

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

A.P.No.188/87

BETWEEN

F

Appellant

A N D

DEPARTMENT OF SOCIAL
WELFARE

Respondent

**NOT
RECOMMENDED**

Hearing: 24 June 1988

Counsel: R.J. Murfitt for Appellant
D.J.L.Saunders for Respondent
Ms P.D. Costigan for Children

Judgment: 24 June 1988

ORAL JUDGMENT OF TIPPING, J.

In my list this morning there is an appeal brought by _____ against the findings of the Children & Young Persons Court. Certain complaints against the Appellant were found proved and guardianship orders were made as a result of which the three children in question have been placed in foster care. All this happened in the middle of last year. The complaints were found proved on 26 June 1987 and certain consequential orders were made on 3 August 1987.

The Appellant has appealed to this Court against the findings of the Children & Young Persons Court. The appeal was listed on 24 May 1988. At that time

only Ms Costigan appeared, she being instructed for the children. I myself was presiding on that occasion and I noted the file "procedural conference adjourned sine die for further date once other counsel are instructed." That was a reference to the fact that at that time the Appellant, for various reasons that I do not propose to traverse, was without current counsel. Mr Saunders was however able to tell me that that date was in fact a formal listing for the appeal itself and not just a procedural conference as I have noted on the outside of the file. Be that as it may, the appeal proper was again listed for today.

Mr Murfitt has appeared on behalf of the Appellant and has asked for an adjournment prior to seeking leave to withdraw. Mr Murfitt explained to me the reasons why he was asking for leave to withdraw. They were valid and leave is accordingly granted. The application for adjournment was opposed by Ms Costigan for the children and by Mr Saunders who has appeared this morning for the Respondent the Department of Social Welfare. They both submitted that the appeal should be dismissed for want of prosecution.

Mr Murfitt presented to me a medical report which says that the Appellant is not fit to attend Court today on medical grounds. Those grounds are not specified in the report but Mr Murfitt did mention to me some of the background. The Appellant has had problems also in relation to the sale of her home pursuant to a mortgagee sale.

Ms Costigan informed me that all three children are now in very satisfactory foster care and that the Appellant has been erratic in her access visits. I was informed that only three out of eleven arranged visits have been kept. Mr Saunders, supported by Ms Costigan, expressed extreme concern at the delays and the difficulty which had been found by the Respondent and counsel for the children in bringing this appeal to a head.

While I am sympathetic to the points which were mentioned to me by Mr Murfitt I must not overlook that in a case of this kind the welfare of the children is the first and paramount consideration. It is therefore an appeal of a rather different kind from most of the appeals with which this Court is concerned. In the ordinary context the Court is always very anxious to give an Appellant an opportunity to say what that Appellant may wish to say, provided injustice is not done elsewhere, and appeals are often adjourned quite readily in other jurisdictions for that reason. In this case, however, I am satisfied as a result of the submissions of Mr Saunders and Ms Costigan that finality is highly desirable in the interests of the stability and certainty for the future of the children.

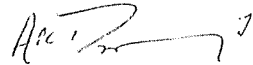
I was initially very troubled at the proposition that the appeal should be dismissed by the thought that the Appellant could then say that she had not had a substantive hearing. My concern in that area has however been allayed by the fact that Mr Saunders has referred me to s.64 of the Children & Young Persons Act

which allows for a review of an order such as that which is in contention here after it it has been in force for twelve months. By reason of the delays that have been inherent in this matter that twelve month period has nearly expired. It will of course expire on 3 August 1988.

In substance the appeal is directed to the question of whether or not the children should be living with their mother. While I acknowledge Mr Murfitt's point that simply leaving it to a right of review implies some measure of acceptance of the correctness of the initial order, the Appellant's rights viz a viz these children are protected in substance and in reality, leaving aside jurisdictional questions, by her right to review which will arise in only about five weeks time. The delays in this matter make it far more appropriate in practical terms to review the situation afresh rather than to examine whether the original conclusion was valid a year ago. In a case vitally affecting the welfare of these three children the Court will want to know the current situation.

I am satisfied from what I have been told that the Appellant was aware of the hearing today and I infer has been aware for some time, albeit not a great length of time. The difficulties which she has experienced with counsel may be the product in part of her own problems but they should not in my view be allowed to impede the welfare of the children. I think it is crucial for these children's future that everybody knows where they stand. I do not think it would be in their interests further to adjourn this appeal.

As I have said, the Appellant's position is protected by her right to apply for a review. If it were not for that I would have been most unlikely to have dismissed the appeal but that right seems to me, as I have said, in substance to allow the Appellant to ventilate the real issues should she wish to do so. The appeal is accordingly dismissed.

A handwritten signature in black ink, appearing to be 'A. R. J.', located at the end of the typed text.