

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

DG v W

In a judgment today the Supreme Court of Appeal has dismissed an appeal by an American couple, for an order of sole custody and guardianship of a minor child, RJ.

R was found abandoned a few days after her birth, head-first in a bucket, under a tree in a veld in the Roodepoort area on 14 November 2004. She was taken to the premises of the Roodepoort Child and Family Welfare Society and on 16 November 2004 the third respondent applied for and was granted an order by the Commissioner of Child Welfare for R to be placed in the care of the first and second respondents. The first and second respondents, American citizens, now resident in South Africa, have established and administer 'Baby Haven', a home for abandoned babies, in Gauteng. R has been in their care since 17 November 2004, and in terms of an order by the Commissioner granted on 11 January 2005, they were appointed her foster parents. To date, neither R's parents nor family have been traced.

During 2005, the appellants, also American citizens, visited the first and second respondents, with whom they shared a long-standing friendship, in South Africa. It was then that the appellants met R. They became extremely fond of her and decided to adopt. To this end they met with their attorneys and this application was launched. The appellants' suitability as adoptive parents is not in dispute. It is apparent from the evidence that they are fit and

proper persons to adopt and that they are possessed of sufficient means to adequately maintain and educate R and they are caring and decent persons who for purely altruistic purposes wish to adopt R.

The SCA, in a judgment by Theron AJA in which Snyders AJA concurred, (Ponnan JA, in a separate judgment, agreed with the conclusion of Theron AJA) held that while it may indeed be in R's best interests to be adopted by the appellants, the process the appellants have chosen is fraught with difficulties. It was held that it is not in R's best interests that she be removed from the country in terms of a custody and guardianship order, without the protection and safeguards of an adoption first effected in the children's court. It was stated that the courts should not sanction an adoption procedure which is in conflict with international treaties which South Africa has ratified and which are designed to safeguard the best interests of the child.

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