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COMMENTS

USE OF THE COURT ORDER OF RELINQUISHMENT IN ADOPTION PROCEEDINGS IN WASHINGTON

JOHN W SWEET*

The necessity for the court order of relinquishment in adoption proceedings in Washington has until recently presented a confusing problem. In 1939 the legislature enacted a statute entitled "Persons Authorized to Adopt Children,"[1] which provided:

> It shall be unlawful for any person, firm, society, association or corporation, except the parents, to assume the permanent care, custody or control of any child under the age of majority, unless authorized so to do by a written order of a superior court of the state.

The statute also makes it unlawful for a parent to relinquish custody of a minor child without such an order.

Those who initiated the statute and backed its passage felt that it

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[1] Wash. Laws 1939, c. 162, § 1, appearing as REM. REV. STAT. § 1700-1, [P P C. § 358-1].

would provide close judicial supervision of the transfer of custody in order that the bartering of minor children might be effectively prevented. It was intended in addition to protect the rights of natural parents by making it more difficult to perpetrate a fraud upon them in procuring the relinquishment of a child. The 1939 statute is quite similar to the 1933 statute, which reads as follows:

> It shall be unlawful for any person, firm, society, association or corporation, except the parents, or relatives within the second degree, or a benevolent or charitable society incorporated under the laws of this state for the purpose of, and engaged in the business of, receiving, caring for, and placing out for adoption, orphan, homeless, neglected, abandoned or abused minor children, to assume the permanent care, custody, or control of any child under fourteen (14) years of age, unless authorized to do so by an order of the court.[2]

This prior statute clearly seems to have been designed to eliminate trafficking in children and the 1939 statute appears to have been intended to expand the coverage of the earlier law by omitting the exceptions as to charitable institutions that were contained in the 1933 statute.

In 1943 there was enacted legislation which purported to be a complete act covering the matter of adoption.[3] This statute fully prescribes the procedure necessary for obtaining an order of adoption, and at no point in the statute is the order of relinquishment mentioned or its use specifically required. The 1945 amendments[4] and the 1947 amendments[5] pertaining to adoption do not add anything with regard to the use of the relinquishment order.

Prior to the decision in the case of *In the Matter of the Adoption of Donna Mae Sipes*[6] it was not settled whether it was necessary to obtain a court order of relinquishment as a condition to jurisdiction to hear and determine whether or not the adoption would be permitted. An informal poll of eleven of the superior courts of this state was taken recently Five of the courts required such an order. One court replied that four of the judges who alternated in that court in the hearing of adoption cases required the order while the fifth judge did

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[2] Wash. Laws 1933, c. 62, § 1. Repealed, Wash. Laws 1935, c. 151 § 7

[3] Wash. Laws 1943, c. 268, appearing as REM. REV. STAT. SUPP. 1943, §§ 1699-1 to 1699-17, [P. P C. §§ 354f-1 to 354-33].

[4] Wash. Laws, 1945, c. 191, appearing as REM. REV. STAT. SUPP. 1945, § 1699-12, [P. P C. § 354f-23].

[5] Wash. Laws 1947, c. 251, appearing as REM. REV. STAT. SUPP. 1947, §§ 1699-4, 9, 10, 12, and 15.

[6] 24 Wn.(2d) 603, 167 P.(2d) 139, (1946).

not. The other five courts did not require the order.[7] As to whether the court would consider the existence or nonexistence of an order of relinquishment relevant in the event that a natural parent whose consent was requisite to adoption desired to withdraw consent, one court thought that it was relevant; five courts thought it not relevant; in one court the judges were not in agreement; while the question had not risen before four of the courts.[8] All eleven courts agreed that an order of relinquishment would not be required in a guardianship proceeding even though it might involve the assuming of permanent care, custody or control of a child under the age of majority

The confusion in this matter has been substantially rectified by the decision in the case of *In the Matter of the Adoption of Donna Mae Sipes*.[9] In this case the natural mother of an illegitimate child, shortly after the birth of the child, executed and delivered to *A* a written document of consent for the adoption of this child by *A*, leaving the child in the custody of *A*. No court order of relinquishment was obtained. Subsequently an adoption proceeding was conducted in the regular manner in accordance with REM. REV STAT. SUPP 1943, §§1699-1 to 1699-17 [P.P.C. §§354f-1 to 354f-33], whereby *A* was given an interlocutory order of adoption. Within the six months interlocutory period prescribed by REM. REV STAT. SUPP 1943, §1699-12 [P.P.C. §354f-23], the mother petitioned to have the interlocutory order vacated, setting up the failure of *A* to get an order of relinquishment as prescribed by REM. REV STAT. §1700-1 [P.P.C. §358-1] Here was presented a question of first impression in this state: Can the mother of an illegitimate child execute a valid consent sufficient to give the court jurisdiction of an adoption proceeding, without first securing the order of relinquishment? The trial court denied the mother's petition to vacate the interlocutory order of adoption of her

[7] The question used in the poll was worded. "In a regularly conducted adoption proceeding [before In the Matter of the Adoption of Donna Mae Sipes, 24 Wn.(2d) 603, 167 P.(2d) 139 (1946)]was an order of relinquishment required before the adoption petition was approved?" The Superior Courts of the Counties of Whatcom, Ferry and Okanogan, Stevens, Garfield and Columbia, and Kittitas answered this "Yes", while the Superior Courts of the Counties of Lewis, Clark, Douglas and Grant, Adams and Benton, and King replied. "No." In Spokane County the judges' opinions were not in agreement as to the answer to this question.

[8] The question was worded. "In the event that a natural parent whose consent was requisite to adoption desired to withdraw consent during the six months interlocutory period, was the existence or nonexistence of an order of relinquishment considered relevant?" The Superior Court of Stevens County answered this in the affirmative; the courts of Lewis, Clark, Douglas and Grant, Adams and Benton, and King counties answered in the negative, while the judges of the Spokane County Superior Court disagreed as to the relevancy of the order.

[9] *Supra*, note 6.

child and entered a final order of adoption. This judgment was affirmed on appeal.

The Supreme Court of Washington reasoned that the relinquishment statute was designed to prevent the release of children to persons, associations, and corporations who did not desire to adopt such children, but who procured their permanent care, custody, and control and thereafter placed them out for adoption. The statute, it said, was never intended to apply to a situation where the parent, who was legally entitled to consent to the adoption of her child, had given that consent in writing, and the adopters had proceeded to obtain an order of adoption.

The decision appears to have the effect of removing from the adoption proceeding the court order of relinquishment in all cases where the persons whose consent is necessary for adoption have given written consent. The child care and protective organizations do not use the order, for, before taking a child into custody, such groups (which have as their objects the purpose of caring for or obtaining homes for dependent, neglected, or delinquent children) procure a commitment of such children from the Juvenile Court pursuant to statutes designed to handle cases of delinquent or dependent children.[10] And such institutions do not relinquish custody of a child until the interlocutory order of adoption has been granted. Certain hospitals have followed the practice of requiring a court order of relinquishment before permitting a person other than the natural parent to take the child from the hospital in order to fully protect themselves; however, even this precautionary step would not seem necessary if the hospital has written consent of the natural parent to the release of the child.

Most assuredly, the natural parents who are relinquishing their child to another should be given adequate protection from those persons and associations who would wrongfully take the child from its parents. But to require a court order of relinquishment as a condition to the entertaining of an adoption petition is to put the cart before the horse. Our adoption statutes provide for a thorough investigation to be made before even the interlocutory order is granted.[11] Notice to a nonconsenting parent or guardian is required by statute,[12] and the courts have in the case of *In the Matter of the Adoption of a Minor*[13] made it clear that the notice provisions will be given broad interpre-

[10] REM. REV. STAT. §1987-9; [P.P.C. §359-15].
[11] REM. REV. STAT. SUPP. 1947, §1699-10.
[12] REM. REV. STAT. SUPP. 1947, §1699-9.
[13] 129 Wash. Dec. 700, 189 P.(2d) 458, (1948).

tation and that the spirit of the statute will not be circumvented by the use of technicalities. In the latter case the court held that it was necessary that the husband of the mother of an illegitimate child be given notice of the adoption proceedings, the child being presumptively his. This was held in spite of the language of the statute which reads: "If the court is satisfied of the illegitimacy of the child to be adopted, and so finds, no notice to the father of such child shall be required."[14] The courts similarly require strict adherence to the written consent provisions of the statute,[15] the court deciding in *In The Matter of the Adoption of Lois Ann Hope*[16] that consent of both parents is necessary before the court will permit the adoption of children born of an illegal marriage contracted in good faith and later annulled.

It is clear that the natural parents are given adequate protection under our present adoption procedures. If a parent whose consent is necessary for adoption has given written consent for a particular person to adopt the child there should be a showing of fraud or of very strong and compelling circumstances why that parent should be allowed to revoke the consent after the interlocutory order of adoption has been granted. To permit otherwise would be to subject the proceedings to a degree of uncertainty and unfairness which the adoption statute was designed to avoid.

It appears that for all intents and purposes the court order of relinquishment is no longer a necessary step in the state of Washington's procedure for the supervision of the welfare of children. *In the Matter of the Adoption of Donna Mae Sipes*[17] removes this order from the adoption procedure whenever written consent has been given, and the Delinquent Children and Juvenile Court laws[18] prescribe adequate procedures and are customarily used for the relinquishment of children to those who do not themselves desire to adopt. This result seems desirable, for it eliminates from the adoption system a step which seemed superfluous. The statutory plan for adoption has in many courts functioned smoothly without requiring the order of relinquishment.[19] The holding should assist in making the Washington adoption system operate in a uniform and sure manner, giving ample protection to all parties concerned.

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[14] The last sentence of REM. REV. STAT. SUPP. 1947, §1699-9.
[15] REM. REV. STAT. SUPP. 1947, §1699-4.
[16] 130 Wash. Dec. 170, 191 P.(2d) 289, (1948).
[17] *Supra*, note 6.
[18] REM. REV. STAT. §§1987-1 to 1987-18, [P.P.C. §§359-1 to 359-35].
[19] *Supra*, note 7