

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

JARED S., SHERRI S., and AYDEN S.,)	No. 1 CA-JV 06-0158
)	
Appellants,)	DEPARTMENT E
)	
v.)	MEMORANDUM DECISION
)	(Not for Publication -
COMMISSIONER BRIAN S. REES and)	Ariz. R.P. Juv. Ct. 88(G);
the MARICOPA COUNTY SUPERIOR)	ARCAP 28)
COURT,)	FILED 2-22-07
)	
Appellee.)	
)	

Appeal from the Superior Court in Maricopa County

Cause No. JA-507691

The Honorable Brian Rees, Commissioner

REVERSED AND REMANDED

Law Office of Paul D. Peterson
By Paul D. Petersen
Attorney for Appellants

Mesa

T I M M E R, Judge

¶1 Jared S. and Sherri S. appeal from the juvenile court's denial of their petition to adopt Ayden S. They argue that the court failed to follow Arizona law and violated Ayden's Equal Protection rights by denying the adoption based on alleged violations of foreign laws. Because we conclude the court

improperly delegated its duty to determine whether the adoption is in Ayden's best interests, we reverse and remand this case for further proceedings.

BACKGROUND

¶2 Jared and Sherri retained attorney Paul Petersen to assist them in adopting a baby. Petersen was familiar with the Republic of the Marshall Islands ("RMI") due to his time spent there performing church mission work. Through a third party, Jenny B., an RMI citizen, contacted Petersen to secure a couple to adopt her unborn child.¹ Robby D., the child's father, is also an RMI citizen. Jenny chose Jared and Sherri to be the adoptive parents. On March 10, 2005, the State of Arizona certified Jared and Sherri as acceptable to adopt a child. See Ariz. Rev. Stat. ("A.R.S.") §§ 8-105 & -108 (Supp. 2006).

¶3 Petersen arranged for Jenny to travel from RMI to Mesa, Arizona, where she lived for several weeks until giving birth to Ayden on September 26, 2005. Ayden was born prematurely and remained hospitalized two weeks for treatment of breathing problems and syphilis. After Ayden's birth, Jenny and Robby gave written consent for Jared and Sherri to adopt Ayden. After a brief period of recovery, Jenny returned to RMI, and Ayden came to live with Jared and Sherri, where he has

¹ According to Petersen, Jenny remembered him from his mission days and asked that the third party contact him about arranging the adoption. This third party was paid \$2,000 for her role in placing the child.

continuously resided. Jared and Sherri paid hospital, doctor, and lab expenses, Jenny's living expenses, and a fee for Petersen's services.

¶4 On January 10, 2006, Jared and Sherri filed a petition with the juvenile court to adopt Ayden. In the course of the adoption proceeding, the couple arranged for and paid Adoption Specialists of Arizona, Inc. ("Adoption Specialists") to prepare and submit to the court a social study evaluating the couple's proposed adoption of Ayden. See A.R.S. § 8-112 (Supp. 2006). Upon investigation, Adoption Specialists found, among other things, that Ayden was "growing and thriving," had bonded to his prospective parents, and that adoption by Jared and Sherri was in Ayden's best interests. Adoption Specialists therefore recommended issuance of a final order of adoption.

¶5 On June 28, the court communicated to Petersen by telephone that it intended to deny the adoption petition.² It agreed, however, to hold a hearing to permit Petersen to make a record in order to proceed with this appeal. The court held a brief, non-evidentiary hearing the next day and at the conclusion, the court denied the petition. In its ruling, the court expressed concern with the legality of Petersen's methods in setting up the adoption. In particular, the court opined

² The record on appeal does not contain a transcription of this conversation, and we do not know whether the conversation was memorialized.

that Petersen had violated RMI laws regulating adoptions as well as section 141(b) of the Compact of Free Association ("Compact"), U.S.-Marsh. Is., April 30, 2003, 117 Stat. 2834, a federal treaty between RMI and the United States, by arranging for Jenny to come to the United States for the purpose of placing a child for adoption.³ Despite its concern with the legality of Petersen's methods, the court recognized it was "constrained to grant an adoption if [Jared and Sherri] have met the requirements of Title 8, Article I and if the adoption is in the best interest of the child."

¶6 The court ultimately ruled that it lacked sufficient evidence to find the adoption was in Ayden's best interests. Specifically, the court said that Adoption Specialists' social study "was insufficient in its information because it failed to

³ Jared and Sherri vehemently contest the court's conclusion that Jenny's trip to the United States violated Compact § 141(b). They rely on an RMI-prepared summary of that provision for the proposition that § 141(b) applies only to children and does not affect the passage of pregnant women coming to the United States to give birth. Although there is some support for this interpretation, strong support exists for the construction adopted by the juvenile court. A United States Citizenship and Immigration Services Fact Sheet states that the "bar on visa-free admission applies to . . . RMI citizens who are seeking to come to the United States for the purpose of giving up an unborn child for adoption in the United States, as well as to children being brought to the United States for the purpose of adoption." U.S.C.I.S. Fact Sheet at 2 (Feb. 11, 2005), available at <http://www.doi.gov/oia/pdf/USCISFACTSHEET.pdf> (last visited Feb. 14, 2007). Additionally, this view furthers the apparent purpose of § 141(b) to aid RMI's efforts to manage the adoption of RMI children by foreign citizens. Regardless, the interpretation of § 141(b) is not before us, and we do not comment further on the issue.

disclose any information about the child's circumstances in the Marshall Islands and the effects of leaving his place of origin." The court stated it would have sufficient evidence to decide the best-interests issue if Jared and Sherri "retroactively compl[ied]" with circumvented RMI laws by obtaining approval for the adoption by RMI's Central Adoption Authority ("CAA") or Journeys of the Heart, an RMI-approved adoption agency based in Oregon. The court therefore denied the adoption "subject to . . . approval by the Journeys of the Heart Agency or subject to approval or ratification by the Central Adoption Agency of the Marshall Islands" This timely appeal followed.

DISCUSSION

¶7 Adoptions in Arizona are governed by statute. A.R.S. §§ 8-101 through -173 (1999 & Supp. 2006). Before prospective adoptive parents can file a petition to adopt a child, they must become certified by the court as "acceptable to adopt children." A.R.S. §§ 8-105 & -108. Prospective parents become certified by submitting to an investigation that examines whether they are fit to adopt conducted by the Arizona Department of Economic Security, an agency (as defined in A.R.S. § 8-101(2) (Supp. 2006)), or an officer of the court. A.R.S. § 8-105(C). Before the adoption can take place, a social study must also be conducted that evaluates the proposed adoption. A.R.S. § 8-112.

After becoming certified, the prospective parents file a petition to adopt, which contains information about the parties to the adoption and disclosures about money spent on the adoption. A.R.S. § 8-109 (Supp. 2006). The juvenile court then holds a hearing on the petition to determine whether there has been compliance with the requirements of the adoption statutes and whether the adoption is in the best interests of the child. A.R.S. § 8-115 (Supp. 2006); see *In re Adoption of Krueger*, 7 Ariz. App. 132, 136, 436 P.2d 910, 914 (1968), *disapproved in part on other grounds by* 104 Ariz. 26, 448 P.2d 82 (1968) ("Our courts have consistently stated that the welfare of the child is the primary consideration when passing upon an adoption application"). If the court believes there has been compliance and that the adoption is in the best interests of the child, the court must order the adoption. A.R.S. § 8-116 (Supp. 2006).

¶8 The juvenile court found that Jared and Sherri had sufficiently complied with the adoption statutes⁴ but nevertheless denied the petition because it lacked sufficient evidence to make a best-interests finding until either CAA or Journeys of the Heart approve the adoption in compliance with

⁴ The court found violations of A.R.S. § 8-114(C) (Supp. 2006) (prohibiting compensation paid in exchange for consent for adoption placement without court approval) and A.R.S. § 8-112(B) (relating to sufficiency of social study). The court did not base its ruling, however, on these violations.

RMI law. Jared and Sherri argue, among other things, that the court erred in this ruling by applying RMI law under the guise of Arizona's best-interests requirement to deny the petition. We agree.

¶9 Section 8-116, A.R.S., requires the court to decide whether adoption by the petitioning parties is in the child's best interests. While the court is permitted to consider and rely on the recommendations of experts and other parties, it may not relinquish responsibility for making an independent best-interests determination by delegating that decision to other parties, including CAA, Journeys of the Heart, or the RMI government.

¶10 In *DePasquale v. Superior Court*, 181 Ariz. 333, 335-36, 890 P.2d 628, 630-31 (App. 1995), this court considered the propriety of delegating a best-interests decision to an expert when considering a request to change a child's custody. The applicable statute in that case provided that "[t]he court shall determine custody . . . in accordance with the best interests of the child." *Id.* at 336, 890 P.2d at 631 (quoting A.R.S. § 25-332(A) (1994)). At the start of the hearing, however, the court announced that it would adopt any recommendation offered by the court-appointed psychologist. *Id.* On special action review, this court held that "a court can neither delegate a judicial

decision to an expert witness nor abdicate its responsibility to exercise independent judgment." *Id.*

¶11 A similarly impermissible delegation occurred in this case. As in *DePasquale*, the juvenile court was required to make an independent best-interests decision. A.R.S. § 8-116. Instead, the court effectively delegated the responsibility for making that decision by finding insufficient evidence to make the decision unless CAA or Journeys of the Heart approve the adoption. No authority exists for making this delegation,⁵ and we must therefore reverse and remand for the court to decide whether the proposed adoption is in Ayden's best interests and whether the petition should be granted or denied.⁶ If on remand the court finds that it requires additional information to determine Ayden's best interests, the court can order the submission of additional evidence or appoint a guardian ad litem for Ayden to address his best interests. Ariz. R. Civ.

⁵ The Compact does not contain a provision for denying adoptions if Compact § 141(b) is violated.

⁶ The wisdom of requiring the court to refrain from delegating the best-interests decision to CAA or Journeys of the Heart is revealed in considering the possible ramifications of any decisions by those agencies. In issuing its ruling, the court opined that Ayden was "in good hands" with Jared and Sherri and that it "can't imagine" that either the CAA or Journeys of the Heart would send Ayden to the RMI. But what if those agencies refused to approve any adoption by a family residing outside the RMI? The court's ruling would leave Ayden, a United States citizen, see U.S. Const. amend. XIV, sec. 1, who has never been to the RMI, without parents as long as he continues to exercise his right to reside in this country.

P. 17(g); see *Hall v. Lalli*, 194 Ariz. 54, 60, ¶ 20, 977 P.2d 776, 782 (1999) (allowing appointment of guardian when child's interests could potentially conflict with other parties' interests).

¶12 We appreciate the juvenile court's well-expressed concerns about the manner in which this prospective adoption was arranged. Requiring RMI approval of Ayden's adoption, however, is not a solution to any violations of Compact § 141(b). We therefore reverse the juvenile court's judgment and remand for additional proceedings in accordance with this decision. In light of our decision, we need not address appellants' additional arguments.

Ann A. Scott Timmer, Judge

CONCURRING:

Philip L. Hall, Presiding Judge

Michael J. Brown, Judge