

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division**

FILE NO. FAM/adn/000248

BETWEEN

In Re W (An Infant)

Before: The Hon. Madam Justice Donna D. Newton

Appearances: Mr. Avrom Thompson and Ms. Krystal Rolle, for the
Applicants

Ms. Lukella Lindor and Mr. K. Mackey

Hearing Date: 13th September, 2017

Dated 1st August, 2018

RULING

NEWTON, J (Actg.):

1. The Applicants who are the biological father of the infant and his wife, are applying pursuant to the Adoption of Children Act to adopt the infant herein.. They are thirty-one and thirty-two years old respectively and have had the infant, now 15 years old, in their care since she was three years old.
2. The infant was born in The Bahamas on 12th November 2001 to a single mother, Jamaican national, Petrola Thompson and the Applicant after a brief relationship. Shortly after the infant's birth Ms Thompson left The Bahamas, leaving the infant in the care of her maternal grandmother, also a Jamaican national but with immigration status in The Bahamas.
3. The child visited her mother who resides in Jamaica, only once, when she was eight years old. The mother who has consented to the adoption has no relationship with the minor.
4. Throughout the period that the infant resided with her grandmother her father provided financial support for her, including taking her to spend weekends with him. After his marriage, the child, three years old at the time, began residing with him and his wife.

5. In 2009 the Applicants were granted custody of the infant by a magistrate. In their affidavit in support of this application they explained that they assumed this custody order was sufficient to give them all rights to the infant until they attempted to obtain a passport for her when they were then advised that in order for her to obtain a passport they would have to adopt her.
6. They stated that the child participates in karate and in 2015 she was selected to the team to represent The Bahamas. It was at this time that they were advised that she required a passport as the Ministry of Foreign Affairs no longer issued Certificates of Identity, the document with which she previously used to travel.
7. The Applicants in their affidavit detailed the numerous attempts they made to adopt the infant, including delays on the part of several attorneys, and their inability to afford the legal fees charged. However when they were eventually able to afford to pay, the attorney did not proceed with the application in a timely manner and they were therefore forced to instruct another attorney. They explained that;

“...we made the sacrifice and retained a lawyer. However the lawyer took our funds but did nothing. After six months of constant follow up we discovered that she was being duplicitous. After a few weeks of pleading we finally had the funds returned to us...”
8. The Guardian ad Litem in her Report exhibited to her Affidavit filed 26th June, 2017 has recommended that it is in the best interest of the child that an adoption Order is granted in favour of the Applicants.
9. The infant, born in The Bahamas to a Bahamian father and a single non-Bahamian mother is considered a foreign child, consequently the application was referred to the Office of the Attorney General (AG).
10. The Attorney General objected to the application on the ground that the adoption is for convenience and it is not genuine. They stated that

the real intent of the adoption is to circumvent the immigration laws and obtain citizenship pursuant to *Section 4 of The Bahamas Nationality Act* which confers citizenship once an adoption order is made.

11. Attorney for the AG submitted that the basis for their objection is that the applicants admitted by affidavit that they attempted to obtain a passport for the infant to travel with the family. When they discovered that she could no longer travel with a Certificate of Identity they therefore made an urgent application for the hearing of the adoption.
12. Counsel for the AG stated that as the infant was born in The Bahamas she may avail herself of the provisions of *Article 7 (1) of the Constitution of The Bahamas*, on attaining the age of 18 years or within one year thereafter, apply to become a citizen of The Bahamas.
13. The issue is whether the real motive for the adoption is to confer Bahamian Citizenship on the infant or whether it is to ensure that her welfare is secured.
14. The factors the court is obligated to consider when dealing with the question of the welfare of the infant are outlined in *Section 3 of the Child Protection Act*. These include the wishes of the child, the physical, emotional and educational needs of the child, any changes in the child's circumstances, the age, sex, background, and any harm the child has suffered or is at the risk of suffering.

15. *Section 8 of the Adoption Act* requires the court before making an adoption order to be satisfied that every person whose consent is necessary has consented and understands the nature and effect of the adoption and that the order if made is for the welfare of the infant having regard to his wishes.
16. The applicants submitted that they have met the requirements of *Section 8*, in that the mother has consented, the child is old enough to understand the nature and effect of the adoption and has agreed to it. Additionally they state that the educational, emotional and psychological needs of the child are best met within the structure of the adopted family unit.
18. The applicants explained that citizenship in this case is a collateral consequence of the adoption order and not the primary reason for seeking it.
19. Both parties rely on the case of *Re A (an infant) 1963, 1AER* where *Cross J*, refused to grant an adoption on the basis that it was an “*accommodation adoption*”. It was discovered that the proposed adopters of a French boy was not to stand in loco parentis to the infant but rather for him to obtain British Nationality. *Cross J* went on to explain it would mean,
20. ***“that in this sort of application the court would be taking on itself functions similar to those of the Home Secretary on an application for naturalization I do not think that the Act of 1958 was intended to authorize the court to embark on such inquiries.”***
21. Counsel for the applicants distinguished *Re A supra* from the instant case by showing that the parents had no intention of standing as parents in

that case but rather the sole intention was to obtain nationality, whereas in this case the applicants are not attempting to usurp the role of the Immigration authorities but rather they are acting in the interest of the child's welfare.

22. The applicants stated that had this been their intention they would have waited for her to obtain the legal age and not spent funds on the adoption. Additionally they said that nationality would not give the proposed adopted mother parental rights which can only be conferred by adoption.

23. Counsel for the AG in her submissions provided a number of authorities and quoted extensively from them. He relied on the decision of *Osadebay Sr. J* (as he then was) in **L (Minor) (Re) No. 1999** where he referred to *Cross J* in **Re A** *supra* who refused to grant an adoption order on the basis that it was an “*accommodation adoption*” and such cases, he said, could be open to objection on the grounds of public policy. *Osadebay Sr. J.* concluded that an accommodation adoption is something that was not intended by the legislatures.

24. Counsel for the AG explained that *Osadebay Sr. J* determined that where the period of minority is short then the welfare factor carries less weight. And in the instant case the period is a mere 13 months. She further urged the court to consider the case of **W (A Minor) Adoption: Non-Patril** (1986) Fam. 54 where the minority period was 10 months and the court said that the infant did not need adoption to ensure his welfare from childhood to adulthood.

25. Counsel for the AG also relied on the case of **re K (A Minor)** (1995) Fam. 38 where the Court of Appeal was required to consider a two stage approach in dealing with such cases. First it was to determine the true

motive for the adoption and only if it was satisfied that it was not to obtain citizenship then it ought to proceed to the second stage which is to carry out a balancing act between the infant's welfare and public policy.

26. She submitted that the Crown's view is that it is not necessary to proceed to the second stage as it is clear that the motive is to achieve citizenship rather than serve the minor's general welfare and for this reason the application should be denied.

27. She further said that the evidence is that the applicants attempted to obtain a passport for the infant to travel on a family cruise and only when this was not achievable they turned to adoption.

28. Counsel for the Attorney General submitted that the infant would not be negatively impacted if the adoption order is not granted as the infant's welfare is already addressed by the Magistrate's Order which gave them care and control of the infant. She added that this view is supported by the guardian ad litem whose report stated that adoption would not change anything.

29. The effect of an adoption order is two-fold. The Adoption of Children Act extinguishes all rights, duties, obligations and liabilities of the parents and vests all such rights in the adopted parents as though the child was born to the adopted parents in lawful wedlock. Additionally under ***Section 4 of the Bahamas Nationality Act*** where the adopted parent is a citizen of The Bahamas on adoption the child becomes a citizen.

30. The child's welfare ought to be the paramount consideration when any determination is made respecting any child by virtue to ***Section 3 of the***

Child Protection Act, such consideration to include the child's physical, emotional and educational needs.

31. In **Re H (a Minor) 1992 Hollings J.**, in outlining the approach the court should take in such cases regarding welfare said,

32. "It must treat welfare as the first consideration, outweighing any one factor but not all factors. If the court considers on the evidence and information before it that the true motive of the application is based upon the desire to achieve nationality and the right of abode rather than the general welfare of the minor then an adoption should not be made. If on the other hand part of the motive - or it may be at least as much- is to achieve real emotional or psychological, social and legal benefit of adoption then an adoption order may be proper, notwithstanding that this has the effect of overriding an immigration decision or even an immigration rule. In every case it is a matter of balancing welfare against public policy, and the wider implications of the public policy aspect the less weight may be attached to the aspect of the welfare of the particular individual".

33. The applicants say they want the minor child to enjoy the same rights and privilege, after the age of majority, as their other children whom she would have grown up with since the age of three years. That if the adoption order is denied then it will create emotional and psychological issues for the child during the remainder of her childhood.

34. There is no doubt the child has been totally embraced by this family and made to feel an integral part of it. Together with their other children, she was placed in a private school, and participates in many extra-curricular activities including music, dance, karate and girls brigade. The

applicants are described as very loving and caring parents to the infant who are involved in the life of this infant.

35. I am satisfied, from the evidence that the motive is not citizenship as was the purpose in the cases mentioned. *Hobhouse, LJ* in **Re K (A Minor)** 1995 Fam. 38 considering the question of welfare explained that,

36. “The court must evaluate what will best serve the need to safeguard and promote the welfare of the child throughout its childhood and take this aspect into account as the primary consideration in deciding whether or not to make the adoption order. Where the child is young, the judge’s evaluation of this aspect is likely to be determinative and it would have to be a strong consideration of public policy which would displace it. Where.....the welfare issue is negligible, it may be difficult for the applicant for the adoption order to find grounds which are sufficient to counterbalance the public policy considerations of not allowing a right of entry or abode to be acquired....”

37. He went on to explain that the judge must consider the substance of the position when he is being asked to make an adoption order which will have the effect of granting nationality. He said,

38. “There are many factors which will form part of circumstances which the judge has to take into account which can be described as potential benefits to the child and which arise from a combination of establishing a parental relationship with the proposed adopter and from the ability to continue to live in this country with the adopter. The status benefits for the child continue after it has become an adult; some emotional and psychological benefits will probably also continue. But the parental responsibilities will cease and it may well be that the only substantial lasting advantages are the acquisition of the right to live in this country with the proposed adopter”.

39. Applying *Hobhouse, LJ*, factors as mentioned, one of the potential benefits of adoption to this child is, apart from the legal benefits of adoption, is the sense of belonging to a family she has known all of her life. That she will have the same family status as her siblings, that is, being a “whole child” of the parents as opposed to a “half sister”. She has spent the majority of her life in this family, basically from a toddler. Photographs submitted of her at various family occasions bear out this fact. Her proposed adopted parents are the only parents she has known. In fact her father is her biological father of whom evidence show, has always provided for her.

40. Her first grade teacher speaks positively to the parents’ involvement in her education at that time.

41. The martial arts instructor, said this about the parents,

42. “I teach two of their kids.....if you did not know, you would already assume that (the minor) is both of their biological daughter.

“I have witness first hand of the loving attention they show towards (her). They provide her with many opportunities for growth academically, socially and as well as physically and spiritually. But more importantly (they) are hands on parents”.

43. Balancing the public policy issue with the welfare I believe the welfare greatly outweighs the public policy in this case. The evidence shows that from as far back 2009, when the infant was 8 years old, the parents were attempting to legally make the child a part of their family, but for the misunderstanding that the magistrate’s order granted them full rights to the child coupled with the dilatory actions of their attorney and their inability to afford the legal fees of another attorney they would have made the application many years ago.

44. Although the authority requires the court to take into account the length of time before adulthood, the court is also required to consider all the circumstances of the case. In this case the child is the biological child of one of the adopters. From a toddler she has been a part of this family. The adopters said that they never treated her differently from their other children and they wish her to have the same privileges as those of their other children whom she has grown up with, including rights under the Inheritance Act.

45. I will go further than *Cross J.* in **Re A (A Minor)** supra where he outlined the benefits of the adoption and say in this case that it seals for the child the emotional, social and psychological benefits of truly belonging to this family as a member of it.

46. The facts of this case bear out that nationality and the right of abode in The Bahamas are not the sole benefits of this adoption. The parental relationship has already been established and the parents genuinely stand in loco parentis to this infant. I agree with Counsel for the applicants in its submissions that nationality in this case is co-lateral to the welfare of the child. That the primary consideration here is the welfare of the child.

47. I find that an adoption order will best safeguard and promote the welfare of the infant in this case during the remainder of her minority. Therefore I order that the applicants are authorized to adopt the said infant.

DONNA D. NEWTON

Justice

