

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2020/0022

BETWEEN:

R. S.

1st APPLICANT

T. U.

2nd APPLICANT

AND

DIRECTOR CHILD PROTECTION UNIT JEMMA ALEXANDER

1st RESPONDENT

PARLIAMENTARY SECRETARY IN THE MINISTRY
OF EDUCATION; DEBORAH CHARLES

2nd RESPONDENT

Appearances:

Ms. Michelle Fife instructed by Alpha Law Chambers for the applicants.

Mrs. Cerepha Harper-Joseph, for the respondents.

2020: Feb. 25
Mar. 9

REASONS FOR DECISION

BACKGROUND

[1] **Henry, J.:** R. S.¹ alleges that she is the mother of two children (A and B¹). R. S. lives with T. U. who claims to be A and B's father. No documentary exhibits were presented to establish a relationship

¹ Names have been anonymized by substituting letters or initials in their places, to protect the minor children.

between R. S., T. U. on the one hand and A and B on the other. On February 11th 2020, R. S. and T. U. filed a Without Notice application seeking among other things, leave to apply for judicial review of decisions purportedly made by the Director of Family Services and Parliamentary Secretary to remove the minor children A and B from their home and place them in a State facility on #0th January 2020. The Director ('Director') has since been substituted in place of the Director of Family Services.

- [2] R. S. and T. U. contended that the 2 minor children were removed from their family home by the Director on the night of Thursday 30th Jan. 2020. They asserted further that the removal was prompted by the Parliamentary Secretary. They submitted that the way in which the children were removed from their home and placed in a State facility, constituted a procedural impropriety contrary sections 17, 25 and 26 of the Children (Care and Adoption) Act² ('the Act'). They argued that the decision was made jointly by the Director and Parliamentary Secretary and was illegal and irrational.
- [3] R. S. and T. U. amended their application on 13th February 2020 and again on 24th February 2020. They applied for an order granting leave to apply for order of certiorari to quash decision; interim order of mandamus that the Director immediately return the minor children of the family to their home until this matter is properly adjudicated on by the court or until further order of this court, or until determination of this matter; an interim order of prohibition to restrain the Parliamentary Secretary whether by herself her servants or agents from making contact with the minor children and costs.
- [4] The Director and the Parliamentary Secretary opposed the application. They contended that they did not act illegally, irrationally or unreasonably. They denied that the Parliamentary Secretary removed the children and contended that she had no authority to do so under the Act. They reasoned that R. S. and T. U. have not made out a good arguable case for leave to apply for judicial review. The application for leave to apply for judicial review was heard on February 25th 2020. Leave was denied. The reasons for the decision were summarized orally on the hearing date. The court undertook to reduce the reasons for the decision in writing. They are set out below.

² No. 15 of 2010.

ISSUE

- [5] The issue is whether R. S. and T. U. should be granted leave to apply for judicial review of the impugned decision purportedly made by the Director and the Parliamentary Secretary.

ANALYSIS

Issue - Should R. S. and T. U. be granted leave to apply for judicial review of the impugned decision purportedly made by the Director and the Parliamentary Secretary?

Background

- [6] It is perhaps useful to set out certain background information regarding the circumstances under which this application was dealt with. This matter was brought to the court's attention on February 19th 2020. It was immediately set down for *inter partes* hearing on February 20th 2020. On that date, learned counsel Mr. Kezron Walters, for the Director of the Family Services³ and the Parliamentary Secretary requested and were granted an extension of time to consider the pleadings and to file affidavits and written submissions in response. He requested that time be enlarged to 11.00 a. m. on Monday, Feb. 24th 2020.
- [7] Due to the urgent nature of the proceedings, extension of time was granted to February 24th 2020 by 9.00 a.m. for the filing of such written submissions. Hearing of the matter was adjourned to 10.00 a.m. that day. It was also ordered that any proceedings initiated by the Director of the Family Services and the Parliamentary Secretary or other person on behalf of the State, in connection or related to the matters pleaded in the application, would also be heard on the same date. The hearing did not proceed on February 24th but was adjourned to February 25th 2020 at 9.00 a.m. due to the scheduling of other matters.
- [8] In the intervening period, R. S. and T. U. filed an application to substitute the Director of Child Protection Services in place of the Director of Family Services. The Director of the Family Services, the Director and the Parliamentary Secretary made no objections. The court granted the order for substitution as it appeared to be just to do so in the circumstances. In this regard, legal practitioner for the Director indicated that no post of Director of Family Services had been created in the

³ The named first respondent who was since substituted.

government service as contemplated by the Act⁴ and further that the Director has been performing the functions assigned to the Director of Family Services under the provisions of the Act.

- [9] The Court is empowered by the Civil Procedure Rules 2000 ('CPR')⁵ to grant an applicant leave to apply for judicial review of administrative action. The guiding principles are well-established and are outlined in the celebrated case of **Satnarine Sharma v Browne-Antoine**⁶. The applicant must demonstrate that his or her application is founded on a good arguable ground and has a realistic prospect of success. In addition, the court must be satisfied that no alternative remedy is available to the applicant and that there is no other discretionary bar.
- [10] R. S. and T. U. filed affidavits⁷ in support of their application. They averred that they reside with the two minor children A and B at Barrouallie. They asserted that on January 30th 2020, the Parliamentary Secretary accompanied the minor child B to their home just before 9.00 p.m. and told her that she met the child in the company of some boys and that she was in the lap of one of those boys. They complained that the Parliamentary Secretary took an unusual interest in B and contacted B on a number of occasions that weekend by telephone and even visited her at school on January 27th 2020. R. S. averred that the Parliamentary Secretary contacted A at school and arranged for her to be interviewed by a social welfare officer and three police officers.
- [11] R. S. complained that on January 30th 2020 while they were at school, the Parliamentary Secretary telephoned the Family Services Department in her presence and directed that they remove A and B from her home. She averred that as a result of that call the minor child B was removed from the school by the authorities and later that evening A was removed from her home by a representative of Family Services accompanied by two police officers and the minor child B. She claimed that the children were then forcibly taken from their home and have been in the State custody since then, a 'government girls home in Mespo'.

⁴ Section 6.

⁵ Rules 56.4 – 56.5 of the CPR.

⁶ [2006] UKPC 75.

⁷ On 11th February 2020.

- [12] T. U. deposed that he is the children's father. He echoed much of the assertions outlined by R. S. They contended that the Director has not applied for any court order authorizing her to have custody of the said children.
- [13] During the course of the hearing, R. S. and T. U. indicated that they had obtained further materials which they had not included in their application or affidavit and on which they intended to rely. They disclosed that they had received a handwritten letter from the minor child A and wished to have it entered into evidence. They represented that it was not included in the documents they had filed because it was provided to them only the day before the hearing. They indicated that there is no reason why it was not disclosed previously and contended that this was due solely to the time constraints.
- [14] The Director and the Parliamentary Secretary objected to the hand-written letter being produced into evidence, on the grounds that it was not included in any affidavit and that they would have had no opportunity to cross-examine the person producing it. They argued that they are thereby placed in an unfair and prejudicial position because they are only then having sight of the documents. They indicated that they would need to provide instructions to counsel and would need 15 minutes to do so.
- [15] The matter was stood down to afford them an opportunity to review the documentation and give instructions. When the case was recalled, R. S. was permitted to give oral evidence about the hand-written letter and she was cross-examined on behalf of the Director and the Parliamentary Secretary.
- [16] R. S. testified that A gave her the letter on Monday February 24th 2020 while she (A) and R. S. were at school. She later said that she was outside of the school compound at the time. R. S. stated that she recognized the handwriting as being A's. The 2 page hand-written document was admitted into evidence to establish that it was made but not as proof of its contents. R. S. stated that it was not written in her presence. She testified that she did not force A to write it. She explained that she went to the school to see A because she (A) does not receive money or anything from the persons in charge of the facility where she resides. R. S. stated that she wanted to make sure that A and her sister were fed and had money for transportation for school. She acknowledged that she had

visited the children at school before and had not received any hand-written letters on any previous occasion.

- [17] The hand-written letter in part purported to contain a recantation of certain allegations which A had made which implicated other persons including T. U. in alleged criminal activity. At the close of the case for R. S. and T. U. legal counsel for the Director and the Parliamentary Secretary made an oral application for an adjournment 'to obtain proper instructions from (them)'. She submitted that the further amended application for judicial review was not served on the Director personally. She represented to the court that the Director would need time to instruct counsel with respect to the way forward. The court declined to grant the adjournment having regard to the subject matter and the need to make an urgent determination.
- [18] R. S. and T. U. contended that without their consent or prior knowledge, and as a result of a call made by the Parliamentary Secretary, the minor children were unlawfully taken out of their respective classes at school and forcibly removed from home on the night of Thursday Jan. 30th 2020 by Ms. August a representative from the Child Protection Unit and 2 male police officers. They submitted that when the children were unlawfully removed from their home, they were not in any imminent danger.
- [19] They contended further that to the best of their knowledge, information and belief the two minor children were never before or at any time after Jan. 30th 2020 made the subjects of an order from any court; neither were they (R. S. and T. U) summoned to any court to defend any matter soon after the children were removed. They argued that they were not in any position to apply for any alternative form of redress. They submitted that no decision or actions taken by the Director or Parliamentary Secretary can be clothed with any garment of legality.
- [20] R. S. and T. U. contended that the Director and Parliamentary Secretary erred in the way they sought to have the children removed and in the way the Director failed to present the case immediately pursuant to section 26 of the Act; or as soon as practicably possible after the children had been removed. They submitted that the Director and Parliamentary Secretary cannot show where an emergency was occurring to justify an emergency care and protection order.
- [21] R. S. and T. U. argued that the Parliamentary Secretary was one of the decision makers who had

the children removed from their home. They maintained that she was part of the decision making process. They reasoned that she filed an affidavit in support of the Fixed Date Claim and admitted⁸ that she took steps to find out about the case and spoke to her superiors in relation to the matter.

Purported decision by the Parliamentary Secretary

[22] R. S. and T. U. have pointed to no provision in the Act or other law which empowers the Parliamentary Secretary to make any decisions regarding the removal of children or otherwise. They have produced no documentary evidence which establishes that the Parliamentary Secretary made such a decision. There is no sufficient evidentiary basis on which this court can find that such a decision for removal of the referenced minor children has been made by the Parliamentary Secretary. I make no finding that such a decision by the Parliamentary Secretary exists. There is therefore no factual or legal foundation on which R. S. or T. U. can successfully argue that they have a good arguable case against the Parliamentary Secretary with a realistic prospect of success, to ground their application for leave to apply for judicial review.

Decision by the Director

[23] The Director has not disputed that the minor children were removed from their home and placed in a State facility on January 30th 2020. There is no denial either that the decision was made by the Director. I find that therefore such a decision was made.

[24] R. S. and T. U. submitted that they have no other recourse to challenge that decision except by way of an application for leave to apply for judicial review. This contention overlooks the right of a parent or legal guardian to bring a regular claim in tort to secure the release of his child or charge from unlawful detention or false imprisonment. In such case, an application for an interim injunctive relief would be entertained by the court. If they R. S. or T. U. or either of them is so related or connected to the minor children, this avenue is open to them. They have provided no explanation for not pursuing it.

[25] Moreover, the Director filed a Fixed Date Claim Form on February 21st 2020 against R. S. and T. U. In it, the Director applied for an emergency care and protection order in respect of the minor children A and B. By serving it on R. S. and T. U. an opportunity was afforded to them to challenge

⁸ At paras. 37 and 38.

the impugned decision and to make any application for the impugned decision to be set aside or quashed. It created an alternative route to seek the remedy they are attempting to pursue through judicial review proceedings. Although their application preceded the Director's this does not negate the further gateway which is open to them to obtain redress separate from judicial review proceedings. In those circumstances, neither R. S. nor T. U. can maintain that they have no alternative route to redress as they have claimed. Their application for leave to apply for judicial review therefore fails.

Miscellaneous

[26] Interestingly, None of the parties provided any proof that the minor children are biologically related to R. S. or T. U. There is just the say so of R. S. and T. U. to this effect. The law provides for custody is vested in the biological parents unless a court order has been made revoking such right⁹. None of the parties have provided any court order or other legal documentation establishing R. S.'s and/or T. U.'s right to lawful custody of the minor children A and B. In pursuing their claim for leave to apply for judicial review, R. S. and T. U. have not proven this essential element of their claim - that they have parental rights which are being violated. They have failed to discharge the burden of presenting a good arguable case.

[27] I hasten to add that if indeed the State has removed the minor children without legal justification and in violation of a parent's right to custody, such circumstances would *prima facie* be a good arguable case for investigation and pronouncement by the court in the absence of other redress routes. But for the existence of the alternative routes to relief, R. S. and possibly T. U. might have been granted leave to apply for judicial review of the impugned decision.

[28] In light of the foregoing, the application for leave to apply for judicial review was denied. This narrative provides the written reasons for that decision. For completeness, the order made on February 25th 2020 is set out in full in the final paragraph.

Postscript

[29] In furtherance of its obligation to remain accountable and transparent, the court considers that it

⁹ Both at common law and by statute – Law of Minors Act, Cap. 232 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

owes a duty to the parties to provide an explanation for the length of time it took from the time of initial filing of the Without Notice Application (February 11th 2020) for this matter to be timetabled for a hearing.

[30] This file was assigned to the undersigned on February 19th 2020. It contained an endorsement by my learned sister Byer J. of even date. The endorsement stated:

‘Upon the court considering the contents of the application, and Upon the court being of the considered opinion that there are matters which are contained therein that will be unsuitable for this Judicial Officer to hear and consider This court doth order that this matter is to be set down before a judicial officer other than Byer J. to be dealt with expeditiously.’

[31] In accordance with best practices and in the interest of justice, it was directed that the Director and Parliamentary Secretary be served with the pleadings and supporting documentation. At the first hearing on February 20th 2020, the matter was adjourned at the joint request of the parties. This served the dual purpose of ensuring that parties had the opportunity to get instructions, marshal their factual and legal assertions and be in a position to assist the court in making a determination which meets the justice of the case, having regard to all the circumstances. It also gave the parties a further opportunity to consider whether alternative dispute resolution mechanisms could be deployed to simplify or by-pass the court proceedings.

[32] The court apologizes to the parties for any inconvenience caused by the delay between the filing date and the hearing of this matter. The parties are once again encouraged to explore all options (including court-connected mediation) for arriving at an amicable resolution of the remaining issues.

ORDER

[33] It was ordered:

1. The application by the respondents for an adjournment is dismissed.
2. R. S.’s and T. U.’s application for leave to apply for judicial review of the respondents’ decision to remove the minor children A and B from their custody is denied.

3. No order as to costs.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar