

**DECISION APPEALED**

Judgement by Gotland District Court of 13/06/2012 in case T 1058-11, see appendix A

**APPELLANT**

Social Services Committee, Region Gotland  
621 81 Visby

Legal counsel: Lawyer Richard Ploman  
Östergarn, Skolhuset 104  
623 68 Katthammarsvik

**OPPOSING PARTIES**

1. Annie Johansson, 710917-1780  
c/o Rune Johansson  
Alva Gudings 363  
623 46 Hemse

2. Christer Johansson, 690615-3231  
Same address as above

Legal counsel and assistant pursuant to Legal Aid Act for 1-2: Ruby Harrold-Claesson LLB  
Juristkonsulten  
Ströms väg 37  
424 71 Olofstorp

**CASE**

Transfer of custody to a specially appointed guardian.

**DECISION BY COURT OF APPEAL**

1. Through a change to the judgement by the District Court, the Court of Appeal appoints the lawyer Margaretha Dufvenmark as specially appointed guardian to have custody of Dominic Johansson, 010909-6792.

2. The Court of Appeal upholds the order of confidentiality by the District Court

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with the exception of Ch. 36 Section 1 second paragraph of the Public Access to Information and Secrecy Act (2009:400), which shall no longer apply to information in legal psychiatric opinions (District Court's case appendix 49).

3. The Court of Appeal orders that the secrecy provision in Ch. 36 Section 1 second paragraph of the Public Access to Information and Secrecy Act shall continue to apply to information relating to private individuals' personal and financial conditions presented for examination *in camera* and that found in the District Court's case appendices 12-18, 127 and 128, in the Court of Appeal's case appendix 6 and in the recording of the questioning of Henrik Pelling.

4. The Court of Appeal determines compensation to Ruby Harrold-Claesson under the Legal Aid Act as SEK 125,299, of which 60,250 is for work carried out, 27,349 for time lost, 12,640 for expenses and 25,060 for VAT. Of this compensation, 35% is payable for Annie Johansson and 65% for Christer Johansson.

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### **PETITIONS IN THE COURT OF APPEAL**

The Social Committee of Region Gotland has requested approval of its plea in the District Court.

Christer Johansson and Annie Johansson have contested the change.

### **COURT FINDINGS BY THE COURT OF APPEAL**

In the Court of Appeal, the parties have cited grounds and developed their pleas mainly corresponding to those put forward in the District Court.

The recordings of questioning in the District Court of Christer Johansson, Annie Johansson, Gunvor Allqvist, Ove Lindstedt, Rune Johansson, Mikael Johansson, Therés Johansson, Bertil Johansson, Trevor Archer, Cornelia Adolfsson, Artur Niczko, Bengt Sprowede and Eva Ernstson were heard. Additional questions have been put to Christer Johansson. Written evidence has been presented. Photographs have been examined and video films have been seen.

The Social Services Committee of Region Gotland has presented new evidence in the Court of Appeal in the form of an opinion of a child psychiatrist dated 9 August 2012. The opinion is issued by Henrik Pelling, chief consultant, and Annelie Sandqvist Wiklund, registered psychologist, both at the Psychiatric Clinic, Child and Young Persons' Department, Visby. Henrik Pelling has also been questioned as a witness in the Court of Appeal.

In this case the Court of Appeal must determine whether the custody of Domenic will be transferred to a specially appointed guardian and, if this is the case, whether the guardianship will be given to the lawyer Margaretha Dufvenmark.

It follows from Chapter 6 Section 2 first paragraph of the Parental Code that the child's best interests shall be decisive in all decisions regarding custody. This means that in the judgement of an issue of custody there are no other interests, be they parents' wishes, general reasons of justice or other, that will have priority over the child's best interests. If a parent who exercises custody of a child is guilty of abuse or negligence or other shortcomings in the care of the child in a manner that causes a long-term danger to the child's health or development, pursuant to Chapter 6 Section 7 first paragraph of the Parental Code, the court shall make a decision on a change of custody.

If both parents have custody of the child and what has been stated in the first paragraph applies to both parents, according to the provisions in the second paragraph, the court shall transfer custody to one or two specially appointed guardians. A transfer of custody pursuant to the first paragraph assumes that the guardians' shortcomings in the care of the child are such that the child is subjected to a real danger with regard to his/her health or development (cf. Bill 1989/90:28 p.60 onwards). As the District Court has stated, the option of transferring custody to a specially appointed guardian shall be used restrictively. When the issue of a change in custody is being heard, Article 8 of the European Convention shall also be taken into consideration. This provision grants a parent both legal and actual family affinity with his/her biological children, and protection against the intervention of an authority that lacks acceptable grounds.

Domenic, who has turned 11 since the judgement of the District Court, has been taken into care under the Care of Young Persons (Special Provisions) Act (1990:52) since 24 June 2009. From the investigation that has been presented in this case, it is clear that the underlying reason for taking Domenic into care was the judgement that he has been subjected to both physical and psychological shortcomings in care at home, an assessment that is shared by the Court of Appeal. In the opinion of the Court of Appeal, the shortcomings in psychological care as described in the psychiatric opinion of 2 October 2009 are particularly important, and resulted in Domenic being refused the opportunity of going to school and thereby being socially isolated from other children of the same age.

Through what has later become known about the parents' actions after the original decision, such as Christer Johansson's abduction of Domenic, the parents' activities on the internet regarding Domenic, and their manner of talking with him about the processes related to the Care of Young Persons (Special Provisions) Act during visitation time, the conclusion may be drawn that, if the opportunity exists, they do not refrain from intervening in the ongoing care of Domenic. During the hearing in the Court of Appeal, it has also been noted that the parents still deny that there have been any shortcomings whatsoever regarding their care of Domenic, nor do they believe that either of the psychiatric opinions given to the Social Services Committee provide a fair description of his physical and psychological state. During the hearing at the Court of Appeal, it has become apparent that Domenic's parents put their own interests and rights before those of their son.

Furthermore, it is clear that they lack any insight into their own shortcomings regarding his care, and for this reason they have not been receptive to the help and support that they could otherwise have been offered by the social authorities.

In summary, the Court of Appeal finds it clear that both Annie Johansson and Christer Johansson have fallen short in their care of Domenic in a way that causes a long-term danger to his health and development. In such circumstances the court *shall* decide on a change of custody pursuant to Chapter 6 Section 7 first paragraph of the Parental Code. Despite the right to family life as established in the European Convention weighing heavily, society's responsibility for children suffering in their home environment must weigh more heavily. What is stated above also applies in consideration of the fact that Domenic has been taken into care under the Care of Young Persons (Special Provisions) Act and that the transfer of legal custody will therefore not bring about any substantial changes in his actual care.

The Social Services Committee has requested that the custody of Domenic be transferred to a lawyer as a specially appointed guardian. The question is whether this solution is in Domenic's best interests.

According to the latest psychological opinion which Henrik Pelling, chief consultant, has commented on during the hearing in the Court of Appeal, Domenic is in great need of being allowed to develop in peace and quiet in his surrogate family home. It has been made clear that the surrogate family home is a secure environment for Domenic, where he has his basic needs of care and support satisfied, and that he has developed in a very positive manner during his placement there. Furthermore, it has become clear that the move from the surrogate family home to his parents would be detrimental to Domenic's mental health and well-being. Domenic himself has been very clear in expressing that he does not wish to meet his parents, or even talk about them.

The Social Services Committee has stated that care under the Care of Young Persons (Special Provisions) Act should continue for a long time. However, such a type of care should not continue longer than necessary. The starting point is that the care should be limited in time and, if so required, be changed to voluntary agreements. If the care of Domenic is given to a specially appointed guardian, according to the opinion of the Court of Appeal there should be a prospect of ending care under the Care of Young Persons (Special Provisions) Act in the long-term, and replacing this form of care with voluntary agreements with, among others, the surrogate family home.

An alternative could be to give custody to a person in the home where Domenic has been cared for and brought up in the long term, in the manner described in Chapter 6, Section 8 of the Parental Code. However, Domenic has not stayed for such a long time in the surrogate family home that it can be stated to be his permanent place of care and upbringing. Through what has become apparent in the investigation regarding the behaviour of the Johanssons, including through the testimony of Eva Ernstson at the District Court, there could also be an unreasonably heavy obligation on the surrogate family home if they were also forced to handle issues regarding Domenic's visitation with his biological parents. An experienced family lawyer, such as Margaretha Dufvenmark, should reasonably have better prerequisites for solving such issues of visitation, both for the child and the biological parents. The appointment of guardians of this type has also been accepted as praxis in previous cases (refer to RH 2001:50).

One further option would be to allow a social services official to be appointed as a specially appointed guardian. In view of the Johanssons' attitude toward the Social Services Committee on Gotland, however, this would not appear to be a particularly suitable solution for Domenic.

Under the solution proposed by the Social Services Committee, issues of visitation could probably be solved in a good manner in the long-term. A specially appointed guardian would also be able to hinder confidential information concerning Domenic being spread on the internet. Irrespective of whether it is Domenic himself who reads such information or if it is, for example, one of his classmates, the very existence of information about him on the internet would influence Domenic's development, not least when he becomes an adolescent. By appointing a specially appointed guardian, legal processes regarding issues that concern Domenic would also be limited, which would be likely to increase his sense of security. The solution proposed by the Social Services Committee would appear to limit his parents' intervention in the care and upbringing which is being given to Domenic in a manner that would be to his advantage.

There are no other solutions to the issue of custody in the prevailing situation as a result of the biological parents' shortcomings in care and the substantial risk brought about by these to Domenic's health and development. The solution proposed by the Social Services Committee is, therefore, best for Domenic.

The Court of Appeal finds that the plea of the Social Services Committee shall be approved and that custody of Domenic shall be transferred from Mr and Mrs Johansson to the lawyer Margaretha Dufvenmark as specially appointed guardian. The judgement of the District Court shall be changed in accordance with what has just been stated.

*Confidentiality*

Christer Johansson has consented to the information about him that is in the legal psychiatric opinion cited in this case no longer remaining confidential information. In other respects, there is reason to order confidentiality in the manner described in the judgement by the Court of Appeal.

*Compensation to Ruby Harrold-Claesson*

Ruby Harrold-Claesson has claimed compensation for 94 hours' work in the Court of Appeal.

The Court of Appeal is of the opinion that Ruby Harrold-Claesson has carried out considerably more work than that required to represent Annie Johansson's and Christer Johansson's interests in the Court of Appeal. In addition, Ruby Harrold-Claesson's legal process has been characterised by much time and investigation being spent on issues which are not of direct significance for the hearing of the issue of custody. Also taking into consideration that questions concerning the rejection of evidence etc. were treated before the main hearing, and the fact that the time taken for the main hearing was approximately 16 hours, the Court of Appeal finds that Ruby Harrold-Claesson should be reasonably satisfied with a total compensation, for both her principals, for 50 hours' work.

**HOW TO APPEAL**, refer to appendix B

Appeal no later than 07/01/2013

[Signatures]

The following officials participated in this judgement: Lars Borg, judge of appeal, speaker and of a dissenting opinion; Richard Ljungqvist, judge of appeal; Emil Karlsson, associate judge of appeal; Bo Gustafsson Grip and Asta Holm, lay assessors.

Differing opinion: refer to next page.

**Differing opinion**

Lars Borg, judge of appeal, holds a dissenting opinion and puts forward the following.

I share of the opinion of the majority that Domenic was subjected to serious physical and psychological shortcomings in his care at home before he was taken into care in the summer of 2009. The investigation of this case also shows that in different ways, his parents put their own interests and rights before those of their son, and that they have not been receptive to the help and support which they otherwise could have been offered. The question remains whether, despite these shortcomings in care, it is in Domenic's best interests to transfer his custody to a specially appointed guardian, in this case a lawyer, who would have legal custody, while the real custody would continue to be exercised by his surrogate parents.

Irrespective of whether care under the Care of Young Persons (Special Provisions) Act continues, or if care through the proposed solution may cease in the long-term and be replaced by voluntary agreements with the surrogate family, in reality Domenic will continue to be taken care of by society.

Under the solution proposed, the parents will not have the right to influence decisions that affect Domenic. Nor will they have the right to any insight in Domenic's life, other than to the extent allowed by his guardian. Since the specially appointed guardian would probably not have the same responsibility as the Social Services Committee in promoting visitation, there is a risk that the prospects of achieving visitation between Domenic and his parents will decrease. Despite the shortcomings in the parents' care, and their activities after Domenic was taken into care, including those relating to the internet, in an overall judgement of the facts in this case, I do not believe that it is in Domenic's best interests to transfer custody from his parents to a specially appointed guardian, whose role will only be that of a legal guardian. In my opinion, therefore, the judgement of the District Court should be upheld.

In other respects I am in agreement with the majority.

[Initials]



## SVEA COURT OF APPEAL

### HOW TO APPEAL

### Appendix

Any party who wishes to appeal the decision by the Court of Appeal shall do this by writing to the Supreme Court.

However, the letter shall be sent or submitted to the Court of Appeal. It must have reached the Court of Appeal by the date stated at the end of the judgement being appealed.

Decisions regarding detention, restrictions, according to Chapter 25 Section 5 of the Penal Code, or restrictions on travelling, may be appealed without any limitation in time.

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Leave to appeal is required for the Supreme Court to try an appeal. The Supreme Court will only issue leave to appeal if

- 1) it is important for the guidance of legal application that the appeal is tried by the Supreme Court, or
- 2) there are special reasons for such a hearing, such as grounds for a new trial, or that there has been a miscarriage of justice or that the outcome of the case in the Court of Appeal obviously depends on gross oversight or gross error.

The appeal must contain information on

- 1) the name, address and telephone number of the appellant,
- 2) the decision being appealed (name and department of the Court of Appeal, date of the ruling and case number),
- 3) the change to the decision being demanded by the appellant,
- 4) why the appellant believes the decision should be changed,
- 5) the circumstances cited by the appellant as grounds for issuing leave to appeal,
- 6) the evidence referred to by the appellant and what is to be substantiated by each piece of evidence.

#### **Simplified service**

If you have previously been informed that simplified service may be used in your case/matter, such a method of service may also be used for you by the Supreme Court, if any party should appeal the decision to the Supreme Court.