

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

REVIEW 162/17

In the matter of:

EX PARTE COMMISSIONER OF CHILD WELFARE, MEYERTON; In re C V  
(Reference 14/1/2 - 6/2005)

REVIEW JUDGMENT: ADOPTION - RECONSTRUCTION OF RECORD

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BAM, J

1. This review concerns the adoption order in respect of a child, C V, made on 27 November 2015 by the Commissioner of Child Welfare, Magistrate C van Niekerk, at the Magistrate's Office Meyerton.
2. There is no issue about the correctness of the adoption procedure followed by the Commissioner. After the order was made, in following the standard prescribed administrative procedure, the relevant documents were forwarded to the Registrar for Registration purposes. The documents were supposed to have included a record of the formal adoption proceedings.
3. On 11 March 2016 the Registrar directed a letter to the Commissioner requesting the "*signed proceedings*" and requesting the Commissioner to "*state*" the reason why the consent of the biological father is not required. From the first part of the enquiry it appears that the Registrar was not in possession of the original signed record.
4. Upon endeavouring to respond to the enquiry, it was discovered that there was no copy of the original record on the office file. On the probabilities the copy

was misfiled. There is no reason to find that the Commissioner did not record the formal proceedings.

5. Accordingly it became necessary that the record of the proceedings had to be reconstructed. Any alternative, for instance that the adoption proceedings should be set aside and the proceedings to start afresh is out of the question. The mere absence of the original record is not an irregularity that could justify the setting aside of the adoption order.

6. The Commissioner is presently, after the return of the other formal documents by the Registrar 20 April 2017, in a position to reconstruct the required record.

7. The Commissioner entertained certain misgivings concerning whether he was in law justified to reconstruct the record. This is the main reason why the matter was sent on review.

8. Reconstruction of the record in this case is clearly a formal exercise, in view thereof that the Commissioner has all the necessary information at his disposal, and taking into account that none of the parties involved, neither the child, nor his biological mother, nor the adopting parents, will be prejudiced. It is in any event clearly in the interest of the child, and in the interests of justice that the matter should be dealt with without further delay.

9. The enquiry about the identity of the child's biological father can be dealt with by the Commissioner. It is reflected in the relevant documents that the identity of the biological father is unknown. The child was conceived after the biological mother was raped by an unknown person. Section 236(2)(c) of the Children's Act, No 38 of 2005 provides that in such circumstances no consent of the biological father is required.

10. It must however be stressed that the order I intend to make does not affect the duties and rights of the Registrar in respect of the registration of the adoption.

11. Although this type of review proceedings is uncommon, this Court is the upper guardian of all children, and in my view, it is in the interests of justice and the minor child, whose rights are at stake, that this case has to be accommodated .

12. ORDER

1. The Commissioner of Child Welfare, Mr C van Niekerk, is permitted to reconstruct the record of proceedings concerning the adoption of C V; Ref 1/4/13, Magistrate's Office, Meyerton.

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A J BAM  
JUDGE OF THE HIGH COURT

I agree,

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A. J BAM  
JUDGE OF THE HIGH COURT

10 August 2017