

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2019/0199

IN THE MATTER OF THE CHILDREN (CARE AND ADOPTION) ACT 2010

AND

**IN THE MATTER OF AN APPLICATION UNDER SECTION 106 OF THE CHILDREN (CARE AND
ADOPTION) ACT 2010 TO DISPENSE WITH THE CONSENT OF A PERSON REQUIRED TO GIVE
CONSENT FOR THE ADOPTION OF THE CHILD KNOWN AS Y.Z.**

AND

IN THE MATTER OF AN APPLICATION BY L.M. FOR ADOPTION OF THE CHILD KNOWN AS Y.Z.

BETWEEN

L.M.

APPLICANT

AND

N.O.

1st RESPONDENT

AND

Y.Z.

(BY HIS NEXT FRIEND CAMILLE JOHNSON)

2nd RESPONDENT

Before: The Hon. Mde. Justice Esco L. Henry High Court Judge

Appearances:

Ms. Paula David for the applicant.

Mr. Duane Daniel for the 1st Respondent.

Mrs. Cerepha Harper-Joseph for the 2nd Respondent.

2020: May 11
Jun. 2
Jul. 14

JUDGMENT

BACKGROUND

- [1] **Henry, J.:** At the center of this case is an infant who is just over a year old. The dispute is almost Solomonic in nature in that two women have locked horns over which one should essentially be awarded custody of the child. One is the birth mother and the other is the prospective adopted mother. Due to the sensitive nature of this matter and out of a desire to protect the child, all names have been anonymized.
- [2] The intended adopted mother L. M. is seeking an order from the court to dispense with the consent of the biological mother N.O. for the adoption of the child Y.Z. L.M. lives in another State. She claimed that she travelled to Saint Vincent and the Grenadines in 2019 to explore the possibility of adopting a baby boy – Y.Z. She alleged that she encountered N.O. at the hospital when she went there to meet the baby. Subsequently, a caretaker was identified and the baby placed into her care pending completion of the adoption process.
- [3] N.O. had in the meantime signed a consent for the adoption. She has since revoked her consent. She contended that she made a mistake to hand him over. She indicated that she now wishes to get the child back and wants to be a mother to him. Y. Z. is represented in these proceedings by Ms. Camille Johnson, Secretary to the Adoption Committee ('Committee').
- [4] L. M. submitted it would not be in Y.Z.'s interest to be returned to N.O.. N. O. countered that it is in the best interest of the child to remain with the parents. Ms. Johnson submitted that she stands as a neutral party. The court is satisfied that it is in the child's best interest to return to live with his biological mother.

ISSUES

- [5] The issue is whether the court should dispense with N.O.'s consent for the adoption of Y. Z.?

ANALYSIS

Issue – Should the court dispense with N.O.’s consent for the adoption of Y. Z.?

- [6] The Court may make an adoption order in accordance with the provisions of the Children (Care and Adoption) Act¹ ('the Act'). The Court may not do so unless the natural parent gives consent². Consent is defined in the Act as 'the permission given unconditionally, with full understanding of what is involved' and need not necessarily be with knowledge of the identity of the prospective adoptive parent.²
- [7] The Court may dispense with such consent if:
1. it is satisfied that it is in the child's best interest do so;
 2. the person whose consent is to be dispensed with is not capable of giving an informed consent;
 3. the person whose consent is to be given:
 - (i) has abandoned or deserted the child;
 - (ii) is not capable of caring for the child; or
 - (iii) has not made reasonable efforts to meet his or her parental obligations with respect to the child; or
 4. other circumstances exist which in the opinion of the Court justifies dispensing with the consent.³
- [8] The Act provides for a person who has given consent to withdraw such consent by completing the prescribed form or by giving the Committee notice of such withdrawal.⁴ Withdrawal of consent in such manner is ineffective if given after an application for an adoption order is made.⁴ However, the Committee may approve such withdrawal if the child has not yet been placed with the prospective adoptive parent.⁵ The Court may also approve the withdrawal of consent.⁵

¹ No. 15 of 2010, section 120 and 125 – for local adoption and inter-country adoption respectively.

² Section 104 of the Act.

³ Section 106 of the Act.

⁴ Section 107 of the Act.

⁵ Section 109 of the Act.

- [9] When the Committee receives a withdrawal of consent it is required to notify the prospective adoptive parent and everyone who consented to the adoption.⁵ If the person withdrawing consent had custody of the child immediately before he or she gave consent, the Committee is obliged to return the child to that person as soon as possible after receipt of the withdrawal.⁵ In deciding any matters involving the welfare of a child, the court's paramount concern is the child's welfare.⁶ Until an adoption order is made, the Committee is the child's guardian⁷ unless custody is earlier restored to the parent by operation of law or order of court.
- [10] L. M. provided testimony as to the circumstances under which she was introduced to the adoptive child. She explained that she visited Saint Vincent and the Grenadines in May 2019. She went to the Milton Cato Memorial Hospital accompanied by her then solicitor. She went there to meet Y.Z. who was about 2 months old at that time. N.O. was present. L.M. testified that an informal meeting was held with her solicitor, the Social Worker Ms. K. Johnson and N.O.. L. M. recalled that N.O. 'made it abundantly clear that she wished to give up the baby for adoption and was prepared and anxious to do so immediately.'
- [11] L.M. testified that N.O. indicated that things were hard, that she could not provide for the baby and needed 'help' herself. She remembered that N.O. also said that once she handed over the baby she would leave the State and start a new life in Barbados. She recalled that her solicitor interrupted N.O. and 'explained at length' that any request for 'help' was illegal and cautioned her against persisting in making such requests. L.M. said that she interpreted N.O.'s request for help as one for money in exchange for the baby. She stated that she was alarmed at this. She said that at one point when her lawyer turned away, N.O. pulled her aside and repeated her request for 'help'. She testified that she told N.O. that that would be illegal and it was not possible for her to comply with her request.
- [12] L.M. said that she and her solicitor told N.O. that if she (L.M.) took the baby, there would be no further contact between them (including the baby) and her. L.M. claimed that N.O. replied that she

⁶ Law of Minors Act, Cap. 232 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

⁷ Section 111 of the Act.

understood, that it was not an issue as she had given away her children before and had not 'passed back'. L.M. stated that she inquired as to the baby's health and what he had been consuming and learnt to her absolute horror that N.O. had stopped breastfeeding him and was feeding him 'loose milk with salt to dilute it'. L.M. averred that she encouraged N.O. to resume the breastfeeding to which she responded that she did not want to do that because she did not want the baby to be attached to her and the breast milk since she had no intention of keeping him. L.M. stated that the encounter with N.O. lasted for about ½ hour and that she has had no communication with her in relation to Y.Z. since then.

[13] L.M. testified that she decided to proceed with the adoption. She made arrangements satisfactory to the Committee for the engagement of a caregiver, supplying nourishment and other supplies for Y.Z. and the provision of premises where he would reside pending completion of the adoption process. She said that she feared that the baby would be harmed by being fed 'loose milk diluted with salt'.

[14] L.M. stated that throughout the informal meeting at the hospital, N.O. kept saying that she wanted to hand over Y.Z. right away and could not understand why she could not do so. L.M. recalled her saying further that Carnival was fast approaching and she did not want to be kept back by the baby; and that after the Carnival she would go to Barbados. L.M. stated that she is and has been the sole financial provider for the baby since mid-July 2019.

[15] She explained that she has routinely transmitted the sum of \$2500.00 per month from July 2019 to cover expenses associated with Y.Z.'s care, including his board, utilities and food. She testified that she also sent clothing, toys and books for Y.Z.. L.M. testified that she has been in daily contact with the nanny to ensure that the baby is cared for and is developing well. She explained that she gets pictures of him and engages in videos calls with him from time to time. L.M. expressed shock that N.O. has sought to 'revoke her consent ... some 6 months after surrendering physical custody' of him. L.M. requested that the court dispenses with the need for N.O.'s consent on the ground that it would not be in Y.Z.'s best interest to be placed back in N.O.'s care.

[16] L.M. stated that when she asked N.O about the baby's father she said that she did not know anything about him because she had only had a one night stand with him after a party; he was a student who was no longer in the State and she has had no communication with him since. L.M.

concluded from this that N.O. is reckless and irresponsible in the way she conducts her personal life and would be a poor role model for the baby.

- [17] She explained that she on the other hand is financially capable of providing for Y.Z.'s physical needs and is in an excellent position to raise him on her own. She testified that she has a close knit family and friends who would support her wholeheartedly in his upbringing. She indicated that her brothers and she were raised by professional parents who valued education as a priority. She added that her siblings and she were all afforded private school education; are all professionals and enjoy a comfortable lifestyle.
- [18] L.M. averred that she is an attorney of over 18 years practice and that she resides in a large 3-bedroom home on a well-manicured acre of land which she owns. She asserted that she practices along learned Queens Counsel in their own firm. L.M. stated that she is very family oriented and is in frequent contact with her siblings and their families and visit them twice yearly in the USA.
- [19] She opined that she was of the view that Y.Z. deserves the opportunity to be raised in a loving, caring family environment where careful attention will be paid not only to his physical needs but also to his moral and intellectual training. She averred that she is able to provide him with an upbringing which will afford him the opportunity to realize his greatest potential. She exhibited a Home Study Report of N.O.'s home prepared by social worker Ms. Merline Bailey and dated 29th July 2019, recommending to the Committee that an adoption order be made.
- [20] During cross-examination, L.M. accepted that N.O. never offered to sell her the baby. She added that based on the animated nature in which she kept insisting that she needed help, she inferred this from the conversation. She testified that she was unaware if N.O. had the benefit of independent legal advice at the point that she handed over Y.Z. or immediately before she signed the consent form. She acknowledged that as a practising attorney, she thought that it was incumbent that N.O. have proper legal advice when signing a consent form.
- [21] L.M. admitted that she did not form the impression that N.O. was a woman of financial means. She stated that it did not cross her mind that N.O. could not afford legal advice. L.M. explained that she was informed that N.O. had received counselling for several months even before the baby was born and that she was adamant that she did not want the baby. No one else proffered such

testimony. L.M. stated that she did not consider that it was prudent for N.O. to be examined for post-natal depression. She reasoned that she had given up babies before and was adamant that she wanted to give up Y.Z. and that 'she would not pass back.' L.M. recalled that N.O. told her that she had not 'passed back' for the others either.

[22] L.M. indicated that she had had health concerns for Y.Z. in particular about his nutrition, but stated that she has had the benefit of an affidavit⁸ to which was exhibited a medical report as to the baby's health. She accepted that having seen the medical certificate of pediatrician Dr. Boyle she became aware that Y.Z. 'was checked out' by the doctor. On being shown the report she noted that it reflected that Y.Z.'s state of nutrition was evaluated as 'good' and not 'fair' or 'poor' which were other options on the form. She accepted too that the doctor on the report that there were no significant concerns in relation to Y.Z.'s health or condition. L.M. agreed that there appeared to be no evidence of any nutritional issue associated with Y.Z., despite what he was allegedly being fed. She accepted that she did not personally witness the child being fed loose milk and salt.

[23] L.M. indicated that she was not aware of the exact date that the revocation of consent was signed. She testified that she is aware of the latest report filed by case worker Ms. Augustus, and that the recommendation in it is for Y.Z. be returned to his biological mother, N.O..

[24] L.M. submitted that it would not be in Y.Z.'s best interest to be returned to N.O. because:

1. immediately on meeting her N.O. kept insisting that she be allowed to give up the baby right away and appeared to be unduly concerned with being free from the responsibility of caring for him, so that she could enjoy carnival; and kept insisting even after being told that certain procedures had to be put in place before the baby could legally be given up;
2. N.O. has given up 4 other children which suggests that she recognizes that she is not well-placed to look after children;
3. N.O. fed a newborn baby 'loose milk with salt' suggesting that she is not inclined to inform herself about how to take care of the baby;
4. N.O. indicated to her when they met in 2019 that she was not working and had not been employed for a considerable amount of time; and it did not seem that she had reasonable

⁸ Filed on 2nd December 2019.

prospects of securing employment and was relying on handouts to get by;

5. N.O.'s persistent requests for 'help' even after she was told that it was improper and illegal which suggests that she considers the baby as a commodity which she can trade for money or other material gain.

[25] Q.R. testified on L.M.'s behalf. She is a retired teacher. She said that she knows L.M. and although she does not know N.O. well, she knew her by sight from years ago when she worked at a store on Middle Street. She lives in the U.S.A. for part of each year and spends the winter months in Saint Vincent and the Grenadines. She explained that a cousin of hers is L.M.'s friend. She therefore consented to the nanny occupying her house with Y.Z. from 15th June 2019.

[26] Q.R. stated that she has occupied the house with Y.Z. and his nanny since her return. She described him as being happy, thriving and having a wonderful disposition. She remarked that he and his nanny are very attached to each other. She observed that his nanny provides excellent care to him; and that the nanny communicates with L.M. frequently about his care and welfare. She said that he is an intelligent, active loving child.

[27] She testified further that Y.Z. has become her foster grandchild since she returned to the State and they do many activities together. She averred that when he wakes in the mornings he goes to her room to pray with her and that he frequently sleeps with her in her bed although L.M. assures her that he has his own age appropriate bedding. She explained that Y.Z. has bonded with some of her grandchildren who attend primary school and who stay with her in the afternoons after school. She averred that they regard Y.Z. as their baby cousin. Q.R. stated that they held a birthday party for Y.Z. on his first birthday on March 26th where he and his 'cousins' clapped, danced, sang and enjoyed themselves immensely. She added that they made a video of the festivities for L.M. so that she could experience a small part of it.

[28] She asserted that L.M. is a loving, morally upright and practical woman who is devoted to Y.Z. and spares no effort ensuring that he receives first class care. Q.R. attested that L.M. is mindful that Y.Z. has developed attachments to the nanny and Q.R.'s family and has therefor made arrangements to retain the nanny in permanent employment 'after the adoption is complete so that the Baby's transition' from her home to L.M.'s will be smooth.

- [29] Q.R. averred that in her teaching career and community work she has encountered many children who would have thrived had they lived in a stable, loving, supportive environment and had been parented properly. She stated that she 'shuddered to think that the possibility exists that the Baby could be removed from the stable, uplifting environment to which he is accustomed to be thrust into an unstable household where he is likely to be exposed to deprivation and countless forms of danger.' Q.R. did not indicate what to forms of danger she was alluding.
- [30] Under cross-examination she acknowledged that she does not communicate with N.O., has never made any attempt to communicate with her; has made no attempt for Y.Z. to communicate with her and has made no arrangements for Y.Z. to be visited by the biological mother. She agreed that she is not familiar with N.O. in her role as Y.Z.'s mother. Ms. Conliffe and Kathy-Ann Cato-James gave formal testimony which is not outlined in this judgment.
- [31] N.O. testified that she is 30 years of age. She is employed as an auxiliary police officer on probation, and has been so engaged since December 2019. She indicated that she earns a salary of \$1200.00 and expects to be confirmed in a permanent position in due course. She stated that she lives with her partner in a 3 bedroom, 2 bath concrete house owned by him. The other occupants of the house are her mother and her two sons aged 10 and 4 years old respectively.
- [32] She has 5 children. The first, a girl aged 12 lives with her father and paternal grandmother. N.O. explained that she was 18 when she gave birth to her daughter. She claimed that she was in a 'back and forth' living arrangement with the father and then the relationship ended. She testified that when her daughter was 6 months old, the father and his mother agreed to assist her with her care, to enable her to go take up employment as a salesclerk at a supermarket. She explained that after she lost the job it was difficult for her financially.
- [33] She described her relationship with her daughter as a good one. She averred that they visit each other. Her second child is 10 years old. She claimed that he has always lived with her. He is in grade 4. N.O. claimed that he is an excellent student. Her third child, another son is 6 years old. He started primary school in September 2019. N.O. explained that he is being raised by one of her friends and the friend's husband. She testified that they assisted her during the pregnancy and when she gave birth to him. N.O. explained that when he was born, she and his older brother were

then living in a room, with a friend. She was not working at the time. They visit each other. The next son is 4 years of age. His father is N.O.'s partner. The child lives with them.

[34] Her fifth child is Y.Z.. He is the subject of the instant claim. He was born on March 26, 2019. N.O. averred that he was fathered by her partner. She acknowledged that his name is not on Y.Z.'s birth record. She explained that this is because they are not married. She asserted that when she became pregnant with Y.Z. she was living with the father and the other two sons. She averred that she told her partner that she was pregnant, but at the time they were having issues with their relationship. She recalled that the pregnancy was her most difficult, and one in which she experienced a lot of pain.

[35] N.O. testified that Y.Z. was delivered by C-Section and after delivery there were complications with his breathing. She spent two weeks in hospital with him because of the complications. She also had issues with her blood pressure as it was fluctuating. She said that when they were eventually released from the hospital and went home, all was well for the first two months. She explained that her mother started living with them to help her because she had the C-Section. She averred that around the third month, she and her partner had relationship issues surrounding her mother's presence in the house.

[36] N.O. said that she wanted her partner to register his name for the child, but he did not do so. She described it as a very frustrating time. She recalled that she and her partner had an argument and eventually broke up. However, she remained in his house. She was not working and had to depend on her partner. She claimed that when she asked him to buy pampers and things for Y.Z. he stopped doing so. She stated that she was aware of what he 'was telling people about whether or not [Y.Z.] was his.' She said that in addition to recovering from the delivery, it was a very depressing time and she felt very stressed. N.O. stated that she went to a friend who is a social worker, told her about all the issues and problems she was having and that she needed financial help to pay for things for Y.Z. She said that she was asking her for the help as a friend.

[37] N.O. explained that it was at this point that she was told that adoption is an option. She was also told that if Y.Z. was adopted she would not have to worry about providing for him, and she would be able to get back on her feet. She testified that she was told the baby would be taken good care

of because rich people want children. She claimed that she did not feel that she had any other choice.

[38] N.O. testified that calls were made and a lady came to see her and looked at the baby. She reiterated that she told them that all she really needed was financial help because she was struggling. She recalled being told that she could not get money for the child. She stated that she told 'them' that she was not there to sell her child or ask for money in exchange for him. She testified that the only money she was seeking was to help with buying pampers and food. She averred that she was still breast feeding the infant. She indicated that about a week or so later, she received a call and was told that someone wanted to adopt Y.Z. and that there was a lady and a lawyer she was to meet.

[39] She attested that she still had no money and what little she had saved was already gone. She testified that her mother would give her what she could from her poor relief money to help out. She indicated that things were difficult. She claimed that she was told that she would be able to start over if she gave the child up for adoption. She recalled being asked if she knew anyone overseas, to which she replied that her father did. N.O. said that she was told that she could get a ticket and start over in Barbados. She added that she had other children and a life here.

[40] N.O. stated that while she still had Y.Z., Ms. Camille Johnson asked her to sign a form. She claimed that she did not want to do it and told 'the other Johnson' that she did not want to go through with the adoption. She said that this person texted and asked her if she was sure, and she responded that she was not going to do it. She recalled that her phone rang a few minutes after and she realized that the call was from a strange number. She answered and was told that it was someone calling on L.M.'s behalf. The person asked if they could come to see her and one Rosetta showed up. They spoke.

[41] N.O. said that Rosetta told her that she is L.M.'s friend. She recalled that Rosetta told her that everything is going to be ok, and she would be helped with a ticket to go away to get better and that would lift her up. N.O. said that she promised to think about it. She stated that from that time Rosetta started telephoning her and would at times bring pampers and stuff for Y.Z.. She said that

she was grateful for the help, as that was the best thing for her, because she was unable to work and 'they' were providing for him. She testified that Rosetta told her to bring Malachi in town which she did. She met Rosetta in a jeep at FLOW, the phone company. She left Y.Z. with her. She received a telephone call a few days later and was told to go to a lawyer's office. When she got there, she was given a paper by a secretary and instructed to take it to the Registry of Births to sign.

[42] N.O. said that she did not at that time know where exactly in Saint Vincent Y.Z. was. She recalled that Rosetta offered her a ticket to go Barbados and it was paid for so she went as she was still stressed. She exhibited a copy of the ticket which reflected a departure date of July 20th and a return date of August 10, 2019.. N.O. stated that she stayed in Barbados for 3 weeks with her father. She claimed that she was having trouble sleeping and dreamt that Y.Z. was crying.

[43] She admitted saying at some point that she did not know who was the baby's father. She averred she said this only because she wanted assistance and because Y.Z.'s father was not supporting her. She said that she felt that it was best not to involve him. She admitted handing over the baby to Rosetta. She explained that she did this because of her situation at the time. She asserted that when she had time to think over the entire situation she regretted it and now wants him back. She averred that because she texted Rosetta and did not get a reply, she then texted Ms. Bailey, a social worker and told her that she wanted her child returned.

[44] N.O. claimed that after deciding to get Y.Z. back, she was unaware of the process and did not know what to do. She testified that she texted Rosetta and told her that what she did was wrong, and she needed to have her child back. She averred that she told Rosetta that she was depressed to which Rosetta replied that she was out of the country on holidays. She said that she took Rosetta's advice, contacted Ms. Camille Johnson at the Welfare Office and explained to her. She was told that she had to sign a paper to cancel the adoption and to indicate that she no longer wanted to go through with it. She signed the paper. N.O. stated that she was summoned to go to the Family Court and the matter was then transferred to the High Court. She asserted that she made a mistake to hand Y.Z. over. She acknowledged that she gave up a child when she was

younger and maintained that she did not want to make that mistake again. She claimed that she was now a lot more responsible. She asserted that her mind was not in a good place at the time and further she was not in a good financial situation. She said that she regrets the decision and that she believes it is best for Y.Z. to grow up with his blood relatives.

- [45] She was cross-examined. She acknowledged that learned counsel Mr. Daniel showed to me Case Worker's report⁹ prepared by Mrs. Sandra Augustus. She accepted that in one section she is reported as saying that her partner would kill her. She averred that she did not mean that he would actually kill her, but only that he loves his children and he would be upset. She claimed that he apologized to her about their argument and disagreement, and he apologized about not going to put his name on Y.Z.'s birth certificate. She insisted that she is the one at fault because she thinks she was depressed and did not know what to do. She repeated that she never should have put Y.Z. up for adoption. She agreed with Mrs. Augustus' recommendation that she should get Y.Z. back.
- [46] L. M. submitted that she is a 43 year old single professional woman with no biological child of her own. She argued that she is financially stable, university educated, owns her own home and is self-employed. She submitted further that she enjoys the emotional support of her parents, siblings and friends. By contrast she argued that N.O. is a 30-year-old mother of 5 children who is employed on a probationary basis as an auxiliary police officer. She rehearsed the living arrangements and circumstances of each of N.O.s' children.
- [47] Referencing the Home Study Report of N.O.'s home prepared by Ms. Bailey L.M. submitted that the report paints a picture of the N.O.'s character and circumstances. L.M. pointed out that the report revealed that N.O. at one time lived at Lower Questelles with her mother in a one bedroom dwelling with a kitchen, living room, toilet and bathroom, which was described as 'a very small living area that is in need of repairs'. L.M. noted that none of N.O.'s children lived with her at that time but were spread among a number of relatives and friends. This is indeed outlined in the report.

⁹ Filed on February 7, 2020

- [48] L.M. argued that the report revealed that N.O. felt 'comfortable with the plan for adoption' as she 'did not want to have another child', because he 'was not planned'; she could not 'support herself and a child' financially'; she did not know who was the child's biological father; she wanted what was best for him and felt that adoption was 'in his best interest as he would be exposed to opportunities she cannot give to him'. L.M. submitted that the report prepared by Ms. Augustus¹⁰ also sheds light on N.O.'s circumstances because in it, N.O.'s present living arrangements were outlined. In this regard, L.M. submitted that the case worker noted that the residence is a 'wall structure' belonging to N.O.'s partner and one which had 'all the basic amenities running water and light' including an 'indoor bath and toilet'.
- [49] L.M. pointed out that the case worker reported that N.O. told her that she had lied to the child's father by telling him that Y.Z. was in Barbados with family members and therefore 'she wants the child back into her care before he finds out or he would kill her'. L.M. submitted that N.O. admitted telling the case worker that her partner would kill her and later recanted and explained that she did not mean that he would literally 'kill' her; but rather she meant that because he loves his children he would be upset. L.M. noted that N.O. stated that he has since apologised about the argument and disagreement and for 'not going to put his name on the child's birth certificate'.
- [50] L.M. submitted that there was no home visit to ascertain how Y.Z. is being cared for, who is caring for him and how he is progressing; that the case worker made no enquiry into whether he has bonded with his present carers; and offered no insight into how separating him from his carers may affect him. This is so. I make the observation that neither did L.M. Se submitted further that it is not clear from the report whether the case worker visited N.O.'s home to inspect the conditions under which she lives; whether the caseworker interviewed or even observed the children who live with N.O. to ascertain how well they are cared for, how they are progressing in school, how they relate to their parents and their peers and how balanced they are emotionally. This is indeed so.

¹⁰ Attached to the Child Development Division of the Ministry of National Mobilisation. Mrs. Augustus' report was filed on 7th February 2020.

- [51] The Court notes from the report that the case worker's qualifications as entered at the end of the report are MSW, BSc and Cert. It is not clear from those notations whether she had the relevant expertise to express an opinion on some of those matters. In the premises, the Court must make the best use of the report in light of the information contained in it.
- [52] L.M. argued further that crucially the case worker does not appear to have interviewed or observed N.O.'s partner and the person she claims to be Y.Z.'s father; or to have interviewed neighbours or N.O.'s close associates to ascertain how she and her partner parent the two boys who live with them; how in general, N.O.'s partner interacts with her and the children living with them; or how the family conducts itself and is perceived in the neighbourhood. L.M. submitted further that the case worker did not interview her and made no attempt to do so.
- [53] L.M. argued that while N.O. expressed the belief that it is best for Y.Z. to grow up with his blood relatives, she did not explain why that would be best; and although she suggested that her financial and relationship problems have been resolved, she offered no specific information about those matters. She argued further that while N.O. claimed that there was a marked improvement in her financial position because her partner was supporting her and she now had a job, there was no mention in the report of who was supporting her 10 year old son and no mention in Ms. Augustus' report of the condition under which the 10 year old is living.
- [54] She submitted that N.O. does not appear to have invited her partner to participate in these proceedings. L.M. reasoned that his absence from the process is the proverbial elephant in the room. She contended that N.O.'s failure to offer her mother's input in these proceedings is also a notable omission.
- [55] L.M. argued that she has provided a home study report¹¹ prepared by the authorities in her own country in support of her application. It was among several documents including the Application for Placement Form, Placement Agreement, Consent of Natural Parent, Statement in Support of application for an Adoption order, all of which are required documentation for an adoption under

¹¹ Exhibited to the affidavit of Monique Conliffe filed on 2nd December 2019.

the Act. L.M. submitted that the Act lays down a general prohibition¹² against the making of an adoption order without the consent of the natural parents of a child. She submitted further that the law permits any person who has consented to the adoption of a child to withdraw his or her consent by giving notice to the Committee in the prescribed form.¹³

[56] L.M. contended that the Court may dispense with such consent if any of the circumstances listed at section 106 (1) of the Act are fulfilled. She argued that the presence of the word 'or' at the end of sub-paragraph (d) and before sub-paragraph (e) indicates that the sub-paragraphs are to be read disjunctively.

[57] L.M. invited the court to compare section 106(1) of the Act with section 13(1) of the Adoption of Children Act (the 'Former Act') which the Act repeals. That provision states:

'(1) The Court may dispense with any consent required by section 11(4)(a) if it is satisfied in the case of a parent or guardian of the child, that he has abandoned, neglected or persistently ill-treated the child;

(a) In any case, that the person whose consent is required cannot be found or is incapable of giving his consent, or that his consent is unreasonably withheld or for any other reason such consent should be dispensed with.'

[58] L.M. contended that the Act requires a judicial officer who is charged with deciding whether to dispense with a parent's consent, to engage in a more holistic enquiry than was required under the Former Act. She argued that the Act has retained the Former Act's provisions which required the Court to enquire, if applicable, whether a parent has abandoned the child or is incapable of giving consent. She submitted that the Act has not retained the specific terminology which requires an enquiry into whether a parent had 'neglected or persistently ill-treated the child'. She submitted further, that in requiring a Court to enquire into whether a parent 'has not made reasonable efforts to meet his or her parental obligations with respect to the child', the Act makes room for consideration of mistreatment which may be less egregious than persistent ill-treatment but tantamount to neglect

¹² Section 104 of the Act.

¹³ Section 107 of the Act.

or other forms of abuse.

[59] L.M. argued that even though the case of **Monique Monette Layne-James and Lionel Elvis James v Curtis Chance**¹⁴ was decided under the old legislative regime and although the circumstances in it were very different from those of the instant case, it is still instructive. She contended that the Court in that case was asked to make an adoption order and the learned trial judge had to apply section 16 of the Former Act in making her determination. L.M. submitted that section 16 provided, *inter alia*:

‘The Court, before making an adoption order, shall be satisfied ... that the order, if made, will be for the welfare of the child ...’.

L.M. reasoned that the phrase ‘for the welfare of the child’ is equivalent to the phrase ‘in the best interests of a child’.

[60] L.M. argued that the child in **Layne-James and James v Chance** was the biological child of the female applicant, whose husband was the male applicant in an application for an order dispensing with the biological father’s consent. The latter was the respondent. L.M. submitted that the evidence revealed that the respondent had made no effort to participate in the child’s life and the Court accordingly dispensed his consent to the adoption on the basis that he had neglected the child. The court made an order dispensing with his consent and granting the adoption order.

[61] L.M. contended that in determining whether an adoption order would be ‘for the welfare of the child’, the learned judge reasoned:

‘... the Applicants would be able to provide adequately financially for the child. The First Applicant is employed as a secretary and the Second Applicant is a Police Officer. I am also satisfied that they would be able to provide for his social and religious needs. They would be able to provide the child with a stable environment for his development. I balance this against the Respondent’s rights as a parent bearing in mind the consequences of an Adoption Order and the words of Wilberforce J in *Re Adoption Application 41/61 (No. 2)* [1964] Ch. P. 48 at p. 53:

¹⁴ High Court Civil Claim No. 19 of 2005 (Saint Vincent and the Grenadines)

*“It would seem to me that the Court must take into account **all the merits and demerits of the alternative proposals** as they seem likely to bear upon the child’s welfare, not limiting itself to purely material factors, but considering, as they may bear upon the welfare of the infant, such matters as the natural ties of blood and family relationship. **The tie (if such is shown to exist) between the child and his natural father (or any other relative)** may properly be regarded in this connection **not on the basis that the person concerned has a claim which he has a right to have satisfied, but, if at all, and to the extent that the conclusion can be drawn that the child will benefit** from the recognition of this tie.”* (Emphasis supplied by L.M.)

[62] L.M. submitted further that in considering an appeal against the Adoption Board’s refusal to approve the adoption of a child, the Supreme Court of Jamaica was obliged by the terms of the Children (Adoption of) Act to have regard to ‘the best interests of the child’. She contended that in considering the meaning of the words, Sykes J (as he then was), noted:

‘Conceptually, the words do not demand that there must be a significant deficiency in where the child is before the child is eligible for adoption. It is entirely possible that the child’s present circumstances are adequate but another circumstance has so much in favour of it when compared with the child’s present arrangements that it would be in the best interests of the child to be adopted in order to benefit from the second.’¹⁵

[63] L.M. submitted further that the learned judge offered a more expansive definition of the term when he said:

‘The best interests of the child are not just material circumstances. There are intangibles such as the mental, emotional and spiritual health of the child. There is also another aspect of the intangibles which are a socially and intellectually healthy environment which exposes the child to persons, things, ideas and places that can spark or enhance the desire to reach beyond his or her present circumstances. These are quality of life matters.

¹⁵ Claim No 2015HCV04032 In the Matter of An Appeal Against the Decision of the Adoption Board and In the Matter of the Children (Adoption of) Act, at paragraph 3 of the Judgment of Sykes J.

There is a futuristic element.’¹⁶

- [64] L.M. contended that the Court’s duty in determining this application is first, to consider which of the factors set out at section 106 (1) of the Act applies and then to address its mind to considering the elements involved in applying that factor. She submitted that in the instant case, the applicable factor is whether dispensing with N.O.’s consent is in the child’s best interests. She argued further that in determining what is in his best interest, it would be prudent for the Court to adopt the approaches taken by Thom J in **Layne-James and James v Chance** and Sykes J in the case brought against the Jamaican Adoption Board.
- [65] L.M. submitted that Thom J considered the question of the financial requirements for taking care of the child, his social needs, his religious needs and the need to provide a stable environment for the development of the child; and balanced those factors against the respondent’s rights as a parent; reminding herself of Wilberforce J’s dictum¹⁷ where he noted that the Court must consider all the merits and demerits of the alternative proposals, among them blood ties. L.M. argued that on the matter of blood ties Wilberforce J was keen to note that ‘the tie (if such is shown to exist) ... may properly be regarded’ not on the basis that it is a right of the parent which must be satisfied but on the basis of whether the child will benefit from the recognition of any such tie. L.M. argued that the ‘tie’ to which Wilberforce J. refers to is two-fold: the biological ‘tie’ but more importantly, the matter of bonding or attachment. She argued that it is important to note that there is no evidence before this Court of any attachment on the part of the Y.Z. to the N.O..
- [66] L.M submitted further that Sykes J referred to the significance of ‘material circumstances’ but noted that ‘the mental, emotional and spiritual health of the child’ as well as ‘a socially and intellectually healthy environment’ were also important factors to which a Court must have regard in determining what is in the best interests of a child. She contended that Sykes J also noted that ‘there is a futuristic element’ which must be considered in determining what is in the best interests of a child.
- [67] L.M. contended that N.O. has advanced a case which centres on her needs, her anxieties and her regrets rather than on what is in Y.Z.’s best interests. She submitted that N.O.’s case is replete with

¹⁶ At paragraph 56 of the judgment.

¹⁷ In Re Adoption Application 41/61.

red flags which warn that the life she will offer Y.Z. will be characterized by instability and outright danger. L.M. argued that at age 30, N.O. has given birth to 5 children by at least 4 men, possibly 5; was living in a room with a friend when one of her sons was born and when interviewed by Ms. Bailey around July 2019 was living in a one bedroom dwelling with her mother and none of her children.

[68] L.M. contended that around February 2020 when N.O. was interviewed by Mrs. Augustus, she was said to have been living with her partner and two of her children; and now claims to be in a better financial position than she was when she put Y.Z. up for adoption; but yet has offered no verifiable evidence of this. L.M. submitted that although N.O. claimed that her first son has always lived with her, she did not explain why when she was interviewed by Ms. Bailey, that child was said to have been living with O.S. in Sharpes Dale. L.M. argued further that N.O. admitted that she lied when she said that her partner was not Y.Z.'s father and now claims that he is.

[69] L.M. submitted that N.O.'s partner has not presented himself before this Court to admit that he is Y.Z.'s father, even though N.O. claimed that their relationship has improved so remarkably that he has apologized for not having put his name on Y.Z.'s birth certificate and for their 'argument and disagreement'. L.M. argued that N.O.'s claim that he would kill her if he knows that she has put Y.Z. up for adoption, should cause this Court considerable anxiety, notwithstanding that she has retracted that assertion. L.M. submitted that a Court charged with the responsibility of acting in the best interests of a child cannot properly place said child in a dangerous environment.

[70] L.M. contended that she has demonstrated that she is a financially secure, well educated, physically sound, morally wholesome individual, capable of providing Y.Z. with a good life. She submitted that she has a supportive network of friends and family who will help her to raise him. She argued further that since N.O. handed him over to be fostered, she arranged for Y.Z. to receive first class care. She submitted that applying the concept identified by Sykes J in the above-referenced case, what she offers Y.Z. 'has so much in favour of it when compared with the circumstances' which N.O. offers, that it would be in Y.Z.'s best interests to benefit from the circumstances she offers. She submitted that N.O.'s consent should be dispensed with, on the basis that it would be in Y.Z.'s

best interests to do so.

[71] L.M. contended that whereas N.O. has sought to portray the dispute as one akin to a David and Goliath feud, nothing could be further from the truth. She submitted that N.O. has appeared to be nothing if not astute and bold. She argued that there was nothing in her deportment before the Court to suggest that she is either a shrinking violet or uninformed, but rather she gave her evidence in a manner exuding self-confidence and awareness of the case she is required to meet. L.M. contended that in presenting her case N.O. 'cut her coat to suit her cloth', and more to the point 'she cut the truth to suit her case'. L.M. argued that when it suited N.O., she either did not know who was Y.Z.'s father or he was a Jamaican student with whom she had lost touch; and it now suits her to say that her partner is the father. L.M. submitted that when it suited her, she said he would kill her, it now suits her to say she did not mean what she said.

[72] N.O. rebutted that 'the fabric that she had at the time she gave up her child was of a cruder texture and she did not think that she could fashion a coat to cover her child, however with a change in her circumstances although she would now only be able to provide simple cotton and not the silk that L.M. can provide from her largesse, nevertheless Y.Z. will be clothed. She submitted that this is not a case of David and Goliath even though the parties' respective strengths are clearly disproportioned. Instead, she likened it to the story from the Hebrew Bible where King Solomon of Israel was presiding over a case involving two women who were both claiming to be the mother of a child. She described the women's respective positions as on the one hand 'one to have as her justice that the child be sundered in two', and on the other hand 'the other for the love of her child would give it up absolutely so that the child would live'. She contended that it was for the love of her child that she gave him up, and it was not her intention to abandon him but to provide for him.

[73] N. O. submitted that the provisions of section 106 of the Act are relevant and should be considered by the Court. She submitted further that she is an adult of sound mind and there is nothing in the pleadings to suggest from either side that 'she suffers from any disability preventing her from giving consent'. She argued further 'there is no support for the proposition that reasonable and unsuccessful attempts to locate' her have failed. She contended that no such case could be made since she signed a withdrawal of consent within the contemplation of section 107 of the Act, and

has participated in these proceedings.

[74] N.O. argued that the Court ought to address its mind to the paragraphs (a), (d) and (e) of sub-section (1) of section 106 of the Act, which respectively requires the Court to consider whether an order dispensing with the consent of a parent should be made:-

1. in the best interests of the child;
2. because the parent has abandoned or deserted the child; is not capable of caring for him; or has made no reasonable efforts to meet the parental obligations with respect to the child; or
3. other circumstances exist which in the Court's opinion justify dispensing with the consent.

[75] N.O. submitted that the Court should also take into account any recommendation made in a report filed by the Committee or the child's parent¹⁸. She argued that it is given that the parental bond of parent and child are to be protected as stated in Article 9 (1) of the **UN Convention on the Rights of a Child ('UNCRC')**. She argued that Saint Vincent and the Grenadines became a signatory to the UNCRC¹⁹ and subsequently ratified it. She did not identify any domestic legislation which incorporated those provisions into the law of the land. The Court is nonetheless expected to have regard to those treaty obligations.

[76] N.O. outlined a portion of article 9 (1) of the UNCRC. It provides:

'States 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 residence.'

[77] N.O. reasoned that the clear implication is that it is in the best interests of the child to remain with

¹⁸ Section 106 (3) of the Act.

¹⁹ On 20 January 1993.

the parents. I do not accept that this is congruent with established legal principles and precedent. N.O. contended that further support for this contention is found in the case of **Layne James and James v Chance**²⁰. N.O. submitted that her testimony chronicles her story and paints a picture of financial hardship and emotional turmoil. She contended that she was seeking financial assistance for support of her child and handed him over for adoption with a heavy heart. She submitted that she has regretted the decision, has made attempts to see Y.Z, and sought redress as to how she may get him back. She submitted that this shows she neither abandoned nor deserted him.

[78] L.M. rejoined that she never suggested that N.O. has abandoned or neglected Y.Z. She submitted that quite frankly, if she made those submissions, they would have been wrong in law because putting up a child for adoption is not considered in law to be abandoning or neglecting the child. In view of that assertion, this removes that factor from dispute. Taking all of the evidence and this principle of law into consideration, I find that N.O. has neither abandoned nor deserted Y.Z.

[79] N.O. argued that she has led evidence of her current situation and her ability to meet Y.Z.'s needs. She submitted that the Court should find that she is now positioned to meet her parental responsibilities. She contended that the circumstances of this case are far different from those in the **James v Chance** matter. She argued that the Court in that case²¹, found that the father had 'paid no attention to the child. ... shown no interest in the child's development... took no initiative to establish a relationship with the child'; and that he had 'neglected his child'²². She submitted that this is in stark contrast to the instant case where she sought assistance, then made attempts to contact the persons who had Y.Z. and took the initiative to withdraw her consent to the adoption.

[80] She contended that there are no other circumstances within the contemplation of section 106 (1) (e) of the Act which touches and concerns this matter. She argued that while there may be no report of the Committee, *per se*, the report from social worker Ms. Bailey dated July 29, 2019 recommending

²⁰ SVGHCV2005/0019.

²¹ At paragraph 35 of the James v Chance case.

²² At paragraph 36 of the James v Chance case.

that the child be adopted was prepared prior to her withdrawal of consent. She invited the court to consider the report of case worker Sandra Augustus who recommended that Y.Z. be returned to N.O.

[81] N.O. submitted that L.M. has failed to show to this Court, that she should be denied the opportunity to withdraw her consent. She submitted further that she has neither neglected her child, nor failed in her parental duties to him. She argued that this case is not a competition between her and L.M. in terms of who has the better means and it is clear that L.M. has far better means than she. N.O. stressed that what is important is the child's best interest. She submitted that the material facts are that no adoption order has been made; she has revoked her consent; she is the biological mother; and she had no independent legal advice or counselling when she gave consent to the adoption. She added that even if she did, that does not obstruct her legal right to withdraw her consent. This latter submission accords with the law.

[82] N.O. contended that notwithstanding matters of station in life and wealth, neither L.M. nor her witnesses testified as to what sort of mother she (N.O.) is, or whether she can adequately provide for her son. She argued that L.M. met her once and the other witnesses had little or no contact with her and are therefore not properly placed to assist the Court with assessing her as mother or the circumstances to which the Court must address its mind in deciding what is in Y.Z.'s best interests. She submitted that the Court must determine whether she is capable of caring for Y.Z. and whether she has made reasonable efforts to meet her parental obligations.

[83] N.O. argued that she is currently mothering two other children and that no evidence has been led that those children are in harm's way, uncared for, improperly provided for, or that they are neglected or have been abandoned. She is correct in this regard. She submitted that that is the history to which the court should be guided to predict what the future would be. N.O. contended that she has admitted telling lies. On N.O.'s behalf, learned counsel Mr. Daniel reasoned that if the telling of lies is sufficient to rip a biological mother's child away from her, even his own mother should have been separated from him because she lied to him several times, including about Santa Claus, the tooth fairy and when she promised to take him to the beach if he ate his vegetables and then reneged on that promise. He stated that she was a constant liar, but she is a

good mother.

- [84] N.O. argued further that Y.Z. was found to be healthy as evidenced by the medical report reflecting that he was assessed to be in good health after he was handed over for adoption. She submitted that no evidence was led that he was mistreated under her care. This is so. She submitted that the Court should note that Y.Z. is just 1 year and 4 months now. She submitted further that the Court should have regard to her testimony as to her state of mind and her dire financial situation when she handed over Y.Z., and that her personal financial situation and fortunes are now reversed.
- [85] She argued that at the time she gave up her child, she believed that she was acting in his best interests. She added that now that her circumstances have changed and she has the means and the mental fortitude, she is exercising her legally protected right to change her mind and have her child returned to her. She submitted that Ms. Augustus' report is commended to the Court as a more recent and up-to-date one than Ms. Bailey's and is reflective of her current circumstances including particulars about her financial capability and her ability to care for her child.
- [86] Ms. Camille Johnson relied on the same legal authorities advanced by L.M. and N.O. It is noteworthy that she filed a Certificate of Next Friend on February 2nd 2020 and has taken no active part in the proceedings by advocating for Y.Z.. She submitted that she remains a neutral party in the proceedings. In my opinion, the role of a next friend requires much more than striking a pose of casual observer. Ms. Johnson made no submissions or representations as to what informed her participation in this matter as next friend considering her alleged active role in this matter at critical stages. I am of the considered view that it was ill-advised for her to agree to be appointed as next friend. In any event, she contended that an adoption order is an order of the most serious description, the consequences of which are that the rights and responsibilities of parents of a child are severed and other persons assume those rights and responsibilities.
- [87] Ms. Johnson cited the case of **Cheril Laborde née Carr v Peacous Laborde**²³ as being instructive as to the meaning of 'the best interest of the child'. There Byer J. referenced the definition from the **International Journal of Law, Policy and the Family of 2015** as follows:

²³ SVGHMT 2018/0064.

‘acts that provide the child with stability, protecting them from parental conflicts and preserving the primary relationships they have developed.’²⁴

Ms. Johnson submitted that the concept of ‘best interest of the child’ was considered in the case of **Monique Monette Layne-James Lionel Elvis James v Curtis Chance**²⁵

[88] The Act came into force on October 7th 2010²⁶. It introduced certain administrative positions and functions which necessitates that the several functionaries named in it must familiarize themselves with the duties ascribed to them and be provided with the requisite training to remove any lack of capacity or knowledge. I make this observation having regard to the provisions of section 107 of the Act. It provides that a person who has consented to an adoption may withdraw that consent by notifying the Committee or executing the withdrawal of consent in the prescribed form.

[89] N.O. testified that she signed a paper to cancel the adoption. She indicated that Ms. Camille Johnson was the person who told her that if she wanted to cancel the adoption she would have to sign that paper. N.O. did not produce that paper. Neither did Ms. Johnson. In fact, Ms. Johnson filed an affidavit only on March 31st 2020 in which she averred that N.O. signed a withdrawal of consent on October 10th 2019 and as Secretary to the Committee she wrote to L.M.’s legal practitioner on October 24th 2019. She filed no pleadings in this matter. The Court takes judicial notice that she is Secretary to the Committee and would have been the person to present any of the Committee’s records or notes of any proceedings or deliberations. There is no evidence before this Court as to whether the Committee proper received the withdrawal of consent.

[90] That N.O. signed a withdrawal of consent and submitted it to Ms. Johnson is not disputed. Furthermore, in her report, Ms. Augustus noted that in October 2019, N.O. withdrew her consent to the adoption pursuant to section 107 of the Act. I am satisfied from the evidence adduced in this case that N.O. completed a document signifying her decision to withdraw her consent to the adoption. I find too that Ms. Johnson received that document in her capacity as Secretary to the Committee. She had a duty to bring it to the Committee’s attention forthwith or as soon as

²⁴ At paragraph 21 of *Laborde v Laborde*.

²⁵ Claim No.19 of 2005.

²⁶ By Proclamation of the Governor General Sir Frederick Ballantyne.

reasonably practicable after she had received it from N.O. She failed in her duty to place critical information before this Court. It is a matter of record that L.M. was notified of the withdrawal on October 24th, 2019 through her counsel. She filed the Originating Summons on December 2nd 2019 for an order dispensing with N.O's consent. Those dates assume significance in relation to certain stipulations in the Act, as discussed later.

[91] L.M., N.O. and Ms. Johnson represented to the Court that they had no objections to the court placing reliance on the contents of Ms. Augustus' report. They all declined to question Ms. Augustus. I remain mindful that Ms. Augustus did not provide testimony and that her report is not evidence. I find that the withdrawal of consent signed by N.O. was a withdrawal of consent under section 107 of the Act in the prescribed form. Notification to L.M. by the Committee supports this finding. I accept too that this was completed and submitted on 10th October 2019.

[92] Significantly, the Act provides that on receipt of notification of withdrawal of consent, the Committee 'shall' make all reasonable efforts to give notice of withdrawal to each person who consented to the adoption and also to the prospective adoptive parent. It provides further that if the person who withdrew her consent 'had custody of the child immediately before the giving of his or her consent' the child 'shall' be returned to her as soon as possible after the Committee receives the withdrawal²⁷. This provision is pellucid. No explanations have been provided to this Court as to why the clear directive to return the child was not effected by the Committee.

[93] The Act provides that a withdrawal of consent is ineffective after an application for an adoption order is made, but a parent may apply to the court²⁸ to withdraw his consent at that later stage. L.M. had not made her application for adoption when the withdrawal was completed. That provision does not apply.

[94] Moreover, the Act provides that an application to the Court to withdraw consent is not necessary if the child has not been placed with a prospective adoptive parent. The Committee is authorized to

²⁷ Section 107 (3) of the Act.

²⁸ Pursuant to section 109 (1) of the Act

approve such withdrawal. Of note too is that the law states that the Committee becomes the child's guardian until an adoption order is made or the consent for adoption is revoked²⁹. It follows that by operation of law, once such consent is withdrawn, custody of the child reverts to the person who had such custody immediately before giving consent.

[95] Accordingly, when N.O. signed and submitted her withdrawal of consent, it effectively severed any custodial rights that the Committee exercised over Y.Z. up to that time. So therefore, while the Committee retained *de facto* custody over Y.Z. after the withdrawal of consent, N.O. immediately assumed *de jure* custody and has done so right up the present. Had the Committee returned Y.Z. to N.O. when it received the withdrawal of consent, perhaps this matter could have been resolved without the ensuing lengthy proceedings. More importantly, Y.Z.'s life and that of L.M. and N.O. would not have been held in suspended animation so to speak for these months. This case is therefore an object lesson for the administrators learn from to ensure that they take all necessary steps to provide appropriate training to the functionaries under the Act. It is striking and disconcerting that the Committee took no steps to give effect to the clear dictates of the Act between October 10th to December 2nd 2019 or since.

[96] Be that as it may, in view of the referenced provisions, the legislators have signaled their intention that where consent to adoption is withdrawn, that brings the adoption machinery to a halt, and subsequently a complete stop by return of the child to his parent. Implicit in this arrangement no doubt, is that this would be generally the case unless exceptional circumstances warrant a deviation from this course. The Act is silent on this. I insert this consideration as one which holds intact the established guiding safeguard that matters involving the custody, control and care of children be determined in their best interest.

[97] Neither the Committee nor L.M. has made out any case that N.O.'s withdrawal of consent is or was ineffective. I find that it is not. In the premises, notwithstanding the Committee's failure to act in this regard, I am constrained to give effect to the spirit of the Act and declare that N.O. assumed custody of Y.Z. from the date on which she completed and submitted her withdrawal of consent to

²⁹ Section 111 of the Act.

the Committee by leaving it with Ms. Johnson. In my opinion, this fact alone is sufficient basis for dismissing L.M.'s present application. I will nonetheless consider the central question of whether N.O.'s consent should be dispensed with.

[98] It is noteworthy that the scheme of the Act provides for an application for an inter-country adoption order to be made to the Committee. One of the pre-requisites to any adoption under the Act is the consent of the natural parents or an order dispensing with such consent. Before L.M. could lodge her application with the Committee, she had to satisfy this requirement.

[99] All of the parties have identified the relevant statutory framework under which the Court may dispense with consent and have highlighted cases in which the applicable principles were applied. I agree with the submissions that paragraphs (b) and (c) of section 106(1) of the Act do not apply. Those provisions deal respectively with an order dispensing with consent if the person whose consent is required is not capable of giving an informed consent or cannot be found despite reasonable efforts being made to locate him or her.

[100] The remaining limbs under which the Court may dispense with N.O.s consent are fourfold:

1. The person's whose consent is to be dispensed with is not capable of caring for the child;
2. That person has not made reasonable efforts to meet her parental obligations with respect to the child;
3. The Court is satisfied that it is in the best interests of the child to do so; or
4. Other circumstances exist which in the Court's opinion justify dispensing with consent.

I shall deal with them seriatim.

Capacity of the parent to care for the child

[101] L.M. and N.O. agree that N.O. was unable to care for the child when she handed him over to be adopted. I agree with their assessment in that regard. L.M. maintained that N.O. is still labouring under that impediment. N.O. disputes this. The evidence speaks for itself in relation to their respective means. L.M. has offered copious amounts of evidence which supports her assertions that she is able to lavishly meet Y.Z.'s material, financial and social needs within a strong family and moral setting.

- [102] N.O.'s financial means are more modest and she admitted this. She was frank about telling lies about a number of things including the identity of Y.Z.'s father. Her explanations for these lies are based in some measure on the stress she claimed she was experiencing after the birth of the child and later. No psychological evaluation featured in this case and no medical evidence was offered. I make the observation that lying does not disqualify a person from being a parent unless it is established that there is some underlying pathology which militates against that person's ability to care for and nurture a child. L.M. spotlighted the fact that some of N.O.'s children are fathered by different men. In my opinion, that too does not disqualify a person from being a good mother.
- [103] I accept N.O.'s assertions that she encountered difficulties at different times in life which caused her to make alternative arrangements for the care of her daughter, who now resides with her biological father and paternal grandmother and for another son to live with a friend and her husband. She explained that she was younger and struggling financially when she made those decisions and that she does not want to repeat those mistakes now that she is older and better positioned to care for her offspring. I believe her.
- [104] N.O. seemed genuinely contrite. Her anguish was palpable to me. I view N.O.'s situation as one of a mother who wants earnestly to do the best for her children. I take note of her testimony that she is in contact with the children who do not live with her. It strikes me that in those cases, she settled for arrangements which would afford the children a measure of stability and security while maintaining the maternal connection, albeit from a distance. I am satisfied that her salary as an auxiliary police officer would enable her to adequately provide to Y.Z.'s reasonable needs even if his biological father does not assist her.
- [105] I note L.M.'s concerns regarding the alleged threat by N.O.'s partner to kill her if she had 'put up' the child for adoption. N.O.'s explanation that she meant only that her partner would be upset is not far-fetched. The Court takes note that people sometimes use the term 'kill' colloquially in certain contexts to signify their grave displeasure but without malicious intent. I believe N.O. when she said that her partner has never assaulted her or her son. Mrs. Augustus noted in her report that N.O. has improved her socio-economic status. She also reported that N.O.'s mental health is

affected by the decision to put her son up for adoption.

- [106] She observed that she also has fears about an angry boyfriend who does not have true knowledge about the child's whereabouts. She sounded no alarm that Y.Z. is likely to be the subject of any diatribe by this boyfriend. To my mind, any such concern would be contrary to a professional recommendation from her that Y.Z. be returned to his mother and by extension that home environment. I infer that she had no such apprehensions. I harbour no doubt that N.O. is able to care for Y.Z. This is therefore not a ground for dispensing with her consent to the adoption.

Reasonable efforts to meet parental obligations

- [107] N.O. was candid about her inability to meet her parental obligations to Y.Z. at the point when she gave him up for adoption. Her account offers gripping testimony about the efforts she made to get help. Her self-confessed desperation in that regard is noted. It is not urged on this Court that she did not try her best to take care of Y.Z. I am satisfied that it was only when her best endeavours failed that she chose the option of adoption. It is a matter of record that she interrupted that process by withdrawing her consent when her circumstances improved. This Court observed too that N.O. requested very early in these proceedings that she be given access to Y.Z. and persisted in those requests throughout. I make no finding that she made no reasonable efforts to meet her parental obligations.

The best interests of the child

- [108] L.M. submitted that the evidence indicates that N.O.'s relationship with her partner is dysfunctional. She argued that N.O. wants the Court to believe that their relationship is all sweetness and light, but the evidence discloses otherwise. She contended that N.O. and her partner occupy separate bedrooms; she does not know how much he earns and has never asked him; and he has refused to support Y.Z. in the past; has not placed his name on Y.Z.'s birth record and has told people things about whether or not Y.Z. is his son. L.M. submitted further that she I have concluded from this evidence that he has not been asked to come to the court to claim paternity and support N.O.'s bid to regain custody and control of Y.Z., to have him returned to her custody and care.
- [109] L.M. argued that the evidence is that the relationship is characterized by secrets and untruthfulness, and signals an insecure, volatile and tense home environment all of which is manifestly unhealthy

especially for children. She reasoned that it cannot be in Y.Z.'s best interest to introduce him to such an environment especially since all he has known from the age of 3 months old is a peaceful nurturing environment.

[110] N.O. was forthright about the difficulties that she has encountered in her life and in her relationship with her partner. In factoring that into the determination, I remain cognizant that any normal romantic relationship is punctuated from time to time by disagreements, conflicts and stress. That is a feature of life among all people, be they single or coupled and no matter how idyllic their physical and social environment. I make no finding that N.O.'s home is one in which there is incessant conflict and turmoil or that it is dysfunctional or unhealthy for children. There is inadequate evidence for reaching such a conclusion and no such concerns raised by the social worker or case worker. I remind myself that no household is immune from challenges which based on my own observation often serve to create opportunities for the parties involved to emerge better equipped to navigate the inevitable stressors life throws out.

[111] It is clear to me that Y.Z. is loved deeply by L.M. and N.O. If possible, the ideal order would be one whereby both could have custody of him. That is neither practicable nor possible. The Court must seek to make an order with his best interests in mind. L.M. has the capacity to offer him all material creature comforts for the foreseeable future and until he attains the age of majority, but does not have a familial connection with him. N.O. has the maternal bond and is somewhat limited in what she can provide him financially at present. All things being even, her employment trajectory is likely to improve and with such improvement so too her capacity to provide even more for Y.Z.

[112] She has the capacity to give him a reasonably comfortable life in an environment where he would grow up with his siblings. In my opinion, no price can be attached to that. L.M.'s and N.O.'s worlds are miles apart but both in my mind furnish a comfortable setting in which Y.Z. can thrive. I am of the considered view that he is likely to benefit more from the recognition of the familial linkages with his biological mother than from the material trappings which L.M.'s circumstances offer.

[113] It does not go unnoticed that Y.Z. has been under the care of a nanny whose services are paid for by L.M. In that environment he has been interacting with the nanny on a daily basis and with other members of that household and their associates. He would of necessity have had to form new

bonds with L.M. if the adoption had proceeded to completion; or with N.O. had he been returned to her at any time after she surrendered him, especially if she did not have access to him during these proceedings. Either way, this need to create new attachments was unavoidable.

[114] Applying the legal principles enunciated in the cited cases, particularly **Re Adoption Application 41/61** and **James v Chance** to the facts, I am of the view that Y.Z.'s interests are best served by allowing him to remain in Saint Vincent and the Grenadines with his biological mother and other members of his family of origin. I therefore make no order that it is in Y.Z.'s best interests to dispense with N.O.'s consent to the adoption.

Other circumstances

[115] None of the parties have advanced any other circumstances which justify dispensing with N.O.'s consent. I find that there are none. For the reasons outlined, L.M.'s application to dispense with N.O.'s consent is dismissed.

COSTS

[116] The parties were invited to address the court on the issue of costs. They unanimously submitted that there should be no order as to costs. The Court accepts those representations.

ORDER

[117] It is accordingly ordered:

1. L.M.'s application to dispense with N.O.'s consent for Y.Z.'s adoption is dismissed.
2. The Adoption Committee through its Secretary, Camille Johnson shall make arrangements for the child Y.Z. to be delivered to his mother N.O. by 10.30 a.m. on Wednesday July 15th 2020.
3. There shall be no order as to costs.

[118] The parties made comprehensive written and oral submissions which the court found very helpful. I am grateful to them all. Learned Counsel Mr. Duane Daniel was invited by the Court to provide

legal advice to N.O. after the proceedings were initiated. He did willingly and diligently. He is to be commended.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar