

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Family Division**

**2005/FAM/adn/FP00121**

**IN THE MATTER OF T (Child)**

**IN THE MATTER OF The Adoption of Children Act (Chapter  
131)**

**B E T W E E N**

**OLIVE AGATHA HENDFIELD**

Applicant

**AND**

**T (a Child)**

Respondent

**BEFORE:** The Honourable Mrs Justice Estelle G. Gray Evans

**APPEARANCES:** Mr R. Rawle Maynard for the applicant

Mrs Erica Kemp for the Attorney General

2011: 2 May; 23 May, 1 and 6 June

**DECISION**

Evans, J.

1. The applicant wishes to adopt T, a child, pursuant to the provision of the Adoption of Children Act, chapter 131, Statute Laws of The Bahamas.

2. The originating summons commencing this action was filed on 18 November 2009 and was supported by the statement and affidavit of the applicant also filed on 18 November 2009.

3. By order of this Court made on 25 February 2010 Mrs Lillian Quant-Forbes of the Department of Social Services was appointed Guardian *ad litem* for the purpose of safeguarding the interests of the child.

4. The Guardian *ad litem*'s report and supplemental report dated 8 April 2011 was filed 19 April 2011. The Guardian *ad litem* supports the adoption and declares that she is satisfied that an adoption order will be in the interest and welfare of the child.

5. The matter was initially set for hearing on 2 May 2011 then adjourned to 23 May 2011. It is unclear whether the Guardian *ad litem* and/or counsel for the Attorney General was notified of the 23 May hearing as neither of them appeared. The matter was then adjourned to Wednesday, 1 June 2011, a date convenient to counsel and just 5 days shy of the child's eighteenth birthday. On that date, counsel for the Attorney General appeared, armed with submissions and authorities, and indicated that the Attorney General objected to the order being made. Unfortunately, my calendar for the following day was full and the next day, Friday, was a public holiday, so the earliest I could see the parties again was Monday, 6 June, the day the child would turn 18. I therefore adjourned the matter to 6 June 2011 for consideration of the arguments and authorities.

6. On 6 June 2011, I dismissed the applicant's application and promised to provide a written decision in due course. This I now do.

7. Set out hereunder are the facts as gleaned from the applicant's statement and affidavit, the report and supplemental report of the Guardian *ad litem*.

8. The child, an illegitimate female, was born on 6 June 1993. At the time the originating summons was filed, she was 16 years old, having celebrated her sixteenth birthday on 6 June 2009. A copy of the child's birth certificate shows that she is the child of Marjorie Bailey whose last address was Ballards River District, Pennants in the Parish of Clarendon, Jamaica.

9. Although the father of the child is not named on her birth certificate, the mother's evidence as well as that of the applicant is that the father's name is "C...D...", the brother of the applicant. The child carries the father's surname. No application was made to dispense with the father's consent. However, in a copy of an affidavit by the mother sworn on 28 September 2009, exhibited to the affidavit of the applicant filed herein on 30 May 2011, she deposes, that the whereabouts of the father were unknown to her; that she last saw him about ten years ago; that he has not contacted her during the past ten years neither has he supported the child financially or otherwise; that she is solely responsible for the child; that she has full custody and control of the child and provides for her financial and other needs. She also avers that the applicant, who is the father's sister and the child's aunt, wishes to adopt the child and take her to The Bahamas to live with her.

10. The child and her parents are all Jamaican nationals and the applicant, who was born in Jamaica, is now a Bahamian citizen.

11. At the commencement of this action, the applicant was 49 years old. According to the Psychiatric report exhibited to her supplemental affidavit filed 20 May 2011, the applicant married Llewellyn Hendfield when she was 17 years old. The couple has been separated since the applicant was 32 years old. They are said to have a good relationship and there is no evidence that they have divorced. There is also no evidence as to whether or not Mr Hendfield consents to the said adoption by the applicant. No application has been made to dispense with such consent.

12. The child came to The Bahamas in February 2009 to live with the applicant but, it appears that because of immigration issues she returned to Jamaica where she graduated in June 2009 from Edwin Allen High School with a diploma and a Caribbean Examination Council Secondary Education certificate with successful passes in six subjects, which apparently are equivalent to the Bahamas General Certificate of Education (BGCSE).

13. After graduation, the child returned to The Bahamas in July 2009 and has been here ever since. This action was commenced in November 2009. According to the Guardian *ad litem's* supplemental report the child presently attends Alpha Omega Evening Institute where she is registered to sit four subjects in the BGCSE exams this year.

14. Section 4 of The Bahamas Nationality Act, chapter 190, Statute Laws of The Bahamas, provides as follows:

“4. Where, under a law in force in The Bahamas relating to the adoption of children, an adoption order is made by a competent court in respect of a child who is not a citizen of The Bahamas, then if the adopter, or in the case of a joint adoption, the male adopter, is a citizen of The Bahamas, the child shall become a citizen of The Bahamas from the date of the order.”

15. Because the child is a Jamaican national and the applicant is a Bahamian citizen, the Attorney General was invited to intervene.

16. As indicated, the Attorney General does not support the application. Mrs Kemp who appeared for the Attorney General says the Attorney General is of the view that the application is primarily to circumvent The Bahamas Immigration laws rather than to promote the child's welfare and should, therefore, be dismissed.

17. In support of that position, Mrs Kemp makes certain observations, which had not gone unnoticed by this Court.

18. Firstly, Mrs Kemp points out that the reason given by the applicant to the Guardian *ad litem* for the proposed adoption is because the applicant wants to ensure that the child receives a high school education.

19. Mr Maynard disagrees with counsel for the Attorney General's argument that the purpose of the adoption was to provide an education for the child, which he says, is a "red herring". He argues instead that the emphasis that came from the report of the Guardian *ad litem* after having interviewed the parties is that the child was in a position where the mother was incapable of taking care of her. That the applicant had already assumed responsibility for the child and the purpose of the adoption is to provide a family for the child.

20. However, in her supplemental report, the Guardian *ad litem* clearly states that:

"The applicant indicated that she wants to ensure that T receives a sound high school education which will prepare her to become an independent upstanding adult. The applicant is galvanized to do this; due to the depressed economy in Jamaica and the challenges that Ms B currently faces as a single mother of three (3) children, Ms H appears to be genuine in her decision to positively impact T's life."

21. However, that same report indicates that the child had already graduated from high school in Jamaica since June 2009. So, although the desire to ensure that the child receives a sound high school education may have been the reason when the child initially came to The Bahamas in February 2009, in my view, it cannot still be reason in April 2011, the date of the Guardian *ad litem's* report and almost two years after the child had already graduated from high school in Jamaica.

22. As for Mr Maynard's submission that the purpose of the adoption is to provide a family for the child, I agree with Mrs Kemp that there is no evidence that the child has been abandoned by her family. The evidence is that the child lived with her paternal grandmother and then a paternal family member, although it is said that the applicant provided for her. According to the supplemental report, "this arrangement encountered some challenges and resulted in the child being returned to (her mother's) care." There is no indication as to what those "challenges" were.

23. Further, when the child was required by the Immigration Department to return to Jamaica, she lived with her mother, although it is said, again, that the applicant provided for her financially. I note here from the aforesaid copy affidavit sworn in Jamaica on 28 September 2009 and annexed to the applicant's affidavit filed 20 May 2011 that the applicant avers that she was "solely responsible for the said child...and provide for the said child's financial and other needs."

24. Mrs Kemp also observes that although the mother says she and the child's father separated before the child's birth, and he has not played a vital role in the child's life, the report is that the child has had contact with him in the past, although it does not say when.

25. According to the Psychiatric report:

"The applicant says her brother called her and informed her of the child's birth; that she was left in the care of her maternal grandmother at birth and at age 3 she saw her niece and fell in love with her and has been taking care of her financially ever since."

26. According to the doctor's report, both parents are in support of the adoption. However, only the written consent of the mother has been provided. Mr Maynard drew to the Court's attention that, although the child carries the surname of the father, which surname is indicated on the child's birth certificate, no affiliation order has been made with respect to the child, and the mother's evidence is that he has not supported the child financially or otherwise.

27. I note, however, that although it is accepted that the Court has authority to dispense with such consent, no such application was made pursuant to section 7 of the Adoption Act. Similarly, with respect to the consent or of the husband of the applicant, although the Court has authority to dispense with such consent if the spouses have

separated and are living apart and the separation is likely to be permanent, no application was made to dispense with such consent pursuant to section 6(3) of the Adoption Act.

28. Mr Maynard reminded the Court that the law allows for the adoption of a child who is defined as anyone up to the age of 18 and it should not, in his submission, make a difference whether or not the child is almost 18.

29. As for the Attorney General's intervention, Mr Maynard points out that the law provides that the Court may make an adoption order, the consequence of which, amongst other things will be that the child assumes the nationality and name of the adopted parents. And although he accepts that the Government has an interest in being heard in a matter relating to the adoption of a foreign national by a Bahamian citizen, in his submission, the objections raised by the Attorney General are without merit. He submits further that the immigration or citizenship is not an issue because the law (section 4 of the Bahamas Nationality Act) provides that if a non-Bahamian child is adopted by a Bahamian the child would assume Bahamian citizenship.

30. In the end Mr Maynard submits that the paramount consideration of the Court in adoption matters is the welfare of the child. He submits further that in light of the fact that all the information required by the Adoption Act has been provided to the Court and the Guardian *ad litem* has submitted her report which, in his submission, addresses all of the primary considerations relating to the welfare of the child, it should not matter where the child is from. As I understand his submission, once it is determined that the child could not be properly taken care of and is suffering, for whatever reason, and there is an aunt in The Bahamas who is in a position to provide a family environment for the child then according to our laws and the United Nations Principles regarding the protection and welfare of children, to which The Bahamas subscribes, the order should be made.

31. The Court's authority to make an adoption order is derived from section 3 of the Adoption of Children Act which provides that "upon application in the prescribed manner being made by any person desirous of being authorized to adopt an infant who has never been married the court may make an adoption order authorizing the adoption of the infant."

32. Section 6 of the Act provides that an adoption order shall not be made unless the applicant or, in the case of a joint application, one of the applicants-

- (a) has attained the age of twenty-five and is at least twenty-one years older than the child in respect of whom the application is made; or
- (b) has attained the age of eighteen and is a relative of the child; or
- (c) is the mother or father of the child.

33. The applicant is now 51 and she is certainly more than twenty-one years older than the child. The applicant also claims to be a relative, the aunt, of the child, notwithstanding the child is illegitimate and no affiliation order has been made with respect to her.

34. Section 7 of the Act provides that an adoption order shall not be made except with the consent of every person or body who is a parent or guardian of the child, or who is liable by virtue of any order or agreement to contribute to the maintenance of the child.

35. In consenting to the proposed adoption, the mother averred on 28 September 2009 that she understands that the effect of an adoption order is “to deprive a parent or guardian of all rights in respect of the maintenance and upbringing of the child.”

36. As pointed out by Osadebay, J in the case of L (a Child) (Re) [1999] BHS J. No. 180 at paragraphs 17 and 18:

“17. The adoption of a foreign child or child by a Bahamian Citizen has in the context of the Immigration Law two effects-

- (a) It confers on the adopted child or child Bahamian Citizenship as from the date of the adoption.
- (b) It also confers on the adopted child or child the right to live in The Bahamas i.e. right of abode.

18. Without the benefits stated above, the foreign child or child would be subject to all the restrictions imposed on foreigners or aliens by the Immigration Act. Such persons may only reside and work in The Bahamas by the permission of the Immigration authorities subject to such restrictions as may be placed on such persons. Such persons may not enter The Bahamas without leave of the Immigration authorities. Adoption of a foreign child by a Bahamian Citizen will therefore make a very substantial change to the position of the child or child in respect of his right to reside, work and remain in The Bahamas.”

37. Similarly in this case, if this adoption application were granted, the benefits which I have stated would automatically be conferred on T, the child.

38. The applicant is not one of the child's biological parents. I do not doubt that she genuinely wishes to take care of her niece. However, while I believe that she has provided financial assistance for the child for many years, and while I accept that it is within the Court's discretion to grant the order sought as the Act defines “child” as a person under the age of 18 years, it appears to me that the reason for adopting the child is really to ensure she is permitted to remain in The Bahamas without immigration issues.

39. This is clearly not a case of the child having been abandoned by her parents, certainly not by her mother, and although I have no doubt that the parties are of the view that the child may be afforded better opportunities were she permitted to reside with the applicant in The Bahamas, I do not accept Mr Maynard's submission, on the evidence, that the child was suffering. Further, while, as Mr Maynard submits, the first consideration is the welfare of the child, other considerations, such as public policy and the effect of an adoption order on nationality and the right to reside, ought, in my view, to be taken into account, particularly, again in my view, as the child has graduated from high school and, at the date of the hearing, only five days shy of her eighteenth birthday.

40. So, having reviewed the documents filed herein, including the statement and affidavit by the applicant, the Psychiatric report and other documents exhibited to such affidavit, the report and supplemental report of the Guardian *ad litem*, and having heard counsel on behalf of the applicant as well as counsel for the Attorney General and having reviewed the law and the authorities, I have

come to the conclusion that the child does not need to be adopted for the applicant to ensure her welfare from childhood to adulthood which she, at the time of delivery of this decision on 6 June 2011, would have attained.

41. In the exercise of my discretion, therefore, I refuse to grant the adoption order sought by the applicant herein.

42. The originating summons is therefore dismissed. The applicant is to pay the costs of the Guardian *ad litem*.

Dated the 6<sup>th</sup> day of June A.D. 2011

Estelle G. Gray Evans  
Justice