the infant to the Registry to have the father's name inserted on the JJ;s birth certificate. This action by the father and aunt does not in any way impress this court as being an attempt to create a relationship with the baby JJ and in any event based on the DNA testing there was no doubt that Mr Prescott was baby JJ's father and since knowing this he has still done nothing to forge a relationship with her.

[97] Having considered all of the above this court is satisfied that it is in the absolute best interests of JJ that its discretion be exercised to dispense with her father's consent, this court is satisfied that this decision is in the best interests of the welfare and development of JJ and the adoption order be made.

This court therefore orders that:

- (1). The parental consent of Mr Jovando Prescott be dispensed with in the adoption of his daughter JJ;

- (2). That the matter be remitted to the Family Court for the adoption order to be made;
- (3). There shall be no order as to costs.

[98] This court wishes to express its gratitude to all counsel involved in this matter and your patience and manner in which the matter was handled is greatly appreciated.

M E Birnie Stephenson
High Court Judge

By the Court

Registrar