

COMMONWEALTH OF THE BAHAMAS

2020/FAM/and/00532

IN THE SUPREME COURT

FAMILY DIVISION

BETWEEN

IN THE MATTER OF S.H

AND IN THE MATTER OF THE ADOPTION OF CHILDREN ACT

Chapter 131, Statute Laws of The Bahamas

W.S.P & C.S.P

Applicant

And

S.H (a child)

Respondent

M.Z

Guardian Ad Litem

Before: The Hon. Madam Justice G. Diane Stewart

Appearances: Sonia Timothy for the Applicants

Rashied Edgecombe for the Attorney General

Ruling Date:

### RULING

1. The Applicants wish to adopt S.H a child pursuant to the provisions of the Adoption of Children Act, Chapter 131, Statute Laws of The Bahamas (**"the Act"**).
2. The Amended Originating Summons was filed on 22<sup>nd</sup> July 2021 upon the application of W.S.P and C.S.P, and sought the following Orders:-

- a) That M.Z may be appointed the Guardian Ad Litem for the purpose of safeguarding the interest of the said S.H
  - b) That the Applicants be authorized to adopt the said S.H
3. The Statement and the Affidavit in Support were also filed on 22<sup>nd</sup> July 2021.
  4. By Consent to Act as Guardian Ad Litem, filed 18<sup>th</sup> October 2021, M.Z consented to act as the Guardian of the child. By Order of this Court made 26<sup>th</sup> November 2021, M.Z was appointed Guardian Ad Litem for the purposes of safeguarding the interests of the child.
  5. On 22<sup>nd</sup> July 2021, S.H's biological parents, J. H and E.L gave consent to the adoption by the Applicants.
  6. S.H, a female child was born 1<sup>st</sup> February 2010 in Haiti. The child's biological parents J.C.H and E.L are both resident in New Providence and are experiencing extreme financial hardship. W.S.P and C.S.P expressed that they wish to assume full responsibility for S.H.
  7. W.S.P is a Haitian national and holder of a Resident Spouse Permit in The Bahamas and C.S.P is a Bahamian citizen. The Applicants are close friends of the biological parents. S.H has resided with the Applicants for the past two and a half years, during this time when she has been in their care and possession, they have provided for her financially..
  8. The Guardian ad Litem reports support the adoption of S.H and declares that she is satisfied that an adoption would be in the best interest of the child's welfare.

### **Issues**

9. The issues to be determined are:-
  - i) Whether it is in the child's best interest to be adopted by the Applicants?
  - ii) Whether the application ought to be dismissed for public policy reasons

### **DECISION**

10. The Attorney General opposes the application on the ground that it has only been made to circumvent the immigration laws of the Bahamas.
11. **Section 2 of the Adoption of Children Act ("the Act")** defines "adopted child" and "infant" as follows:-

**"adopted child" means any infant authorised by the court to be adopted**

**“infant” means a person under the age of eighteen;”**

12. **Section 4** of the Act enables an adoption order to be made in respect of an infant who is not a “British subject”. By virtue of this section ‘British’ is interpreted as meaning “Bahamian” as the statute was enacted prior to independence and accordingly the citizenship description post-independence is read as “Bahamian”.
13. This application does not breach any of the restrictions as set out in Section 6 of the Act.
14. **Section 8** outlines what the Court must be satisfied of before making an adoption order. Expressly contained in this Section is that:-

**“...(b) that the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant....”**
15. Further **Section 4 of the Bahamas Nationality Act** provides:-

**“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”.**

By virtue of this Section the child upon an adoption order being granted would be entitled to the citizenship held by the adopting father.
16. **Section 11 of the Act** states:-

**“Upon an adoption order being made all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or to consent or give notice of dissent to marriage, shall be extinguished and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter in lawful wedlock, and in respect of the same matters and in respect of the liability of a child to maintain its parents the adopted child shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock:”**
17. The child is a Haitian national, the female applicant is a Bahamian citizen, and the male applicant is a Haitian National on a spousal permit. The Attorney General (“AG”) was invited to appear. The AG objects to the adoption for public policy reasons. It is their belief that the purpose of the application is to pass citizenship to the child.

18. The AG is of the view that the adoption application is being used to currently evade Bahamas immigration laws rather than to ensure the safety and welfare of the child and as such the application ought to be dismissed. The AG submits that the only person involved in this application without status is the child, and this application is made to facilitate that.
19. It was submitted by the AG that the biological mother never parted with the child and in fact lives with the proposed Applicants. In fact the female Applicant confirmed to the court at one of the hearings that this was in fact the case. Subsequently, however, counsel for the Applicants advised the Court that she was instructed that the mother was no longer in the country.
20. Further evidence was ordered to confirm this, which was never provided.
21. The AG further submitted that if an adoption order is made the child would immediately be entitled to the citizenship of the mother. Upon questioning by the court on this submission, I requested authority for this submission which was not provided.

22. I am satisfied by **Article 9(1) of the Constitution** which provides:-

**“Notwithstanding anything contained in Article 8 of this Constitution, a person born legitimately outside The Bahamas after 9<sup>th</sup> July 1973 whose mother is a citizen of The Bahamas shall be entitled, upon making application on his attaining the age of eighteen years and before he attains the age of twenty-one years, in such manner as may be prescribed, to be registered as a citizen of The Bahamas:**

A child born outside of The Bahamas after 9<sup>th</sup> July 1973 whose mother by adoption is a citizen shall be entitled, upon making application on his or her attaining the age of eighteen, to be registered as a citizen. Therefore this child, if adopted, as she is born outside of the Bahamas would be entitled upon making an application to be registered as a Bahamian citizen upon attaining the age of eighteen.

23. The AG also referred to **Re L and C (Minors) BS 1999 SC 83** where Osadebay Sr. J stated:-

**“Therefore in making such an adoption order in The Bahamas, the court will take into consideration the need to promote the infant's or minor's welfare and also the public policy considerations in relation to the effect of an adoption order on nationality and the right to reside in The Bahamas. In doing so the court should carry out a balancing act between welfare of the minor and public policy considerations.”**

24. While the Court must balance the welfare of the child against public policy issues. The welfare of the child must always be the paramount consideration in proceedings of this nature.

25. Furthermore the AG referred to Osadebay, J. in L (a Child) (Re) [1999] BHS J. No. 180 at paragraphs 17 and 18 pointed out:-

“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.”

26. Section 4 of The Bahamas Nationality Act, Chapter 190 provides however:-

“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.”

27. The child is a Haitian national and the Applicant wife is a Bahamian citizen and the Applicant husband is a Haitian national holding a spousal permit in the Bahamas. As provided in section 4 of the Bahamas Nationality Act, there would be no automatic citizenship for this child. Therefore, the public policy concerns raised by the AG in these circumstances ought not to outweigh that of the welfare of the child.

28. The AG further submitted that the reason given by the Applicants to the Guardian ad Litem for the adoption is because the wife is unable to have a child and wishes to fulfill her desire to exercise her maternal instincts and not in the interest of the child. It is irrelevant whether the Applicant is unable to have children, as the main consideration for the Court is the welfare of the child. This fact does not automatically negate the fact that the adoption would be in the best interest of the child.

29. **Section 3 of the Child Protection Act** sets out the guiding principles in dealing with the rights of the child. Section 3 states:-

**“3. (1) Whenever a determination has to be made with respect to:–**  
**(a) The upbringing of a child, or**  
**(b) The administration of a child's property or the application of any income arising from it, the child's welfare shall be the paramount consideration.**

**(2) In all matters relating to a child, whether before a court of law or before any other person, regard shall be had to the guiding principle mentioned in subsection (1) and that any delay in determining the question is likely to be prejudicial to the welfare of the child.**

**(3) In determining any question relating to circumstances set out in paragraphs (a) and (b) of subsection (1), the court or any other person shall have regard in particular to:–**

**(a) The ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding;**

**(b) The child's physical, emotional and educational needs;**

**(c) The likely effects of any changes in the child's circumstances;**

**(d) The child's age, sex, background and any other circumstances relevant in the matter;**

**(e) Any harm that the child has suffered or is at the risk of suffering**

**(f) Where relevant, the capacity of the child's parents, guardians or other persons involved in the care of the child in meeting his or her needs.”**

30. The Applicants submit that their intention to adopt the minor child is genuine and not for any ulterior motive. They have provided a home for this child and maintained her.

31. I cannot ignore, however the evidence that the child's mother has been and in fact may be living with the Applicants and the child. I am also aware that the Applicants have had the child residing with them for five years before making the application. This is not an unusually long time and would tend to support the submission by the Applicants that this is a genuine application.

32. The child was twelve years at the time of the application. This further supports the submission that there is no intention to evade the immigration laws. There would be no automatic granting of citizenship.

33. I do not doubt that the Applicants genuinely wish to adopt and care for S.H. They have shown that they have and will continue to care for the minor child.

34. The concern of the AG is merely a concern, and I find that there is no concrete evidence which would support this concern or the court finding that the application was to evade the immigration laws as the child would still have to apply on reaching the age of eighteen.

35. The welfare of the child is the paramount consideration, and after having reviewed the evidence and submissions, in the exercise of my discretion I grant the adoption order sought by the Applicants herein.

Dated this *16<sup>th</sup>* day of *December* 2022



Hon. Madam Justice G. Diane Stewart