

OP. NO. 04-008

WELFARE (SOCIAL SERVICES): ADOPTION.

No authority for circuit court to waive order of reference with respect to children from foreign country involved in agency placement adoption proceeding.

The Honorable Rossie D. Alston, Jr.
Judge, Thirty-First Judicial Circuit of Virginia
May 19, 2004

Issue Presented

You ask whether a circuit court may waive the order of reference mentioned in § 63.2-1208(A) in an international adoption.

Response

It is my opinion that a circuit court may not waive the order of reference mentioned in § 63.2-1208 with respect to children from a foreign country involved in an agency placement adoption proceeding.

Background

You advise that a married couple has filed a pro se petition for the adoption of two Ukrainian children. You indicate that all the documents from the Ukraine are in order and that the children legally entered the United States on June 28, 2002. You further indicate that this adoption is an agency placement adoption. The petition for adoption requests a waiver of the order of reference required by § 63.2-1208. You question whether the circuit court has the authority to waive the order of reference.

Applicable Law

Legal adoption in the United States is a creature of statute.¹ Chapter 12 of Title 63.2 comprises Virginia's adoption laws² governing agency placement adoptions,³ parental placement adoptions,⁴ step-parent adoptions,⁵ and adult adoptions.⁶

Section 63.2-1201 provides that "[p]roceedings for the adoption of a minor child ... shall be instituted only by petition" filed in the

appropriate circuit court. Section 63.2-1228 provides that the circuit court, in agency placement adoptions, "*shall* forward a copy of the petition and all exhibits thereto to the Commissioner [of the State Department of Social Services] and to the agency that placed the child." (Emphasis added.) Such referral is accomplished through an order of reference. There is a similar provision for parental placement adoptions.⁷ Section 63.2-1208(A) provides that, "[u]pon receiving a petition and order of reference from the circuit court, the applicable agency shall make a thorough investigation of the matter and report thereon in writing."

Section 63.2-1238(B), however, states that, in parental placement adoptions, "where consent has been properly executed, no investigation and report pursuant to § 63.2-1208 is required." Section 63.2-1238(B) further provides that "the circuit court may order a thorough investigation of the matter and report in which case the provisions of § 63.2-1208 shall apply." Similarly, § 63.2-1242 states that, for stepparent adoptions, "an investigation and report shall be undertaken only if the circuit court in its discretion determines that there should be an investigation before the entry of a final order of adoption is entered." If certain conditions exist in a stepparent adoption, § 63.2-1241(C) authorizes the circuit court to order the proposed adoption without referring the matter to the local director of social services for investigation.⁸ The circuit court also has the discretion to waive the investigation and report in adult adoption cases.⁹ In each of these instances, there is statutory authority to not conduct an investigation. There is no statutory provision that explicitly excepts or waives the requirement of § 63.2-1208(A) or the mandatory provisions of § 63.2-1228 in the situation you describe. Consequently, an order of reference from the circuit court is required in agency placement adoptions.¹⁰

Conclusion

Therefore, it is my opinion that a circuit court may not waive the order of reference mentioned in § 63.2-1208 with respect to children from a foreign country involved in an agency placement adoption proceeding.

¹ See *Shepherd v. Sovereign Camp*, 166 Va. 488, 186 S.E. 113 (1936); 2001 Op. Va. Att'y Gen. 208, 209.

² Va. Code Ann. §§ 63.2-1200 to 63.2-1248 (LexisNexis Repl. Vol. 2002 & Supp. 2003).

³See §§ 63.2-1221 to 63.2-1229 (LexisNexis Repl. Vol. 2002 & Supp. 2003).

⁴See §§ 63.2-1230 to 63.2-1240 (LexisNexis Repl. Vol. 2002).

⁵See §§ 63.2-1241, 63.2-1242 (LexisNexis Repl. Vol. 2002).

⁶See §§ 63.2-1243, 63.2-1244 (LexisNexis Repl. Vol. 2002).

⁷See § 63.2-1238(A).

⁸See *also* 2001 Op. Va. Att'y Gen., *supra* note 1, at 209 (interpreting predecessor § 63.1-219.48(C)).

⁹See § 63.2-1244.

¹⁰Section 63.2-1226 states that "[w]hen a licensed child-placing agency or a local board [of social services] accepts custody of a child for the purpose of placing the child with adoptive parents *designated by the birth parents or a person other than a licensed child-placing agency or local board*, the parental provisions of [Chapter 12 of Title 63.2] shall apply to such placement." (Emphasis added.) Since this opinion assumes that this is an agency placement adoption in which the children are placed with the adoptive parents designated by the agency, this statute is not implicated.

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