

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

**2021
FAM/ADN/0035**

IN THE MATTER OF D.C (a minor)

**AND IN THE MATTER of the ADOPTION OF CHILDREN ACT, CHAPTER 131
BETWEEN**

J.B

Applicant

AND

**D.C
(a minor)**

Respondent

E.P

Guardian Ad Litem

Before: The Hon. Madam Justice G. Diane Stewart

Appearances: Darren Bain for the Applicants

Raquel Whyms for the Attorney General

Ruling Date: 16th December 2022

RULING

Background Facts

1. The Applicant, J.B, wish to adopt D. C a minor child and the biological child of his wife, G.B, pursuant to provisions of the Adoption of Children Act, Chapter 131, Statute Laws of the Bahamas (**“the Act”**).

2. The Originating Summons was filed January 22nd 2021 seeking an Order that:-
 - a) That a Guardian Ad Litem be appointed for the purpose of safeguarding the interest of the said D. C
 - b) That the Applicant be authorized to adopt the said D. C
3. The Statement support and the Affidavit in support were also filed on 22nd January 2021.
4. D. C's biological mother, G. B gave her consent to the application by J.B.
5. By Consent to Act as Guardian Ad Litem filed on 26th March 2021, E.P consented to act as Guardian Ad Litem for the child. By Order made 22nd June 2021, E.P was appointed as Guardian ad Litem of D. C for the purposes of safeguarding the interest of the child.
6. D. C, is a female child born 15th October 2004 in Jamaica. The Applicant is a Bahamian citizen and is married to the child's biological mother.
7. D.C, is the biological father and G. B, are both non-Bahamian. The child came to live with the Applicant around the 13th April 2015 upon his marriage to G.B. She has since remained with them and lived in Governor's Harbour, Eleuthera for the past seven years.
8. Since the child has been in the care of the Applicant, he and G.B have financially provided for the child with no assistance from D.C.
9. The child is a 10th grade student at Central Eleuthera High School and has a valid permit to reside in The Bahamas.
10. G.B in her affidavit in support of the application avers that while resident in Jamaica, the biological father abandoned her and the child and since that time has provided no support, financial or otherwise to the child's upbringing or development.
11. In or about 2013, G.B relocated to The Bahamas with the child. She avers that the biological father did not object to the child relocating to The Bahamas because he has not seen the child since she was eight years old. This meant that the biological father would have seen the child the year prior to her relocating to the Bahamas.
12. The Applicant by summons applied for an order that the Court dispense with the consent of the biological father on the ground that he has abandoned and neglected the child. By an Order made 27th October 2021 after notice of the hearing

of the application was sent to the father and his failure to appear, the Court dispensed with service of the adoption application on the biological father.

13. The Guardian Ad Litem by her reports supports the adoption of D. C and declares that she is satisfied that an adoption would be in the best interest of the child's welfare.
14. The Attorney General's office opposes the application on the ground that it is an attempt to evade the immigration laws of the Bahamas.

Issues

15. The issues to be determined are:-

- i) Whether it is in the child's best interest to be adopted by the Applicant
- ii) Whether the application for adoption ought to be dismissed for public policy reasons as an attempt to evade immigration laws

DECISION

16. The Applicant submits that the adoption would be in the best interest of the welfare of the child. However, the Attorney General opposes the adoption application and submits that this is an attempt to circumvent the immigration laws rather than to promote the child's welfare and that the application should be dismissed.

17. The child is a Jamaican national and the Applicant is a Bahamian citizen, accordingly the Attorney General has been invited to intervene in these proceedings. The public policy issue will be addressed first.

18. **Section 2 of 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;"**

19. **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 interpreted as "Bahamian".

20. The application does not breach any of the restrictions as set out in Section 6 of the Act.

21. **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...”

22. **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.”

By virtue of this Section the child upon an adoption order being granted would be entitled to the citizenship held by the adopting father who is Bahamian.

23. 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”.

24. The Attorney General opposes the application as they maintain that based on the application, as filed, the Applicant will have the primary care of the child. This statement is also confirmed in the Guardian Ad Litem Report. The Attorney General queries whether G.B would willingly relinquish her parental rights even though the child will still be living with her.

25. The Crown referred to **Re L and C (Minors) BS 1999 SC 83** where Osadebay Sr. Justice 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. If only a short period of minority remains, then clearly the welfare factor carried less weight.”

26. The child was 17+ years old when this application was heard. There is no evidence that if the application is refused, the child will be negatively impacted. The child has a permit to reside in the Bahamas. The Guardian's report does not speak of the existence of any negative factors surrounding the child's life.

27. In the Matter of the Adoption of Children's Act 1954 (Chapter 131 of the Statute Laws of The Bahamas) [2011] 3 BHS J. No. 91, Hepburn J at paragraph 31 opined that:-

"The court must, then, determine whether the motive for the instant application is the welfare of the infant or the acquisition of citizenship and the right to abode. If the court is satisfied that the real motive for the application is the welfare of the infant, the court must then proceed to carry out a balancing act between the welfare of the infant and public policy considerations in relation to the effect of an adoption order on nationality and the right to reside in The Bahamas. (See In re L and C (Minors) [1999] BHS J. No. 180; 1999 No. 9 per Osadebay J., as he then was.) As I have said before, it is not to be assumed that every application to adopt an infant who is not a citizen of The Bahamas is motivated solely or chiefly by the desire to achieve citizenship for the infant, even when, as in the instant application, the infant is nearing the age of majority, bearing in mind that the benefit of citizenship on the making of adoption orders is provided for by our legislation."

28. As indicated, the Attorney General's view is that this application is to circumvent The Bahamas immigration laws rather than to promote the safety and welfare of the child and should be dismissed. At the time the originating summons was filed on 22nd January 2021, the child was 16 years old, and expected to celebrate her 17th birthday on 9th October 2021. The child's Permit to Reside issued by The Bahamas would expire on 27th November 2022. The application was completed when she was 17+ years old.

29. The Applicant rejects the Crown's position relying on the presumption of genuine intent and on what is in the best interest of the child and further relies on the decision of Justice Hepburn hereinbefore referred to.

30. There is no doubt that an adoption order would benefit this child. However the question which arises is why was there a delay by the Applicant in making the application. The child is now of age and as the Court of Appeal held in **Milton McPhee v Sherica Kentanya Rose SCCivApp. No. 192 of 2019:-**

"Pursuant to the Adoption of Children Act (the Act) a judge of the Supreme Court may authorize an adoption of a person who is under the age of 18. However, the Act does not make provision for an adoption order to be granted where the child which is the subject of the application has reached the age of majority. The adoption process is an entirely statutory construct. Therefore, unless there is a statutory provision which addresses the issue

of a child for whom an adoption application has been made but who attains the age of eighteen before an adoption order is made, a judge has no power to make the adoption order.”

31. It is unfortunate that the application for adoption was only heard months before the child's 18th birthday. It would appear to me that under these circumstances the purpose of making the application for adoption was to circumvent The Bahamas immigration laws.
32. The child reached the age of majority on 15th October, 2022. It is evident that the adoption was not needed to safeguard the child's best interest. It appears that the only reason for making the application was to pass citizenship to the minor child. Regrettably, notwithstanding that the child is no longer an infant child under the statutory definition, the application for adoption is hereby dismissed. The child still has the right to apply under the immigration laws to regulate her status in this country.

Dated this *16* day of *December* 2022



Hon. Madam Justice G. Diane Stewart