WARNING

THIS IS AN APPEAL UNDER THE

CHILD AND FAMILY SERVICES ACT

AND IS SUBJECT TO S. 45 OF THE ACT WHICH PROVIDES:

45. (7) The court may make an order,

(a) excluding a particular media representative from all or part of a hearing;

(b) excluding all media representatives from all or a part of a hearing; or

(c) prohibiting the publication of a report of the hearing or a specified part of the hearing,

where the court is of the opinion that the presence of the media representative or representatives or the publication of the report, as the case may be, would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding.

45. (8) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family.

45. (9) The court may make an order prohibiting the publication of information that has the effect of identifying a person charged with an offence under this Part.

COURT OF APPEAL FOR ONTARIO

CITATION: Children's Aid Society of Oxford County v. W.T.C, 2013 ONCA 637
DATE: 20131101
DOCKET: C55909

Hoy A.C.J.O., Feldman and Simmons JJ.A.

BETWEEN

Children's Aid Society of Oxford County

Applicant (Respondent in Appeal)

and

W.T.C.

Respondent (Appellant in Appeal)

John Schuman and Rachel Healey, for the appellant

Lorne Glass, for the respondent

Katherine Kavassalis, for the Office of the Children's Lawyer

Heard: July 4, 2013

On appeal from the order of Justice Johanne N. Morissette of the Superior Court of Justice, dated July 20, 2012 dismissing an appeal from the order of Justice Peter R. W. Isaacs of the Ontario Court of Justice, dated September 2, 2010.

By the Court:

[1] In our decision of July 23, 2013, the court made two orders: an order for an additional assessment and an order requesting written submissions from the

Attorney General in response to the Constitutional question raised by the appellant.

[2] This court ordered that the Society provide a current assessment of the proposed adoptive parents, of the child, and of the birth mother for the purpose of determining what is in the child's current best interests. This was necessary at this stage of the process because of fresh evidence tendered by the Children's Aid Society indicating that the proposed adoptive parents had separated since the time of the last adoption home study. Since the status review judge's reasons made it clear that the stable, two-parent home provided by the proposed adoptive parents was a key factor in her decision to uphold the order for Crown wardship with no access, this court viewed the separation as a change in circumstances requiring further investigation.

[3] On appeal to this court, the appellant mother indicated that if she were not awarded custody, she would request access to the child for both herself and for the appellant's two siblings who are in her custody.

[4] Further to the court's order, the parties agreed to name as the assessor Dr. N. Perlman, a well-qualified psychologist, and a further order was made appointing her to provide the assessment, initially within 30 days, then with a requested extension to October 9, 2013.

[5] The court has now received the detailed report from Dr. N. Perlman. The report makes it clear that the child is thriving in the proposed adoptive family, and that she would continue to do so, despite the separation of the parents. Furthermore, the child suffered great emotional distress when she was transferred from her foster family to the proposed adoptive family. If she were to be moved again, the fear is that she would have great difficulty handling the change.

[6] Following receipt of the report, the parties were allowed an opportunity to make written submissions based on the report.

[7] In our view, it is clear from all the evidence, including the report of Dr. Perlman, that it is in the best interests of the child, L.H., for the court to dismiss the appeal of the mother and to allow the child to be adopted by the proposed adoptive parents. There is no basis on the record to find any error in the decision of the Superior Court appeal judge.

[8] On the issue whether the appellant mother, sister and brother of L.H. could have access now to L.H., the proposed adoptive parents advised Dr. Perlman that they do not wish L.H. to have that relationship at this time (she is now six years old). Their reservation appears to relate to L.H.'s past challenges in adapting to change. However, they also stated that when L.H. asks about her birth mother, they will then be prepared to allow contact. Dr. Perlman

recommended that approach as the most appropriate for L.H. at this time, given that she does not know her birth mother. Although the mother challenges the basis for Dr. Perlman's conclusion on this issue, we accept her neutral assessment as in the present best interests of the child.

[9] We observe that Dr. Perlman's report is positive about the birth mother. Based on the materials before us at this time, we see no reason that when L.H. is ready, she should not have contact with the appellant and with her two siblings.

[10] In the result, the appeal from the decision making L.H. a Crown ward with no access is dismissed.

[11] The second order of the court was a request for written submissions from the Attorney General of Ontario in response to the Constitutional question raised by the appellant alleging a breach of her *Charter* rights based on delay. Those submissions were received within 30 days, as requested. The court will reconvene on a date to be arranged, to hear any further submissions from all parties on the constitutional question.

[12] Costs of the appeal will be determined at that time.

Released: "AH" November 1, 2013

"A. Hoy A.C.J.O."
"K. Feldman J.A."
"J. Simmons J.A."