

MUNICIPAL JUVINILE COURT
FOR DIVER CITY

IN THE MATTER OF JULIUS C.

ORDER

ANTONY, J.

Presented before the court is a contest for the adoption of Julius C. Unlike most children in foster care, Julius is fortunate in that he is wanted by not one, but two families. Thomas and Shirley Jones, who have provided Julius foster care for the first two years of his life, and William and Claire Johnson. The Johnson's previously adopted a child by order of this Court, and have submitted petitions for the adoption of Julius C.

This court accepts in full the Diver City Municipal child Welfare Services Agency's findings, see Reports attached to this Order as Appendix A (Report of Jones Family) and Appendix B (Report of Johnson Family), as well as the Agency's final recommendation, see Recommendation attached to this Order as Appendix C. Accordingly, this court hereby grants the adoption petition of William and Claire Johnson. Julius C. is to be placed in the Johnsons' home within three (3) months from the date of this ruling.

SO ORDERED.

/s/ _____
Brutus Antony
Judge
Municipal Juvenile Court
Diver City

Dated: February 2, 2000

MUNICIPAL JUVINILE COURT
FOR DIVER CITY

THOMAS AND SHIRELY JONES,
Plaintiffs,

-against-

DIVER CITY MUNICIPAL CHILD
WELFARE SERVICES AGENCY,
Defendant,

COMPLAINT

Plaintiffs Thomas and Shirley Jones, by and through their attorney Ann Margaret, allege:

JURISDICTION

1. This action is brought pursuant to U.S. Const. amend. XIV, 1, and jurisdiction is conferred on this Court by 28 U.S.C. 1331.

PARTIES

2. During all times mentioned in this Complaint, Plaintiffs Thomas and Shirley Jones were, and still are, citizens of the State of Hope, residing at 223 Liberty Street, Diver City, HP.

3. During all times mentioned in this Complaint, Defendant Diver City Municipal Child Welfare Services Agency (the "Agency") was, and still is, a municipal of Diver City.

CAUSE OF ACTION

4. Julius C. was born in Diver City General Hospital on December 25, 1997. Julius C.'s mother arrived at the emergency room minutes before Julius' birth. After a few days, both mother and child were released from the hospital.

5. On January 9, 1998, Julius C., the son of African-American parents, was released to the Agency by his biological mother.

6. Julius C. was placed under the foster care of Thomas and Shirley Jones, a married Caucasian couple on March 10, 1998. Julius C. continued to live with Plaintiffs until he was two years old.

7. Plaintiffs and Julius C. have been happily living together as a family throughout Julius C.'s first two years. Julius recognizes Plaintiffs as his parents, and Plaintiffs regard Julius as their son. Plaintiffs and child have formed a strong bond and deep love for each other.

8. On September 16, 1999, the Diver City Municipal Juvenile Court terminated the parental rights of Julius C.'s biological parents. At the Same time, Plaintiffs submitted a petition for the adoption of Julius.

9. Within the next two weeks, another married couple, William and Claire Johnson, who were seeking to adopt an African-American child, also submitted a petition for the adoption of Julius C. The Johnsons are African-American and share no blood relation to Julius. After an extensive search, no natural parent or blood relative of Julius could be found.

10. In reviewing the adoptive placement of a racial or ethnic minority child, Hope Stat. §200.34(2) prescribes that courts give preference, in the absence of good cause to the contrary, to (a) a relative or relatives of the child, or if that would be detrimental to the child or a relative is not available, to (b) a family with the same racial or ethnic heritage as the child. At the adoption hearing on January 27, 2000, the Agency relying on the statute, recommended that the court accepts the Johnsons' adoption petition.

11. The agency conducted investigations of each family, and the Agency's social workers filed reports, synopses of which are as follows:

a. "[T]he Joneses provide a secure home and are nurturing toward Julius. Thomas Jones is a tenured professor of African-American Studies at the University of Hope. Shirley Jones is a special education teacher, and deals primarily with children of troubled backgrounds. Their income is steady; their combined annual income is roughly \$150,000. They live in an upper-middle-class, culturally diverse community with highly rated public schools. They ensure that Julius is aware of his racial identity. The Joneses have no biological children of their own, but have previously provided excellent foster care to minority children."

b. "[T]he Johnsons are a young couple," and "can provide a stable home for young children. William Johnson is an attorney; Clair Johnson is a child psychiatrist. Their household income is \$115,000. The Johnsons reside in a racially integrated community. They have one child, an adopted African-American child of five years of age."

12. Although Plaintiffs and the Johnsons are more or less equally suited to raise Julius

C., allowing Plaintiffs to continue their care of Julius would serve the best interests of Julius. As stated above, Plaintiffs and Julius have already formed a parent-child relationship. In addition, Julius has become a recognized member of the community and has formed friendships with other children in the neighborhood. In light of the two reports partially produced in paragraph 11, the agency based its recommendation on race.

13. On February 2, 2000, the juvenile court granted the Johnsons' petition, and ordered that the children be removed from Plaintiffs' home and permanently placed in the Johnsons' home within three months of the ruling. The Johnsons' residence is a considerable distance from that of the Plaintiffs'.

14. Plaintiffs consulted a child psychiatrist, Dr. Spock, who found that the separation of Julius C. from plaintiffs would cause permanent and irreparable harm to Julius. Julius, who has come to recognize Plaintiffs as his psychological parents, will experience severe depression when removed from Plaintiffs' care.

15. Plaintiffs will also suffer irreparable harm from the court-ordered removal. A prolonged separation will greatly diminish Plaintiffs' ability to care for Julius. Furthermore, Plaintiffs will suffer irreparable emotional harm knowing that Julius is suffering from depression as a result of the separation and the current situation in which he will be placed.

16. Hope Stat. §200.34(2)(b), imposing a mandatory racial preference in adoption proceedings, violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution both on its face and as applied to Plaintiffs.

WHEREFORE, Plaintiffs request that this Court:

- A. Issue a preliminary injunction prohibiting the removal of Julius C. From their home and the placement of Julius in the home of the Johnsons; and
- B. Award Plaintiffs such other and further relief as this court may deem proper.

/s/ _____
Ann Margaret, Esq.
Attorney for Plaintiffs
Margaret and Matthau
100 Justice Circle
Diver City, HP 10123

Dated: March 12, 2000

MUNICIPAL JUVINILE COURT
FOR DIVER CITY

THOMAS AND SHIRELY JONES,
Plaintiffs,

-against-

DIVER CITY MUNICIPAL CHILD
WELFARE SERVICES AGENCY,
Defendant,

ANSWER

Defendant, by and through its attorney, Anthony Micelli, respectfully answers Plaintiffs' Complaint as follows:

1. Admits the allegation contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11(b), and 13.
2. Denies the allegations contained in paragraphs 12 and 16.
3. Lacks sufficient information to form a belief as to the truth of the allegation contained in paragraphs 1, 2, 7, 11(a), 14, and 16.

WHEREFORE, Defendant respectfully requests that Plaintiffs; requests for injunctive and other relief be denied.

/s/ _____
Anthony Micelli, Esq.
Attorney for Defendant
McCullen & King
234 Main Street, Suite 30
Diver City, HP 10123

Dated: March 25, 2000

APPENDIX—A

ADDENDUM TO INDIVIDUAL PROGRAM DESCRIPTION CASE 31478 March 10, 1999

A. Child: Julius C.

1. Assessment of Child

- a. **PHYSICAL:** Pediatrician's records provided by foster parents indicate that child has received adequate medical care; necessary tests, vaccinations, and periodic check-ups.

Superficially appears to be healthy and well groomed.

- b. **MENTAL/ EMOTIONAL:** Julius appears to be happy; he interacts well with the Joneses, and even refers to them as "Mommy" and "Daddy." There appears to be psychological bond between Julius and the Joneses.

Julius has adjusted well and has made friends with other children his age in the neighborhood. The children are of different backgrounds; some are African-American; some are Caucasian.

2. **Areas of Improvement:** There are none recommended.

B. Foster Parents: Thomas and Shirley Jones

1. Assessment of Foster Parents

Thomas Jones is a tenured professor of African-American Studies at the University of Hope. Shirley Jones is a special education teacher, and deals primarily with children of troubled backgrounds.

Their income is steady; their combined annual income is roughly \$150,000.

They ensure that Julius is aware of his racial identity.

The Joneses have no biological children of their own, but have previously provided excellent foster care to minority children.

The Joneses have provided more than satisfactory care for Julius. They appear to care a great deal for Julius.

The Joneses live in an upper-middle-class, culturally diverse community with highly rated public schools. Their home environment is stable; the house itself is well maintained, and Julius is provided with his own room and toys.

2. Areas of Improvement: There is no need at this time.

C. Plans and Goals

Julius has adjusted well to his foster home. The Joneses provide a secure home and are nurturing towards Julius. As in the past, the Jonnsons have provided excellent care.

/s/ _____
Sarah G. Kind, Caseworker

APPENDIX—B

INVESTIGATORY REPORT OF POTENTIAL ADOPTIVE PARENTS
CASE #189 MONTH OF OCTOBER 1999
Assessment of William and Claire Johnson

A. Background

William Johnson is 33 years old; African-American. Claire Johnson is 30 years old; African-American. Both are in good health.

William Johnson is an Assistant Attorney General at the Attorney General's Office of State of Hope. His yearly income is \$45,000. Claire Johnson is a child psychiatrist at the Hope General Hospital. Her annual income is \$70,000. Their household income is \$115,000.

They have one child, an adopted African-American child of five years old.

B. Home Environment

The Johnsons reside in a racially integrated community. They have good relations with their neighbors, and their previously adopted child is well adjusted and is regarded as natural part of the family. The child has numerous friends in the neighborhood.

Their home is well kept and has room for a growing family. Their present child has his own room, and an extra room is available.

C. Assessment of Ability to Provide Care

The Johnsons have already successfully adopted a child, and seek to do so again. The Child appears to be healthy, well adjusted, and happy in his environment. The Johnsons appear to be loving parents, who are capable of providing excellent care to children.

The Johnsons are a young couple; thus, they desire to expand their family. They are well respected in their community, and at their workplaces. They appear to be able to provide appropriate stimulation and genuine security to children.

RECOMMENDATION

William and Claire Johnson can provide a stable home and a loving environment for young children. I recommend them as adoptive parents.

/s/ _____
Theresa Placid, Caseworker

APPENDIX—C

To: Juvenile Court of Diver City
From: Diver City Municipal Child Welfare Services Agency
Date: January 27, 2000
Re: Recommendation of Adoption Petition for Julius C.

RECOMMENDATION

After conducting a series of investigations, the Diver City Municipal Child Welfare Services Agency requests that the court grant the adoption of Julius C. to William and Claire Johnson.

The conclusion of the Agency's investigations is that the Johnsons would provide the best care possible for Julius C. In light of the Johnson's stable income, the safe and culturally diverse community in which they live, and their African-American heritage, it is the Agency's opinion the adoption by the Johnsons would satisfy both subdivisions of Hope State. §200.34.

In addition, the Agency is very impressed with the glowing review of the Johnsons' apparent success in raising an African-American child whose adoption was previously recommended by this Agency under Hope Stat. 200.34. Based on the Johnsons' proven capabilities, the Agency is convinced that their adoption of Julius C. would be in the best interest of the child.

Considering all factors discussed herein, the Agency believes that adoption by William and Claire Johnson is in the best interest of Julius C.

/s/ _____
Kate Sweet, Director

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF HOPE

THOMAS AND SHIRELY JONES,
Plaintiffs,

-against-

DIVER CITY MUNICIPAL CHILD
WELFARE SERVICES AGENCY,
Defendant,

DEFENDANT'S MOTION FOR
SUMMARY JUDGEMENT

Defendant, Diver City Municipal Child Welfare Services Agency, by its attorney, Anthony Micelli, asks the Court to grant Defendant's Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on the ground that there is no genuine issue as to any material fact. Therefore, Defendant is entitled to judgment as a matter of law.

Defendant admits, for purposes of this motion, the constitutionally significant facts alleged by Plaintiff in their Complaint. Specifically, Defendant did recommend to the juvenile court the adoption petition of William and Claire Johnson in accordance with Hope Stat. §200.34(2)(b), imposing a preference for racial matching in minority adoption proceedings. However, the constitutional validity of that statute is unquestionable under the United States Supreme Court's ruling in Palmore v. Sidoti, 466 U.S. 429 (1984). Therefore, the discretion exercised by Defendant in recommending the Johnsons' adoption petition was well within the confines imposed by the United States Constitution and judgment must be entered in favor of Defendant.

In Palmore, the United States Supreme Court recognized the firmly entrenched standard that the controlling factor in custody proceedings must be the best interest of the child involved. 466 U.S. at 432-33. Thus, while the Court held that race could not be the sole factor in an agency's decision to divest a natural mother of her own child, the Court left agencies free to take racial consideration into account when doing so would be in the best interest of the child. Id.

Thus, courts have consistently held that an agency's consideration of the race of the child and prospective parents, as one factor among many, advances the best interest of the child and is consistent with the Equal Protection Clause. See, e.g., J.H.H. and S.C.H. V. O'Hara, 878 F.2d 240, 245 (8th Cir. 1989), cert. denied, 493 U.S. 1072 (1990); Drummond v. Fulton County Dept. of Family and Children's Services, 563 F.2d 1200, 1204-05 (5th Cir. 1977), cert. denied, 437 U.S. 910 (1978) (holding that race may be

considered as a factor in determining the best interests of a child); In re Petition of D.I.S. for Adoption of S.A.O., 494 A.2d 1316 (D.C. 1985).

The racial preference statute at issue in the case at bar merely establishes race as one factor among several to be considered by adoption placement agencies in the state. As such, it is facially consistent with the United States Constitution as interpreted in Palmore and its progeny. See, e.g., Palmore, 466 U.S. at 432-33. Furthermore, Plaintiffs have alleged no fact suggesting that Defendant's application of the State of Hope's adoption placement law effected an Equal Protection violation. Consequently, because the racial preference provision of Hope Stat. §200.34(2)(b) is facially constitutional, this Court must grant judgment for Defendant as a matter of law.

/s/ _____
Anthony Micelli, Esq.
Attorney for Defendant
McCullen & King
234 Main Street, Suite 30
Diver City, HP 10123

Dated: March 30, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF HOPE

THOMAS AND SHIRELY JONES,
Plaintiffs,

-against-

DIVER CITY MUNICIPAL CHILD
WELFARE SERVICES AGENCY,
Defendant,

PLAINTIFFS' MOTION IN
OPPOSITION TO
DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT AND CROSS-
MOTION FOR
PARTIAL SUMMARY
JUDGMENT

Plaintiffs, Thomas and Shirley Jones, by their attorney, Ann Margaret, ask this Court to deny Defendant's motion Summary Judgment made pursuant to Rule 56 of the Federal Rules of Civil Procedure and to enter judgment for Plaintiffs with respect to the facial unconstitutionality of the racial preference contained in Hope Stat. §200.34(2)(b).

The racial preference contained in Hope Stat. §200.34(2)(b) is facially invalid under the United States Supreme court's formulation of the Fourteenth Amendment Equal Protection Clause found in Palmore v. Sidoti, 466 U.S. 429 (1984). In Palmore, the Court reaffirmed that "the best interests of the children involved" must control child custody determinations. 466 U.S. at 433. Furthermore, that Court concluded that, because the "core purpose of the Fourteenth Amendment was to do away with all concern with racial pairing violated the Equal Protection Clause injury they might inflict." Id. at 432-33. See also Loving v. Virginia, 388 U.S. 1 (1966); In re D.L., 479 N.W.2d 408, 413 (Minn. Ct. App. 1991), aff'd, 486 N.W. 375, cert. denied, Sharp v. Hennepin County Bureau of Social Services, 113 S. Ct. 603 (1992) (finding statutory racial preference statute to be facially violative of the Equal Protection Clause formulated in Palmore); Elizabeth Bartholet, Where Do Black Children Belong: The Politics of Race Matching in Adoption, 139 U. Pa. L. Rev. 1163, 1254-55 (1991) (noting trend in the scientific community that racial classifications should not be considered in determining the best interest of the child).

Moreover, while some courts applying the Palmore standard have found that race may be one consideration among many in child custody decisions, most agree that race cannot effectively be the sole or determinative factor. McLaughlin v. Pernsley, 693 F. Supp. 318 (E.D. Pa. 1988), aff'd, 876 F.2d 308 (3d Cir. 1998); In re Moorehead, 600 N.E.2d 778 (Ohio Ct. App. 1991). In the case at bar, Hope's statutory preference codifies race as the determinative factor. The statute is unconstitutional on its face. Summary judgment must be granted for the Plaintiffs on this point.

Furthermore, this Court must deny Defendant's Motion for Summary Judgment regarding the constitutionality of the statute's application to Plaintiffs. Even if this Court determines that the statute constitutionally valid, there is sufficient evidence in the record to prove that the statute was unconstitutionally applied such that a trial is warranted.

/s/ _____
Ann Margaret, Esq.
Attorney for Plaintiffs
Margaret and Matthau
100 Justice Circle
Diver City, HP 10123

Dated: April 8, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF HOPE

THOMAS AND SHIRELY JONES,
Plaintiffs,

-against-

DIVER CITY MUNICIPAL CHILD
WELFARE SERVICES AGENCY,
Defendant,

OPINION AND ORDER

NORLAND, J.

In this action, Plaintiffs, foster parents of Julius C., seek a preliminary injunction prohibited the removal of Julius from Plaintiffs' home, and likewise, against the placement of Julius in the home of William and Claire Johnson. They challenge Hope Stat. §200.34(2)(b) as violating the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, both on its face and as applied to Julius C.'s placement.

Defendant and Plaintiffs have made Motions for Summary Judgment. Defendant argues that under cases such as Drummond v. Fulton County Dept. of Family and Children's Services, 563 F.2d 1200 (5th Cir. 1977), cert. denied, 437 U.S. 910 (1978), and Palmore v. Sidoti, 466 U.S. 429 (1984), race can be used as a factor, as long as it is not the determinative or sole factor, in adoption and custody determinations. Therefore, Defendant claims that in light of the undisputed facts, Hope Stat. §200.34(2)(b) is constitutional. Plaintiffs argue that Palmore should be read broadly, in light of the expansive body of Supreme Court Equal Protection jurisprudence, to prohibit the use of race as a factor in adoption proceedings. Alternatively, Plaintiffs argue that a trial is required to determine whether, assuming hope Stat. §200.34(2)(b) is constitutional on its face, the statute's application here resulted in race being the sole determinative factor in violation of Equal Protection Clause. This Court concludes that Defendant is entitled to judgment as a matter of law.

FINDINGS OF FACT

Julius C., the son of African Americans, was born on December 25, 1997, and was released by his mother on January 9, 1998, to the Diver City Municipal Child Welfare Services Agency (the "Agency"). On March 10, 1998, the Agency placed Julius in the home of Thomas and Shirley Jones for temporary foster care. The Joneses are

Caucasian. Since that time, the Joneses and Julius C. have begun to establish a parent-child relationship, and to establish themselves in the community as a family unit.

On September 16, 1999, the Diver City Municipal Juvenile Court terminated the parental rights of Julius C.'s biological parents. At the same time, the Joneses submitted a petition to adopt Julius. Two weeks later, William and Claire Johnson submitted a petition to adopt Julius. Two weeks later, William and Claire Johnson submitted a petition to adopt Julius as well. The Johnsons are African-American.

After thorough investigations of both families, the Agency determined that both were highly qualified to provide more than adequate care of Julius. This Court accepts those findings. See Reports attached to the Order of the Juvenile Court as Appendix A (Report of the Jones Family) and Appendix B (Report of Johnson Family).

On February 2, 2000, the juvenile court granted the Johnsons' petition and ordered the removal of Julius from the Joneses' home. That order was based entirely on the Agency's recommendation. See Recommendation attached to the Order of the Juvenile Court as Appendix C. Plaintiffs allege that Julius will suffer severe depression as a result of the separation from the only family he knows. Plaintiffs further allege that Hope Stat. §200.34(2)(b) is unconstitutional, both on its face and as applied to the facts of the case, under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

CONCLUSIONS OF LAW

As a threshold matter, there can be little dispute that the statute under consideration here involves a classification based on race in an area of strong state interest—namely, the welfare of minor children, particularly infants. Palmore v. Sidoti, 466 U.S. 429 (1984). The Court must therefore review the statute's constitutionality with exacting scrutiny.

Turning first to Plaintiffs' claim, this Court must reject the assertion that race may never be considered in determining the best interest of a child. For the proposition, Plaintiffs rely on Palmore. That case involved proceedings brought to deprive a Caucasian mother of custody over her children, by reason of her marriage to an African-American man. Id. at 430. Those facts are so entirely distinguishable from the case at bar that the Supreme Court's substantive reasoning, even by way of analogy, is tangential at best. Thus, this Court is persuaded by the Fifth Circuit's reasoning, left undisturbed by Palmore, in Drummond v. Fulton County Dept. of Family and Children's Services, 563 F.2d 1200 (5th Cir. 1977, cert. denied, 437 U.S. 910 (1978)). In determining the best interest of the child, agencies and courts may, consistent with the requirements of the Equal Protection Clause, consider race as one factor among many, although not as the sole factor. Id.

Under the Drummond standard, it is clear that Hope Stat. §200.34(2)(b) on its face passes constitutional muster. The statute imposes a racial preference, not an absolute barrier in interracial adoption. Thus, the statute merely reflects the legislature's

judgment that same-race adoption placements, when feasible are presumptively in the best interest of the child. While Plaintiffs have presented compelling judicial and academic authority suggesting that racial considerations are never in the best interest of the child, the issue is hardly a settled one.

Furthermore, based on Agency's recommendation, upon which the juvenile court expressly relied (Appendix C), it cannot be forthrightly argued that race was the sole factor motivating the court's decision to place Julius C. with Johnsons. That recommendation was soundly reasoned and free of constitutional error.

Defendant's Motion for Summary Judgment is hereby GRANTED in full. In addition, Plaintiffs' Motion for Partial Summary Judgment is hereby DENIED, as is their request for a preliminary injunction from this court.

IT IS SO ORDERED.

/s/ _____
Matthew Norland
Chief Judge
United States District Court
Eastern District of Hope

Dated: April 20, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF HOPE

THOMAS AND SHIRELY JONES,
Plaintiffs,

-against-

DIVER CITY MUNICIPAL CHILD
WELFARE SERVICES AGENCY,
Defendant,

NOTICE OF APPEAL

NOTICE IS HERBY GIVEN that Plaintiffs, Thomas and Shirley Jones, in the above named action, hereby appeal to the United States Court of Appeals for the Twentieth Circuit from the order of the United States District Court for the Eastern District of Hope, dated April 19, 2000, Plaintiffs' request for preliminary injunction.

/s/

Ann Margaret, Esq.
Attorney for Plaintiffs
Margaret and Matthau
100 Justice Circle
Diver City, HP 10123

Dated: May 7, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF HOPE

THOMAS AND SHIRELY JONES,
Plaintiffs,

-against-

DIVER CITY MUNICIPAL CHILD
WELFARE SERVICES AGENCY,
Defendant,

ORDER GRANTING APPEAL

An application having been made for leave to appeal, dated May 7, 2000, from the judgment entered by the United States District Court for the Eastern District of Hope, and upon consideration thereof, it is

ORDERED, that said motion be and hereby is granted, and said appeal is to be limited to the following issue of law:

Whether a statutory provision referencing racial matching in adoption proceedings, as contained in Hope State. §200.34(2)(b), violates the Equal Protection Clause of the Fourteenth Amendment, either on its face or as applied the case at bar.

/s/ _____
Elizabeth Sure
Chief Judge
United States Court of Appeals
Twentieth Circuit

Dated: June 19, 2000