

**IN THE COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Family Law Division  
2021/FAM/adn/00668**

**IN THE MATTER OF A.A.H  
(AN INFANT)  
AND  
IN THE MATTER OF THE ADOPTION OF CHILDREN ACT (CHAPTER 131)**

**D.A.M**

**Applicant**

**AND**

**A.A.H**

**Respondent**

**Before: The Honourable Madam Justice C.V. Hope Strachan,  
Justice of The Supreme Court of The Commonwealth of The  
Bahamas**

**Appearances: Doneth Cartwright and Syneisha Bootle for the Applicant  
Nevado Frazer for the Office of the Attorney General  
Deah Duvalier for the Department of Social Services**

**Hearing Dates: 6<sup>th</sup> December 2023; 29<sup>th</sup> December 2023; 7<sup>th</sup> March 2024; 2<sup>nd</sup>  
September 2024; 10<sup>th</sup> December 2024;**

**Adoption – Adoption of Children Act - Child Protection Act - Whether the granting  
of an adoption order is in the best interest of the minor child – Whether granting  
the order goes against public policy**

**RULING**

## **INTRODUCTION**

1. This application was commenced by Originating Summons supported by an Affidavit of DAM ("the Applicant") and a Statement in support of the application for an Adoption Order. Both Affidavit and Statement were filed on 18<sup>th</sup> October 2021. By an Order dated 4<sup>th</sup> March 2022, the Department of Social Services was appointed Guardian Ad Litem for the infant. The Guardian Ad Litem's report was filed on 4<sup>th</sup> March 2024 however, the Addendum has not been filed.

### **Background Facts**

2. AAH, the infant, was born on 9<sup>th</sup> January 2007 to CE, the infant's mother, and OAH, the biological father of the infant, both Jamaican citizens. CE had one older child K.M. from a previous relationship. The infant's mother resided with her two children in Jamaica. Shortly after the infant's birth, CE moved to the Bahamas and married MB in 2011. After one year later, CE and MB separated and CE began a relationship with DAM, the Applicant. Around 2012, the infant relocated to the Bahamas and was living with his mother and the Applicant. The Applicant has been a father figure to the infant for more than a decade and continues to do so to this day. The relationship between DAM and CE produced two children. One day after giving birth to her fourth child, CE died. Shortly thereafter, the Applicant commenced proceedings to adopt the infant who has been living with the Applicant and his other siblings since the age of 3. The infant is now 17 years old. The biological father's whereabouts are unknown. The necessary steps have been taken to locate OAH, in particular, two notices were published in the Gleaner in Jamaica to contact him without success. The infant's maternal grandmother, V.T currently resides in Jamaica and has indicated that she is financially unable to care for the infant. She has therefore given her consent for the infant to be adopted by the Applicant. The Applicant is desirous to conclude the adoption of the infant before his 18th birthday.

3. **Reports of the Guardian ad Litem**

The Department of Social Services ("Social Services") was appointed the guardian ad litem of the infant on 4<sup>th</sup> March 2022. Social Services gave a Social History Report and a Supplementary Report both dated 23<sup>rd</sup> February 2024 which was filed on 4<sup>th</sup> March 2024. In the reports, Social Services assessment of the Applicant was that he has been the infant's primary source of emotional and financial support for the past ten (10) years and he loves the infant deeply. The Applicant wishes to provide the infant with a stable home, a loving family, a good education and to have all of his needs met. The Applicant is a law abiding citizen and is recommended highly by his referrers.

He has a strong bond with the infant and has provided a loving stable environment for the infant to thrive within. Therefore, the adoption would serve to

legalize the family's bond and provide the infant with a stronger sense of belonging.

Social Services noted that there is a concern that the Applicant refuses to allow access to his female companion the access to whom he has denied the Department. As the Applicant states that this individual is a significant part of his life and "stands in the gap" in assisting him with the children, the guardian ad litem wishes to interview her. Social Services recommendation was that they do not support the application of the Applicant as it would not be in the infant's best interest.

Additionally, Social Services prepared an addendum to the report dated 3<sup>rd</sup> December 2024 where they conducted a telephone interview with K.K, the former partner of the Applicant. K.K. stated in the interview that she dated the Applicant for a period of one year. She indicated that she was informed by the Applicant that he fathered four children and she was introduced to them shortly after they started dating. She described the children as "nice" and "adorable". She recounts that the Applicant was a good father to all of his children and that he and the infant were very close and supportive of one another. She also stated that anything that the infant needs, the Applicant would go out of his way to provide it. K.K asserted that their father-son relationship was one like she has not seen before in her own life. She really wants the adoption to be granted for the Applicant and the infant. Social Services recommendation is that they do not support the adoption of the infant based on his age.

4. The Supplemental Affidavit of the Applicant was filed on 23 February 2024. The parts which are relevant to this application are extracted verbatim herein.

*"7). A has been doing very well in school and I have already made financial provisions for him to pursue tertiary education. I am committed, emotionally, financially, to ensuring that he is positioned for success as he moves into adulthood. A formal adoption Order will allow me to make the necessary decisions about his welfare and completely support him throughout the remainder of his childhood and his adulthood.*

*8). ...I purchased a home for my children and I returned to work remotely as VIP Services Coordinator. I mainly worked remotely and therefore had adequate time to drop off and pick up the children from school and spend much quality time with them. Since December 2023 I started my own business ... which is doing very well and allows me more quality time with my family.*

*9). On 6<sup>th</sup> January 2024, Ms. Forbes of The Social Services Department visited my new home and confirmed that she was impressed with the arrangements that are now in place for my family. A has his own room and is very comfortable. During our exchanges, Ms. Forbes complimented me on being a great father to*

*my children, A included. I have always referred to A and his brother K as my children..."*

## **ISSUE**

5. Whether the grant the adoption of the infant goes against public policy due to the infant nearing the age of majority?

## **THE LAW**

6. Section 3 of the Child Protection Act, Ch. 132 ("the Act") is the guiding principle concerning the welfare of a child. Section 3 provides:

"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."

7. Section 3 of the Adoption of Children Act, Ch. 131 ("the Adoption Act") outlines the power of the court to make adoption orders. It states that:

"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."

8. Section 6 of the Adoption Act outlines the restrictions on the making of adoption orders. This section 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.

2) ...

3) ...

Provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving such consent or that the spouses have separated and are living apart and that the separation is likely to be permanent."

9. Section 7 (1) of the Adoption Act relates to the issue of consent of parent or guardian. This section provides:

"7. (1) An adoption order shall not be made except with the consent of every person or body who is a parent or guardian of the infant, or who is liable by virtue of any order or agreement to contribute to the maintenance of the infant:

Provided that the court may dispense with any consent required by this subsection if it is satisfied –

(a) ...

(b) ...

(c) in any case, that the person whose consent is required cannot be found, or is incapable of giving his consent or that his consent is unreasonably withheld.”

10. Section 8 of the Adoption Act indicates that matters with respect to which the Court shall be satisfied before making an order. It 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.”

11. Section 11 of the Adoption Act outlines the effect of the Adoption Order. It provides:

“11. 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 as though the adopted child was a child born to 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:...”

12. Section 17 of the Adoption Act provides as follows:

“17. (1) Rules in regard to any matter to be prescribed under this Act and directing the manner in which applications to the court are to be made and dealing generally with all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect shall be made under section 76 of the Supreme Court Act. Such rules may provide for applications for adoption orders being heard and determined otherwise than in open court.

(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.”

13. Section 18 (1) of the Adoption Act provides as follows:

“18. (1) For the purpose of an application under this Act the court shall appoint some person or body to act as guardian ad litem of the infant upon the hearing of the application with the duty of safeguarding the interests of the infant before the court.”

14. Section 4 of The Bahamas Nationality Act, Ch. 190 states:

“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.”

### **Applicant's Submissions**

15. Counsel for the Applicant submits that the application commenced in October 2021, five months after the infant mother died. The guardian ad litem took two years to prepare their report which prejudiced the Applicant. The application was filed when the infant was well under the age of majority. Secondly, the ex-girlfriend of the Applicant was interviewed in September 2024 expressing her

support for the adoption, however, the guardian ad litem addendum report was submitted three months later refusing to recommend the adoption. Counsel further submits that they have ticked all of the boxes in relation to this adoption and that the report of the guardian ad litem contradicts itself. The infant has been living with the Applicant since he was three years old. Counsel invites the Court to prioritize the best interest of the child by formalizing the adoption of the infant.

### **Office of the Attorney General's Submissions**

16. Counsel for the Office of the Attorney General opposes the application and submits that the delay of this application was due to the Applicant and not entirely on the Department of Social Services. Counsel further submits that the Court had concerns based on the reports of the Department of Social Services which were not satisfied. Counsel contends that the Applicant failed to search for the biological father of the infant. The Applicant also failed to allow his ex-girlfriend to be interviewed by Social Services. Counsel further submits that the living arrangements for the Applicant were not acceptable at the time of the application. Additionally, the initial application included the Applicant's mother which had to be amended. Counsel agrees that the welfare of the child is paramount but in these circumstances where the child is nearing the age of majority more weight must be considered against public policy as oppose to just considering the welfare of the infant.

### **Discussion and Analysis**

17. At the time of the application, the infant was 14 years old. The infant is now 17 years old and is nearing his 18<sup>th</sup> birthday is less than a month. Before the application commenced, the infant was living with the Applicant and his mother since he was 3 years old. The Applicant is the only father figure that the infant has ever known. The Court has taken into consideration that attempts were made to locate the father which was evidenced in the Supplemental Affidavit of the Applicant. He stated that two notices were published in The Gleaner Newspaper in Jamaica on 21<sup>st</sup> December 2023 and 26<sup>th</sup> December 2023 respectively, in search of the biological father of the infant. No response was received in relation to the advertisements.

18. Counsel for the Applicant invited the Court to consider the authority of **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** where Hepburn J stated:

*"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."*



19. Hepburn J, further opined at para of the judgment that:

*"I am not bound by the Guardian ad Litem's report, but as she has conducted the necessary investigation into all of the circumstances relevant to the proposed adoption I will take the report of her investigation into the circumstances of the instant application into consideration in determining whether or not to exercise the court's discretion in favour of the applicants."*

20. As Hepburn J, rightly pointed out **In the matter of the Adoption of Children's Act 1954, supra**, the guardian ad litem's report is not binding on the decision of the Court. I agreed to the recommendation of the initial report that the ex-girlfriend of the Applicant should have been interviewed and I am satisfied with the outcome of the interview. I am quite surprised about their recommendation even after the favorable review of the ex-girlfriend who supports the adoption.

21. Counsel further relied on the authority of **In the Matter of TDD (Male Infant) [2012] 2 BHS J. No. 89** where Bain, J. granted the adoption order for a 17 year old infant, a mere two days away from the age of majority, despite the delay in his proceedings and his short time as an infant. The Order was granted without the assessment by the Department of Social Services as the court found that the child would be prejudiced if the court delayed the application.

22. In relation to the authority mentioned above, I do not consider that matter to be applicable in the instant matter. The circumstances of the case are quite similar in terms of the age of the infants in both matters and the delay by Social Services however, in TDD (supra) no report was submitted by the guardian ad litem which is different from the instant matter where reports were submitted. The Court does note that there has been delays by both the Applicant and the Department of Social Services in this matter. In sensitive cases, such as these, time should be a priority to ensure a swift outcome for all parties involved.

23. In the case of **Milton McPhee and Sheriffa McPhee v Sherica Kentanya Rose (a child) SCCivApp. No. 192 of 2019** Justice Isaacs, JA at paragraphs 27 and 28 opined:

*"27. It is an unfortunate aspect of this case that the application for adoption was made when SKR was a child of sixteen. That it should have taken almost three years for the application to be heard is deplorable and regrettable; and should never have happened, bearing in mind that the welfare of a child was involved. The delay in the Judge rendering her judgment exacerbated the egregious nature of the delay in this matter.*

28. *Regrettably, notwithstanding the unsatisfactory delay in this case, we are inexorably drawn to the conclusion that there was no authority in the Judge to make the order sought once SKR no longer fell within the statutory definition of an infant as contained in the Act.*"

24. **In the Matter of Shawn Anthony La-Dean Buchanan; In the Matter of the Adoption of Children Act (Ch. 117)**, the Department of Social Services did not support the adoption, however the Court decided that:

*"In all the circumstances, I do not believe that the concerns of the Social Services Department are sufficient for me to find that the adoption is not in the best interest of and for the welfare of the child. I also do not find that this application is an attempt to provide Bahamian citizenship for the minor."*

25. This matter is one where the recommendation of Social Services is not in alignment with their full report. I also do not find that this application is an attempt for the infant to be provided Bahamian citizenship. It is an application where the Applicant has been providing and will continue to provide the infant with a stable and loving family home.
26. The guiding principle, as noted by Counsel for the Office of the Attorney General was in the House of Lords decision of **J v C [1969] 1 All ER 788**, where Guest J, cited with approval the dicta of Lindley, J. in *Re McGrath (infants [1893] 1 Ch. 143* as follows:

*"The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded."*

27. Counsel further relied on In **Re: L and C (Minors) (Adoption: Non partial) [1999] BHS J. No. 180No. 9 of 1999**, Senior Justice Osadebay (as he then was) emphasized the following in relation to foreign adoptions where a minor was approaching the age of majority:

*"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 carries less weight."*

28. The Court also considered the authority of **In re K. (A Minor) Adoption Order Nationality (1995) Fam. 38** referred to at paragraph 34 in **Re: L and C (supra)** where the Court of Appeal in England approved a two stage approach in adoption proceedings of this nature i.e. to consider first the motive for the application and only if satisfied that the true motive is not to achieve citizenship or nationality and the consequent right of abode for the minor rather than to serve the minor's general welfare, to proceed to the second stage, which is to carry out a balancing exercise between public policy and the minor's welfare.
29. In exercising its discretion in determining whether to grant the adoption, the Court will apply the two stage approach as mentioned in the authority of **In re K. (A Minor) Adoption Order (supra)**. In considering the motive of the adoption, the Court considers the evidence as a whole and in the circumstances, the Court is not convinced that the adoption is in relation to securing citizenship for the infant. The Guardian ad Litem reports have been contradictory and does not provide a reason for opposing the application other than the age of the infant. It is clear from the Guardian ad Litem reports that the Applicant loves and cares for the infant and wants what is in the best interest of the infant. The Applicant has ticked all the boxes in respect of the application and he provided all of the necessary documentation that is required to support his application to adopt the infant. If the age of the infant was an issue, the Court is of the view that it should have been specified in the guardian ad litem's initial reports.
30. In considering the second stage of the test, which is the balancing exercise between public policy and the welfare of the child, section 3 of the Act is clear, the welfare of the child is of paramount consideration. The Applicant has provided proper living arrangements where he stated in his Supplemental Affidavit at paragraph 9 that *"On 6<sup>th</sup> January 2024, Ms. Forbes of The Social Services Department visited my new home and confirmed that she was impressed with the arrangements that are now in place for my family. A has his own room and is very comfortable."* The Applicant also stated at paragraph 7 of his Affidavit that *"A has been doing very well in school and I have already made financial provisions for him to pursue tertiary education. I am committed, emotionally, financially, to ensuring that he is positioned for success as he moves into adulthood."* Finally, paragraph 8 of his Affidavit speaks to his financial capabilities to take care of the infant and his other children. *"...I purchased a home for my children and I returned to work remotely as VIP Services Coordinator. I mainly worked remotely and therefore had adequate time to drop off and pick up the children from school and spend much quality time with them. Since December 2023 I started my own business ... which is doing very well and allows me more quality time with my family."* I do not agree with Counsel for the Office of the Attorney General on the public policy argument with regard to the

instant matter. The Court is unable to disregard the welfare of the child when considering public policy. I am of the opinion, based on the evidence that the intention of this adoption is not to secure citizenship of the infant but rather legally formalize an already existing father-son relationship between the Applicant and the infant.

### **Conclusion**

31. Having considered the evidence of the Applicant, the reports of the Department of Social Services and the submissions of both Counsel, in these circumstances, I am of the view that public policy does not outweigh the welfare of the infant in this matter. There is no indication from the Social Services report that the immigration status of this child had a bearing on the motives of the applicant. Whilst it may seem strange that the adoption application is nearing the infant's birthday, the fact is that the application was started three years ago. In fact, I was surprised by the objection taken by the Department of Social Services even though their assessment of the Applicant, his family and ex-girlfriend were favorable.
32. While I understand the Office of the Attorney General's argument of persons circumventing the law to obtain citizenship, each matter should be viewed on a case by case basis. Notwithstanding, the Department of Social Services opposing the grant of the adoption order on the basis of the infant's age, and the Office of Attorney General on public policy, the Court exercises its discretion and grants the adoption order sought by the Applicant as it is in the best interest and welfare of the infant.
33. That the applicant DAM is authorized to adopt the child AAH.
34. That the Registrar is directed to enter the said adoption in the Adopted Children's Register.
35. That henceforth the child shall be known as AAM.

**Dated the 16<sup>th</sup> day of December, A.D., 2024**



**The Honourable Madam Justice C.V. Hope Strachan**