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Relief for foster parents

Court removes barrier for private adoption actions

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For years, attorneys with the South Carolina Department of Social Services have argued that a state Supreme Court decision prevented foster parents from pursuing private adoption actions of children placed in their homes.

But the high court obliterated that argument earlier this month in an opinion that sets the stage for a potential deluge of adoption filings that could bog down the state's family courts and disrupt efforts to reunite kids with their parents.

A unanimous five-judge panel for the court held on Jan. 3 in *South Carolina Department of Social Services v. Boulware* that all state residents, including foster parents, have standing to file a private adoption action as long as DSS has not already placed the child in question for adoption. For a child to be placed for adoption there must be a signed contract between DSS and the adoptive parents, according to Abigail Duffy, a family law attorney based in North Charleston.

"I'm over the moon about this opinion," she said. "This is really going to help a lot of children. It's going to give foster parents rights they didn't have before. It will enable foster parents to protect children who are placed with them."

The decision also corrects what had been an apparently widespread misinterpretation of the Supreme Court's 2013 ruling in *Youngblood v. SCDSS*, said Dale Dove of Rock Hill, who represents the foster parents in Boulware.

DSS attorneys had successfully argued in *Boulware* and in other cases throughout the state that the *Youngblood* court held that foster parents did not have standing under state law to file adoption petitions.

The Court of Appeals accepted DSS's argument in *Boulware*, concluding in an unpublished opinion that when lawmakers wrote the South Carolina Children's Code they did not intend "to grant standing to foster parents who file adoption actions early in the process while foreclosing standing to foster parents who wait until after DSS had made an adoption placement decision."

The decision affirmed a ruling from Union County Family Court Judge Coreen Khoury, who had held that the "entire legislative scheme should be allowed to work without interference from foster parents who are there to take care of the child, not to generate an adoption for themselves."

'It's not fair'

The foster parents in *Boulware* have been facing off with the aunt and uncle of a child who was removed from her home after a meth lab was discovered on the property. She had been living with the foster parents for nearly a year before the aunt and uncle arrived on the scene and DSS tried to relocate the child to their home.

The move spurred the foster parents to intervene and file a private termination of parental rights and adoption action in 2014. Since then, the child has been living with the foster parents but she has unsupervised weekend visitation with the aunt and uncle as her case has wound its way through the courts.

The Supreme Court's decision means that the foster parents can push ahead with their adoption action in family court — and so can the aunt and uncle.

Khoury had told the aunt and uncle that they had could go before the DSS adoption committee and seek to adopt the child, but ruled that they did not have standing to pursue a separate adoption action in family court.

"Now that the [Supreme] Court has said that basically anyone can file to adopt a child in DSS custody, they [the aunt and uncle] will be filing an adoption petition," said their attorney, Melinda Butler of Union.

But she believed that her clients had a difficult fight ahead, because they arrived late in the game while the foster parents have already jumped through many of the hoops required for adoption.

"The relatives of children taken by DSS, you cannot compare them apples to apples to foster parents," Butler said. "For us to go head-to-head and have a showdown in family court … it's not fair."

'Where's that line?'

In reversing the lower court's ruling in *Boulware*, the Supreme Court clarified that the foster parents in Youngblood did not have standing to adopt because the child in that case had already been placed for adoption.

Justice George James wrote in *Boulware* that the Court of Appeals had taken an overly broad view of *Youngblood*. He found that the lower court's reasoning "would undermine the broad grant of standing we recognized in *Youngblood*" and rewrite the applicable state law in a way that is not supported "by a plain reading of the statute." Chief Justice Donald Beatty and Justice John Few concurred with James.

In a separate concurring opinion, Justice Kaye Hearn said the court's decision followed the clear language of the state statute and was in the child's best interest. But she expressed concern that "foster parents and others who are anxious to adopt a child will hail our decision today as a green light to file an adoption action when a child is taken into protective custody — at a time when DSS is working to fulfill its statutory mandate for reunification."

"Such actions will burden our family court system and may not always produce results which are best for the child and his or her family," she added.

Justice John Kittredge joined Hearn's opinion, which urged the legislature to change the statute "if the current plain language does not reflect its true intent."

But Dove, the foster parents' attorney, doubted that *Boulware* would significantly disrupt efforts to reunite children with their parents, saying that the "fear is not based on the reality of the system."

"We don't want to blindly kick the birth parents out, but the child demands permanency," he added, referring to living arrangements. "That's the reason for the policy of the state."

Butler disagreed, saying that the court's interpretation of the adoption statute essentially allows foster parents to hire attorneys and "take over the state's case." She argued that the state should be moving these cases forwards, not the foster parents.

"That's where our legislature needs to come in and put some parameters in there," she said.

While Duffy, the family law attorney in North Charleston, applauded the decision, she acknowledged that it also is "opening up a slippery slope."

"The question is, At what point are we giving up standing and at what point is it still a parent's constitutional right to pursue reunification?" she said. "Where's that line?"

The 12-page decision is *South Carolina Department of Social Services v. Boulware* (Lawyers Weekly No. 010-006-18). An opinion digest is available at sclawyersweekly.com.