COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

FAMILY DIVISION

FILE NO. FAM/ADN/00544/17

BETWEEN

In Re E (An Infant)

Before: **The Hon. Madam Justice Donna D. Newton**

Appearances: Ms. Syneisha Y. Bootle for Applicant

Mr. Kenny Thompson

Hearing Date: 6th June, 2018

Dated: 4th July, 2019

RULING

NEWTON, J:

1. The instant application is for an Adoption Order in respect to the minor, the subject of this action, pursuant to the Adoption of Children's Act (Chapter 131) by Originating Summons filed 4th October 2017 and supported by an Affidavit sworn by the applicant and filed the same date.

The Facts

2. The applicant, the biological father of the infant, is 44 years old and a citizen of the Commonwealth of The Bahamas. He is an engineer having been employed with his place of employment for the past 25 years. He is unmarried.

3. The infant's biological mother is 45 years old and a citizen of the United States of America. She and the applicant were never married and the infant is the only child between them. The infant having been born in The Bahamas on 28th February 2002 to a single non Bahamian mother, is considered a foreign child.

4. The infant's mother is incarcerated at the Department of Corrections on a murder charge and she has consented to the adoption. She has two other children, both younger than the infant and who are residing with their father.

5. Since the mother's incarceration in December 2015, the infant has been residing with the applicant.

6. The issue is whether the sole purpose of the adoption is the welfare of the infant or to obtain citizenship.

7. The infant is the applicant's only child. According to the Applicant's supporting affidavit, he has always been involved in the infant's life. He explained that from birth, on week days the infant resided with his mother

and on weekends and holidays he resided with the Applicant. This arrangement continued until the mother's incarceration in December 2015 and since that time he has been continuously providing for his care and maintenance solely, without any significant assistance from anyone else.

8. In a letter of recommendation on behalf of the Applicant, Tsega Thompson, a friend of the family, spoke to witnessing first-hand the interaction between the Applicant and the infant. She said that the applicant is a loving father , adding that;

9. ***"….he has been there for not only the major milestones in Earl Jr.'s life but the in between moments as well. This includes but is not limited to school projects….I have watched him teach Earl Jr how to fish and how to be a respectful and thoughtful young man".***

10. The Guardian ad Litem in her Report dated 14th February 2018, in recommending the adoption, explained that the infant is the only child of the Applicant, that he pays for medical insurance for both of them and that in her opinion they have a wonderful relationship.

11. Counsel for the applicant in her submissions stated that the application is made for the welfare of the child outlining that after the arrest and incarceration of the mother the applicant stepped in to ensure that the infant is not drastically affected by these circumstances.

12. She further stated that if the adoption order is granted then the infant will be able to participate in certain school activities which he was unable to do previously. That the order would be in his best interest physically, emotionally and educationally.

13. She submitted that granting the adoption order in this case is more than merely conferring nationality and she distinguished this case from the case of **Re (A) (adoption)** 1966 3AER 613 where Cross J., described as an

"accommodation" adoption where the parents are not really standing in loco parentis to the infant.

14. The applicant asked the court to grant the order despite what appears like a delay in making the application. Counsel submitted that as the mother was incarcerated, communication with her was difficult and lengthy and scheduled appointments were often cancelled without notice. She relied in support of her position in the case of **In the Matter of TDD (Male infant)** [2012] 2 BHS J. No 89 where the order was granted two days before the infant's 18th birthdate and in the case of **Pinder and Pinder and M (a minor)2015/FAM ánd FP/00106** , like the instant case, the minor's 18th birthday is mere months away.

15. The infant is considered a foreign child, consequently the application was referred to the Office of the Attorney General.

16. Counsel for the Attorney General objected to the granting of the adoption order on the ground that it is solely for nationality purposes. He argued that if the applicant desires, he can apply for citizenship for the child.

17. He further argued that if the applicant wants the child to benefit from his estate, then it is open to him to make a Will. He stated that these reasons the applicant gave for the adoption can be carried out by other means. He submitted that if this is seen as a way to obtain nationality then it will open the flood gates and make it easier as another route for applying for citizenship.

18. Additionally, he asked the court to take into consideration the fact that the child will be an adult soon. He also asked the court not to turn a blind eye to the mother's comments as stated in the Guardian Ad Litem's report that she wants the child to have status in his birth country. In support, counsel relied on the decision of Osadebay J., as he then was, in the case of **Re: L and C.**

(Minors) Adoption: non-partial) [1999] BHS J. No. 180 as authority for denying the order on the basis that the period of minority is short in that the minor would obtain minority age within 20 months.

19. Counsel for the AG stated that as the infant was born in The Bahamas he may avail himself 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.

20. He 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.

21. He submitted that 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.

22. The Attorney General objected to the application on the ground that the adoption is for convenience and it is not genuine. He 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.

23. 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.

24. The child is old enough to consent and he has done so. He is the biological child of the applicant and has resided with him every weekend from birth and continuously since 2015. His primary caregiver's incarceration necessitated changes in his living circumstances, and therefore the applicant, his father is the only person providing such care and maintenance for him.

25. Applying the two stage test as outlined in **Re K (a minor) supra** I am satisfied from the facts that the motive is not to achieve nationality as stated by counsel for the Attorney General's Office and consequently the right of abode in The Bahamas but rather to provide for the minor's welfare. Balancing the public policy issue with the welfare I believe the welfare greatly outweighs the public policy in this case.

26. The parental relationship has already been established and the question of whether the applicant stands in loco parentis to the infant does not arise, it is not an accommodation adoption. Nationality in this case is co-lateral to the welfare of the child, in that the primary consideration here is his welfare.

27. Even though the infant will become an adult in less than one year I am satisfied that attempts were made since the child was 14 years old to make the application. The bureaucracy with the mother's incarceration, ought not to be at the minor's disadvantage.

28. I find that an adoption order will best safeguard and promote the welfare of the infant in this case during the remainder of his minority. Therefore I order that the applicant is authorized to adopt the said infant.

DONNA D. NEWTON

Justice