

IN THE COURT OF APPEAL FOR SASKATCHEWAN

BETWEEN:

[REDACTED]

APPELLANT
(PETITIONER)

And:

[REDACTED]

RESPONDENT
(RESPONDENT)

And:


[REDACTED]


RESPONDENTS
(THIRD PARTY RESPONDENTS)

NOTICE OF APPEAL

TAKE NOTICE:

1. THAT [REDACTED] the above named Appellant hereby appeals to the Court of Appeal from the judgment of the Honourable Mr. Justice R. S. Smith issued on the 29th day of January, 2007.
2. THAT the whole of the judgment is being appealed.
3. THAT the source of the Appellant's right of appeal and the court's jurisdiction to entertain the appeal is: *The Queen's Bench Act*, R.S.S. 1998, Chapter Q-1.01, as am., Section 101(1) and Section 53, and *The Court of Appeal Act*, S.S. 2000, Chapter C-42.1, as am., Section 7(2)(a).

4. THAT the appeal is taken upon the following grounds:
 1. The Learned Trial Judge erred by failing to recognize the primacy of the family and that the child has the right to be raised by his parent;
 2. The Learned Trial Judge erred by ignoring the long tradition of the common law which recognizes that it is always in the best interests of the child to be raised by his or her parent, except in the most extraordinary circumstances;
 3. The Learned Trial Judge erred by failing to follow the Statute Law of Saskatchewan and policies of the legislature of Saskatchewan that recognize that it is always in the best interests of the child to be raised by his or her parent except in the most extraordinary circumstances;
 4. The Learned Trial Judge erred by failing to recognize that the Statute Law of Saskatchewan places an extremely high value and importance upon keeping families together;
 5. The Learned Trial Judge erred by applying the “best interests of the child test” in a dispute between a parent and third parties without recognizing that parents have autonomy in determining what is in the best interests of their children.
 6. The Learned Trial Judge failed to give due consideration to the child’s right to know and be cared for by the Appellant father, pursuant to Article 7 of the *United Nations Convention on the Rights of a Child*, to which Canada is a party. The Learned Trial Judge entirely failed to consider the *United Nations Convention on the Rights of a Child* which recognizes the rights of children to be raised by their parents and the rights of parents to raise their children.
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7. The Learned Trial Judge failed to consider the “best interests” of the child in proper legal context by failing to apply the placement criteria applicable under *The Child and Family Services Act* for Saskatchewan, which promotes the reunification of natural families in cases similar to the one at bar. As a result the Learned Trial Judge applied the wrong legal test in determining the issue of custody.
 8. The Learned Trial Judge in his reasons for judgment erroneously created a new class of “parent” at law by relying on adoption caselaw to rationalize granting custody of the child to the Third-Party Respondents who were not and are not adoptive parents of the child.
 9. The Learned Trial Judge erroneously created a precedent whereby fit, functional natural parents may lose custody of their natural children to third party applicants who present “superior” profiles in a narrow, “best interests of the child” analysis.
 10. The learned trial judge erred by placing undue weight upon the better economic circumstances of the Third-Party Respondents, thus discriminating against poor and working class people;
 11. The Learned Trial Judge failed to address the legally deficient Custody and Guardianship Agreement by which the Respondent Mother purported to transfer custody and guardianship of the child to the other Respondents.
 12. The Learned Trial Judge neglected to address the Respondent Mother’s failure to establish a residence with the child pursuant to s. 3(2) of *The Children’s Law Act* such that the Respondent Mother had no right to transfer custody or guardianship of the child by means of a legally deficient Custody and Guardianship Agreement.
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13. That the said judgment is against the law, the evidence and the weight of the evidence.
14. That key findings of fact are not supported by the evidence presented at trial.
15. The Learned Trial Judge erred in deferring and / or revoking the Appellant's rights of access to the child for a period of one year following judgment, contrary to the spirit and intent of Section 6(5) of *The Children's Law Act* for Saskatchewan.

5. THAT the Appellant requests the following relief:

That the judgment of Mr. Justice R. S. Smith be set aside and judgment given as follows:

- a. That custody of the child, [REDACTED], born April 27, 2006, be awarded to the Appellant Father, [REDACTED]
- b. That the Appellant receive costs at trial and for this appeal.

6. THAT the Appellant's address for service is:

Roe & Company
Barristers & Solicitors
313 – 220 3rd Avenue South
Saskatoon, SK S7K 1M1

Telephone: (306) 244-9865
Facsimile: (306) 934-6827
Lawyer in Charge of File: Mark Vanstone

[REDACTED]

7. THAT the Appellant requests that this appeal be heard at Regina on an expedited basis.

DATED at Saskatoon, Saskatchewan, this ___ day of February, 2007.

ROE & COMPANY

Per: _____
Mark Vanstone
Solicitors for the Appellant
[REDACTED]

TO: Curtis Law Office
Barrister & Solicitor
2505 William Avenue
Saskatoon, SK S7J 2B1

Attention: Gregory J. Curtis
(Counsel for [REDACTED])

AND TO: Arnot Heffernan Blenner-Hassett
Barristers, Solicitors & Mediators
1250 1st Avenue East
Prince Albert, SK S6V 2A8

Attention: Dale N. Blenner-Hassett
(Counsel for [REDACTED])

This document was prepared by:

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[REDACTED]