COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division
2017/FAM/adn/FP/00206
IN THE MATTER OF THE APPLICATION OF ADOPTION
OF
AN AND MN
AND
CG
IN THE MATTER of the Adoption of Children Act (Chapter 131)
BETWEEN
AN AND MN
Applicants
AND
CG
Respondent

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Mrs. Tashana Wilson for the Applicants
Mrs. Eurika Wilkinson Coccia, along with Mr. John Kemp and Mrs. Anishka Missick for the Attorney General
Mrs. Eleanor Williams for the Department of Social Services
Mrs. Sheila Johnson-Smith Guardian-ad-Litem

HEARING DATE: October 29, 2020

DECISION

Hanna-Adderley, J.

Introduction

1. The Applicants wish to adopt CG, a Minor ("**the Minor**"), pursuant to the provisions of the Adoption of Children Act, Chapter 131 of the Statute Laws of The Commonwealth of The Bahamas ("**the Act**").
2. This action was commenced by Originating Summons supported by a Statement in Support of Application both filed on December 14, 2017, and a Supplemental Statement in Support filed October 19, 2020. Mrs. Sheila Johnson Smith was appointed by this Court to act as the Guardian Ad Litem for the purposes of safeguarding the interests of the Minor. The Guardian Ad Litem's Report and Addendum thereto was filed herein on October

23, 2020. 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 Minor. Pursuant to the provisions of the Adoption Rules the Department of Social Services is required to be notified of the proceedings and to give its recommendations with respect to the application. Mrs. Eleanor Williams of the Department of Social Services attended the hearing in this matter for this purpose and the Department of Social Services also supports the application for an Adoption Order. Counsel for the Attorney General appeared at the hearing and Mr. John Kemp objected to the order being made on behalf of the Attorney General.

3. The facts set out hereunder are ascertained from the Statement in Support of Application and the Supplemental Statement of the Applicants and the Report and Addendum thereto by the Guardian Ad Litem. Mrs. Eurika Wilkinson Coccia filed an Affidavit on October 29, 2020 outlining the objection to the grant of an Adoption Order by the Attorney General and Mrs. Tashana Wilson and Mrs. Anishka Missick made oral submissions.
4. The Applicants were married on May 8, 1998. The Minor is a female born on November 1, 2002, at Mount Salem, St. James Parish in Jamaica and is the biological child of RG, the biological son of MN, and SN. The couple never married. The Minor is the granddaughter of MN and the Step-Granddaughter of AN. At the time when the Originating Summons was filed the Minor was 15 years of age. She will turn 18 on November 2, 2020 and she resides and has resided with the Applicants in the City of Freeport, Grand Bahama since she was 4 years old.
5. The evidence is that when RG, a native of Jamaica, immigrated to Grand Bahama, he married and had a child with his wife, in addition to having had another child outside of the marriage. That when SN terminated the relationship with RG he refused to financially provide or care for the Minor. He knew that SN was impoverished but he left SN to struggle alone. The Applicants were not aware of the dire situation that the Minor was in until SN contacted them. AN insisted that he and MN travel to Jamaica to investigate the Minor's situation for themselves. They discovered that what SN had told them was true. She wanted to give up the Minor and so they decided to take the infant and raise her as their own. MN described her son as a "deadbeat" Dad and stated that when they brought the Minor to Grand Bahama RG had and still has very little to do with the Minor. The Minor has no relationship with his wife or their child. SN has had very little contact with the

Minor. The Applicants were given legal custody of the Minor on May 19, 2009 by Dionne Gallimore-Rose, Judge of the Family Court, St. James/Hanover/Westmoreland, Jamaica.

6. The Minor when interviewed expressed her "hurt" at the lack of relationship with her biological parents. She cannot understand her father's rejection of her as he resides in Grand Bahama and still wants nothing to do with her. That despite being an honour student and being loved and well cared for by the Applicants, the Minor was so hurt by the rejection by both parents that she started cutting herself and had to attend counselling at the Rand Memorial Hospital. Counselling has been discontinued because the Minor was deemed to be emotionally stable by the Counsellor. Counsel for the Attorney General has not disputed these facts and the Court accepts the stated facts as its findings of fact.
7. Mrs. Coccia stated in her Affidavit that the Attorney General opposed the Application. That the Minor's Permit to reside in The Bahamas expired on July 15, 2019 and that the Department of Immigration took the position that the Minor had no status in the Bahamas and that there was no evidence that an application for renewal had been made by the Applicants.
8. MN stated in viva voce evidence that in about 2016, when the Minor was 13, the Applicants went to see Attorney, Mr. Ernie Wallace. She did not understand what was going on because every time she went to see him he said that everything was okay. That he said he was doing this and that he was doing that, but she did not understand what was going on. In late 2016/2017 he gave her a receipt which meant that the matter was filed in the court. That the Permit (to reside) is usually given for 3 years. She did not realize that it had been given for less than 3 years the last time it was renewed. That after Mr. Wallace had given her the receipt, she kept going back to him. Then she was advised by a lady from the Court, Mrs. Jones, who is now deceased, that she could change her attorney. That is when she went to Ms. Wilson in late 2019, because she thought she had to wait on Mr. Wallace to do what she had paid him to do.

Issues

9. The issues to be determined are: (1) Whether the grant of an adoption order is for the Minor's welfare and (2) Whether to grant an adoption order would go against public policy.

The Law

10. Section 3 of the Act provides as follows:

"3. Upon an application in the prescribed manner being made by any person desirous of being authorised to adopt an infant who has never been married, the court may, subject to the provisions of this Act, make an order (in this Act referred to as an adoption order) authorising the applicant to adopt the infant, and it is hereby declared that the power of the court to make adoption orders shall include power to make an adoption order authorising the adoption of an infant by the mother or father of the infant, either alone or jointly with her or his spouse."

11. Section 6 of the Act provides as follows:

"6. (1) 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 infant in respect of whom the application is made; or

(b) has attained the age of eighteen and is a relative of the infant; or

(c) is the mother or father of the infant".

12. Section 4 of the Bahamas Nationality Act 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 minor 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 minor shall become a citizen of The Bahamas from the date of the order."

13. Section 8 of the Act provides as follows:

"8. The court before making an adoption order shall be satisfied —

(a) that every person whose consent is necessary under this Act and whose consent is not dispensed with has consented to and understands the nature and effect of the adoption order for which application is made and in particular in the case of any parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights; and

(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; and

(c) that the applicant has not received or agreed to receive, and that no person has made or given, or agreed to make or give to the applicant any payment or other reward in consideration of the adoption except such as the court may sanction."

14. Section 17 (3) of the Act provides as follows:

"17. (1).....

(2) Without derogating from subsection (1) where the guardian ad litem in the adoption proceedings is not a representative of the Department responsible for social services, no adoption order shall be made unless the court is satisfied that a copy of the originating summons in the proceedings together with the statement containing the evidence in support of the application have been served within three days of its filing in court upon the Director of Social Services.

(3) The Director of Social Services shall be entitled to be represented at the hearing of the originating summons."

Submissions

15. Counsel for the Attorney General Mrs. Anishka Missick, in opposition to the grant of the Adoption Order, reiterated the position taken by the Department of Immigration in the said letter dated October 28, 2020, that is, that CG is without status in the Commonwealth of The Bahamas and there was no application for renewal submitted to the Department of Immigration. She referred the Court to **In Milton McPhee and Sheriff McPhee, Applicants and Sherica Kentanya Rose,** SCCiv App. No. 192 of 2019. The application for adoption was made in the Court below when the child was 16 years old, that is, 2 months away from her 17th birthday. She conceded that the Court of Appeal made no decision on the issue in the instant case, but she referred the Court to the finding of the Judge in the lower Court. That it appeared as if the application was being made in an effort to circumvent the process by which a person is to become a proper citizen of The Bahamas. In the instant case the young lady will turn 18 as of November 1, that is on Sunday. The Applicants had had an opportunity for some time to push the matter along. The matter was delayed due to the conduct of the Applicants. For example, it was cited in above case by the Court of Appeal that the Judge by her actions may have impeded the progress of the matter, but in this instance, that is not the case, and so that is a very important distinguishing feature.

16. Further, Mrs. Missick argued, that the Immigration Department is saying that no application for renewal is currently before it and coupled with the fact that there is no legal status being held by the Minor, which raises a very strong red flag. She submitted that the question must be asked, what is the true purpose of this application, when in fact the Minor had an opportunity to obey the laws of The Bahamas at that time to have her documents renewed. An application was filed and yet a whole year later, the Applicants chose not to pursue it? And now they come before the Court in a very hastily fashion, urging upon all parties to resolve the matter only two days shy of her 18th birthday. She submitted to the Court that it appears that what the Applicants are intending to do is to circumvent the laws of The Bahamas relative to proper status, and to take this route by which she is being deemed an infant, but in only a few short days she will no longer be an infant, she would be considered an adult. Whether or not the Attorney who had previous carriage of the matter allowed the matter to lapse, the Applicants were obligated to renew the residency permit according to immigration policies.
17. Mrs. Wilson Counsel for the Applicants submitted that having heard the submissions on behalf of the Attorney General's Office she noted that the objection is really only about the child's Immigration status and nothing to do with the welfare and the wellbeing of the child, having even gone through the Guardian Ad Litem's Report and seeing how overwhelming the circumstances are, the fact that this Minor child has been with the Applicants from age 4 but that they have been supporting the child financially from birth. That she had heard of the case relied upon by her learned friend and it is distinguishable on several grounds. In the instant case the application for adoption was made and filed from December 2017. While the Applicants could have sought different counsel and made some progression with the matter, the fact still remains that the intention in 2017 was to adopt a child that they had legal custody of from 2009, some 8 years before, that the Applicants had already been given custody of the child in another Commonwealth jurisdiction. That the child has always been residing here, The Bahamas. That the Applicants were and are always doing everything as it relates to the child. This child has always had status up until the Permit expired. That MN spoke to the issue of the delay.
18. Mrs. Wilson submitted that having regard to the Report of the Guardian Ad Litem it was in the best interest of the minor child that the adoption be granted, given all the circumstances that was laid out before the Court in terms of her wellbeing. And in matters

concerning children the principle that applies is what is in the best interest of the child. She submitted that given the facts of the case and all the surrounding circumstances, that the Applicants are the only parents the minor child has known from birth, basically. That she is in a stable environment based on the Guardian Ad Litem Report; and all facts and indication in respect of the mental health, social wellbeing, financial stability are in favor of the granting of an Order to the Applicants. She submitted that it would be in the best interests of the child that an Adoption Order be granted to the Applicants.

Analysis and Conclusions

19. The Court's authority to make an Adoption Order is derived from Section 3 of the Act hereinbefore set out. Section 6 of the Act above provides that an adoption order shall not be made in the case of a joint application, unless, inter alia, one of the Applicants is 25 years older than the child. Section 7 of the Act provides that an adoption order shall not be made except with the consent of every person or guardian of the child provided that the Court may dispense with that consent if it is satisfied that that parent has abandoned the child or has persistently neglected to contribute to the maintenance of the child. Section 8 of the Act provides that, inter alia, due consideration must be given by the court to the wishes of the infant, having regard to the age and understanding of the infant. Section 17 of the Act provides that where the guardian ad litem is not a representative of the Department of Social Services the Department must have notice of the proceedings and the Department is entitled to be represented at the hearing of the originating summons. Section 4 of the Bahamas Nationality Act provides that in the case of a joint application for adoption where the male adopter is a citizen of The Bahamas the minor shall become a citizen of the Bahamas from the date of the order. The Minor is this case is a Jamaican citizen. Upon the grant of an Adoption Order she will be entitled to be made a citizen of The Bahamas. In such cases it is the policy of the Government and the practice of this Court that the Attorney General be given Notice of adoption proceedings and be given the opportunity of acceding to or objecting to the application. The Attorney General takes issue with the fact that the Minor's Permit to reside has expired and therefore she does not hold even nominal status in the country. The Attorney General is also of the view that the adoption process is being used to circumvent the immigration policies and that it would be a breach of public policy to grant the adoption order in the circumstances.

20. The Applicants have met every stipulation found in Sections of the Act above-mentioned, that is, both applicants are 25 years older than the Minor, the written consent of the biological parents have been obtained, the Minor is of age to understand the effect of the Order and consents to it being made, the Department of Social Services and the Guardian Ad Litem recommend that the Order be made. The only outstanding issue is whether such an order will go against public policy, and if yes, should the Court grant the Order nevertheless.
21. In the case of **In re R. Adoption** (1967) 1 W.L.R. 34 Buckley J's cautioned at page 41:

> *"I have, of course, given very careful consideration to the public policy aspect of this matter ... This aspect, I think, makes it incumbent on the court to be particularly circumspect in exercising the jurisdiction under the Act when the infant proposed to be adopted is of foreign nationality and, more particularly, when he or she is no longer a young child but is approaching his or her majority. It does not, in my judgment, have the result that the court cannot, or ought not to exercise the jurisdiction in such a case on the ground that it may thereby usurp the functions of the Home Secretary in relation to naturalization."*

22. **In Re H (A Minor)** Justice Hollings at page 133 of the judgment states:

> *"What then should the approach of this court be in applications of this nature? Clearly, it must pay great regard to the "immigration decision" and in particular considerations of public policy and, where relevant, national security. It must be on its guard against the possibility of abuse; but the mere fact that nationality or patriality would result is not conclusive. It must treat welfare as the first consideration, outweighing any one other 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 order 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 (section 19*

apart) 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 the implications of the public policy aspect the less weight may be attached to the aspect of the welfare of the particular individual."

And at pages 134 and 135:

"For my part, I considered Dr. N. to be truthful and genuine, although of course he was not subject to cross-examination on behalf of the Secretary of State, and such questions as I asked him would not be as searching no doubt as such questioning would have been. I have little doubt on the evidence--which is supported by the investigations on behalf of the Official Solicitor and not contradicted by direct evidence--not only that H. is now and has been for 3 1/2 years a de facto member of the applicants' family, but also that he has indeed been rejected by his family in Pakistan. I also believe that if he were returned to Pakistan he would have no home to go to an no means of earning his living. The other relations who might have been thought willing to take him in have been considered and convincing reasons given which satisfy me that they are all for one reason or another unable to do so. He is of course going to be 18 next November. His welfare needs to be safeguarded and promoted in the words of section 3 "throughout his childhood" It would however be harsh, if not illogical after this lapse of time, to reject the application on the ground that so little of his childhood remains. In neither In re A. [1963] 1 W.L.R. 231 nor In re R. [1967] 1 W.L.R. 34 was this factor treated as decisive.

Immigration policy apart, I am satisfied that having regard to all the other circumstances, and having regard to H's welfare, an adoption order should be made. This means, inter alia, that having heard and seen Dr. N. and H. and considered all the material before me, I am satisfied that contrary to the finding on behalf of the Secretary of State, there has been a genuine transfer of parental responsibility and that it is not an adoption application of convenience. I do

however find that there was at least deception in the application for leave to extend H's stay, and probably too in regard to the initial application to enter. The refusal of the Secretary of State was not based only upon the fact that deception as to the purpose of entry was practiced, but the fact that deception was practiced is clearly relevant to the policy decision as to whether or not to admit, even given that there are otherwise valid grounds for giving leave to enter. Deception ought to be seen not be tolerated, and when leave to enter is a matter of discretion, deception of itself may be a proper ground for refusal to exercise the discretion in favour of granting leave or granting an extension. But in an adoption application, it must be put in the scales and weighed against the welfare considerations which have first consideration. In the present case, in the particular circumstances, in my judgment welfare considerations must prevail, and an adoption order made."

In this case the Applicants were the uncle and aunt of the Minor. The infant, R, was 20 years old and a foreign national, parental consents were not obtained. His age was not stated but he must have been a young man as he was able to escape from a country which was under totalitarian regime. The court authorized the adoption of R in that case.

23. By contrast, I also refer to **Re A (an Infant)** [1963] All E R page 531 and the Judgment of **Cross, J** at pages 534 to 535. In this case the applicants were a British husband and wife seeking to adopt a young man from France. The object of the adoption was not for the Applicants to become the parents of the young man but so that the young man might acquire British citizenship. Cross J stated:

".....In this case the benefit to the infant flows simply from the fact that he is being adopted, not from the fact that he is being adopted by the particular adopters. Any adopters, provided that they were British subjects, would do. The applicants will become the statutory parents of this young man, the paternal rights of the mother will be extinguished and the consequences in the field of succession provided by s. 16 will ensue, but there will be no reality in these changes. He is, so far as I know, on the best of terms with his mother. The applicants do not, and will not, really stand to him in the relation of parents and one may guess that in practice each party will take care to see that s. 16 does not operate. Indeed, it is to my mind doubtful whether this young man can really be said to be in the "care

and possession" of the applicants at this moment within s. 3 (1) of the Adoption Act, 1958. In any case where the person to be adopted in nineteen or twenty years of age-and there is no doubt that the court can and frequently does make adoption orders in such cases-those words "care and possession" must bear a somewhat artificial meaning; but it might be said that at least they require that the applicants with whom he is living should really be in loco parentis to the child, and this can hardly be said here. In truth, this adoption would be an "accommodation" adoption, and it is not difficult to envisage cases in which such adoption would be open to objection on the grounds of public policy. An alien infant who wished to live here for the purpose of carrying on some undesirable activity might arrange to be adopted by friends in order to secure his position and put forward a plausible case that the order was for his benefit. I do not, of course, suggest for a moment that this is such a case, and counsel for the applicants argued that fears of this sort were really groundless because the judge would always have a discretion to refuse to make the order even though the statutory conditions were fulfilled, and he said that it would be the duty of the guardian ad litem, who is normally the Official Solicitor, to put before the court any objection of this sort which occurred to him. That would mean in this sort of application that 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."

It was held in this case that although the court was satisfied that an adoption order would be for the welfare of the infant, it would, in the exercise of its discretion, decline to make an adoption order, because on the facts the applicants did not stand in loco parentis to the infant and the adoption sought was an "accommodation" adoption which was not within the intendment of the English Adoption Act, 1958. The facts in the case before me can clearly be distinguished from the facts in the instant case. AN and MN clearly stand in loco parentis to the Minor.

24. It is clear on the evidence of MN that up to last year the Minor was always in possession of a valid Permit to Reside since arriving in The Bahamas at a tender age. MN has explained to my satisfaction why the renewal was not submitted when it should have

been. It is clear on the evidence that the adoption application was filed 3 years ago, well before the child's 18th birthday, and, having found MN to be a credible witness, the delay in the proceedings must be laid at the feet of the Counsel who had the initial carriage of the matter. I am satisfied that the Applicants diligently followed up on the process and upon being told that they could instruct another attorney by a Court officer they did so.

25. The Minor has no real relationship with her biological parents. For the past 14 years the Applicants have been her parents. They were made her legal guardians, albeit by a Court in another jurisdiction, since 2009. They took legal steps in this regard. She has suffered psychological damage as a result of the rejection by her biological parents and I firmly believe that were it not for the love and care of her grandparents this young person would be another lost child. Despite these challenges she has successfully undergone therapy and is an honour student. Her ties are to The Bahamas. She has no real ties any longer to Jamaica.
26. This application is being considered on the eve of her 18th birthday and she will derive the benefit of citizenship by the granting of the order, but I am not satisfied on the evidence before me that the true motive for the application is based on the desire to achieve citizenship rather than the general welfare of the infant. I am satisfied that the true motive is to achieve emotional, psychological, social and legal benefit. The acquisition of citizenship may have been one of the motives for making the application but that is not without more reason to reject the application. I am mindful that I must balance the welfare of the Minor against public policy but I am satisfied that the benefit derived by the Minor from the Adoption Order would not be limited to the acquisition of Bahamian citizenship (**See Judgment of Hepburn J, [2011] 3 BHS J No. 91**). Having weighed the welfare of the infant against public policy I am satisfied that this is proper case to make an Adoption Order.

Disposition

27. Therefore, I order that the Applicants be and are thereby authorized to adopt the Infant and that she be henceforth known as CANGN and I order that the usual Notice be sent to the Registrar General and that the Registrar make the usual entries in the Adopted Children Register according to Section 21 (2) of the Act.

Dated this 30th day of October A. D. 2020

Petra M. Hanna-Adderley
Judge