

Robert Andrew Woodhouse & Christine Anne Woodhouse and Minister for Health, Family and Children's Services and June Audrey Sweeting-Cibau & Robert Neville Fitzgerald, and Denise Anne Woodhouse [1999] NTSC 85

PARTIES: Robert Andrew Woodhouse and Christine Anne Woodhouse

and

Minister for Health, Family and Children's Services

and

June Audrey Sweeting-Cibau and Robert Neville Fitzgerald

and

Denise Anne Woodhouse

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION

FILE NO: 111 of 1999

DELIVERED: 20 August 1999

HEARING DATES: 29 July 1999
4 August 1999
10 August 1999

JUDGMENT OF: MILDREN J

REPRESENTATION:

Counsel:

Plaintiff:	B Cassells
First Defendant:	M Orwin
Second Defendant:	C Black

Solicitors:

Plaintiff:	Terrill & Associates
First Defendant:	Orwin & Associates
Second Defendant:	Cecil Black

Judgment category classification:	C
Judgment ID Number:	
Number of pages:	4

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Robert Andrew Woodhouse & Christine Anne Woodhouse and Minister for Health, Family and Children's Services and June Audrey Sweeting-Cibau & Robert Neville Fitzgerald, and Denise Anne Woodhouse [1999] NTSC 85

No. 111 of 1999

BETWEEN:

**Robert Andrew Woodhouse and
Christine Anne Woodhouse**
Plaintiffs

AND:

**Minister for Health, Family and
Children's Services**
First Defendant

AND

**June Audrey Sweeting-Cibau and
Robert Neville Fitzgerald**
Second Defendants

AND:

Denise Anne Woodhouse
Third Defendant

CORAM: MILDREN J

REASONS FOR RULING

(Delivered 20 August 1999)

- [1] **Mildren J:** This is an application made pursuant to the Family Law Act and the inherent jurisdiction of this Court that a child reside with the plaintiffs who are to have responsibility for all decisions affecting her care, welfare and development, as well as other relief.

- [2] On 29 July 1999, I made certain interlocutory orders relating to the progress of this matter for final hearing which is to commence on 6 September. One matter I left for further argument was the question of what steps, if any, should be taken to bring these proceedings to the attention of the child's natural father. The evidence before me is that the mother has not revealed the identity of the father to anyone, and he is not named on the child's birth certificate. The mother has apparently taken no interest in the child for some time (so it is asserted) and is unlikely to contest the present proceedings which amount to a custody dispute between the grand-parents and foster-parents of the child.
- [3] It was submitted by counsel for the parties that it was not necessary to make any orders to attempt to bring these proceedings to the attention of any person who might know the father's identity, or to the father, if he is aware of his status, so that the father may seek to intervene if he is minded to do so. It was submitted that the Court's primary concern is in the interests of the child; that it would not be in the child's best interests to publicise these proceedings; that the chances of any person coming forward at this stage claiming to be the father were very remote; and that even if that were to occur, it is unlikely in the extreme that the Court would make an order (other than perhaps an access order) in the father's favour, given that he has so far had nothing to do with the child, and given also the child's age.
- [4] Generally speaking, all parties who have an interest in the subject matter of a proceeding should either be joined as a party, or at least, served with

notice of the proceeding. In the present case, the Family Matters Court has made orders placing the child in the care of the first defendant, who has placed the child with the second defendants as foster-parents.

Consequently, neither the mother (nor the unknown father) has actual care and control of the child, and the custody of the child is, by virtue of the order granting sole guardianship of the child to the first defendant, vested in the first defendant for the period of the order: see *Community Welfare Act*, s 4(1), (definitions of 'guardianship'). Nevertheless, I consider that the father of a child has sufficient interest in the future welfare of a child that he should either be joined or at least served with notice of these sort of proceedings.

- [5] However, as there is no person who is able to be identified as the father of the child, there is no known person in respect of whom it could be said that the right to be joined exists. Further, the effect of advertising at this stage would, if it were to achieve anything, inevitably lead to embarrassment and delay of the trial of these proceedings; cf. O.9.04(b) of the *Supreme Court Rules*. An order granting custody to any of the existing parties would not bind the father, who could nevertheless apply for custody later if he so desired. I accept also, that in exercising the Court's equitable jurisdiction as *parens patriae*, the main consideration to be acted upon is the benefit or welfare of the child; *Carseldine and Another v the Director of the Department of Children's Services* (1974) 133 CLR 345 at 351. The principle objection to publication of the proceedings is that the form of any

publication would reveal the child's identify. Reference was made to s 97A of the *Community Welfare Act* which prohibits the publication of any material which identifies a child in the circumstances referred to in that section, by way of analogy, as supporting the contention that such publication would not be in the child's best interests. As opposed to that, the Court is required to weigh the possibility that advertising may reveal the identity of the child's father, which could well be in the child's interests. However, the chances of this occurring are very remote, in my opinion. Accordingly, for these reasons, I will not require advertisement or other notice of these proceedings beyond that which is in accordance with normal practice in every proceeding.
