



# In The Supreme Court of Bermuda

APPELLATE JURISDICTION

2012: NO. 17

**T.O.**  
**Appellant**

-v-

**DEPARTMENT OF CHILD AND FAMILY SERVICES**

**Respondent**

**EX TEMPORE J U D G M E N T**  
(In Court)

Date of hearing: June 1, 2012

Ms Victoria Pearman, Juris Law Chambers, for the Appellant  
Mrs Wendy Greenidge, Attorney-General's Chambers, for the Respondent

## **Introductory**

1. Having heard counsel, I find that the appeal should be allowed.
2. The Appellant complains that a decision made by the Family Court (the Worshipful Tyrone Chin and Panel) on January 10, 2012 is in excess of the jurisdiction of the Family Court. The relevant paragraph in the Order of January 10, 2012 ("the Order") reads as follows:

*"The Department of Child and Family Services requests and the Court is satisfied to release [E] and [A] for adoption."*

3. What that Order meant could not be explained by counsel for the Respondent in any legal terms<sup>1</sup>. That said, I have no doubt that the Department of Child and Family Services were acting quite properly in developing, monitoring and reviewing a plan of care for the children and in having regard to what their best long-term prospects were likely to be. The conclusion that they have clearly reached is that consideration should be given to adoption.

### **Statutory scheme**

4. The scheme of the Act, as Ms. Pearman pointed out with particular reference to section 27(5) of the Children Act 1998<sup>2</sup>, does not seem to contemplate that the Director will take any position on an application for an adoption order, certainly not while a Care Order is in force.
5. In these circumstances it is difficult to see how the Family Court had jurisdiction under the Children Act to make the Order that it did. This is because the Order, by its terms, appears to be prejudging an application that has yet to be made. Such an order, in my judgment, is not contemplated by the Children Act.
6. For this reason the Order must be set aside and the appeal allowed.

### **Conclusion**

7. For the avoidance of doubt I add that this decision is in no way meant to criticise the substance of the conclusions that the Department has reached.

[After hearing counsel, the Court formally awarded costs to the legally-aided Appellant]

Dated this 1<sup>st</sup> day of June, 2012

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IAN RC KAWALEY CJ

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<sup>1</sup> Counsel was understandably keen to defend the merits of the view taken by the Department that adoption appeared to be where the best interests of the children lay. However, the merits of these interests fell outside the scope of the appeal.

<sup>2</sup> Section 27(5) reads in salient part as follows: “(5)While a care order is in force with respect to a child, the Director shall not-...(b)have the right—(i)to agree or refuse to agree to the making of an adoption order...”