

IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division

2024/FAM/and/FP/00154

IN THE MATTER of TSKJ (a minor)

AND IN THE MATTER of The Adoption of Children Act (Chapter 131)

AND

A. S.

Applicant

Before: The Honourable Madam Justice Constance Delancy

Appearances: Constance McDonald, KC for the Applicant
Sheila Johnson-Smith as Guardian Ad Litem
Rayshon Deleveaux for the Office of the Attorney General
Susan Missick for the Department of Social Services

Hearing date(s): 6 November, 2025; 16 February 2026

JUDGMENT

DELANCY, J

[1.] The Applicant filed an Originating Summons on 12 October 2024 to adopt TSKJ (“the minor”) pursuant to the Adoption of Children Act, Chapter 131 (“the Act”). The application is supported by Statement in Support and an Affidavit also filed on the 12 October 2024.

[2.] The Statement states the following:

1. The Applicant is a Bahamian citizen who resides on the Island of Grand Bahama;
2. The minor was born on 20 February 2018 on the island of Grand Bahama of Haitian parentage and is in good health;
3. The biological parents consent to the adoption of the minor (consent annexed);
4. The Applicant is the legal guardian and godparent of the minor;
5. The minor has resided with the Applicant since 2022;
6. The Applicant is able to maintain and educate the minor; and
7. The minor is to take on the surname of the Applicant.

[3.] Consent to Act as Guardian ad Litem was filed on 12 October 2024 and the Undertaking to pay the costs of the Guardian ad Litem was filed on same date. The Guardian ad Litem was appointed on 1 July 2025 to safeguard the interests of the minor.

[4.] The Guardian ad Litem prepared a Report on 31 January 2024, Amended Report on 31 October 2025 and Addendum on 5 December 2025 (collectively “the Reports”) which may be summarized as follows:

- i. The minor was born on 20 February 2018 as the result of a brief relationship between her biological parents, JS and SJ.
- ii. The biological parents are citizens of the Republic of Haiti and reside in The Bahamas.
- iii. The minor has been in the Applicant’s care since 2 February 2023 and is currently in Second Grade.
- iv. Both biological parents consent to the adoption of the minor by the Applicant and understand their parental rights will be terminated as a result thereof should the Court accede to the application;
- v. The Guardian ad Litem Report concluded that the parental relationship between the Applicant and the minor is well established. The Guardian ad Litem stated that she had no hesitation in supporting the Applicant’s application to adopt the minor.

Issues

[5.] The Court must determine whether:

- (a) it is in the best interest of the minor to be adopted by the Applicant; and
- (b) the granting of the adoption of the minor goes against public policy?

Law and Analysis

[6.] Section 8 of Adoption Act, Chapter 131 (“the Act”) provides the Court must be satisfied of at least three factors whenever it is determining whether to grant an adoption order:

- (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.**

[Emphasis added]

[7.] The Court, in exercising its power to grant an order of adoption, must also be guided by the provisions of the Child Protection Act, Chapter 132 (“the CPA”), in particular Section 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.

[Emphasis added]

[8.] Counsel for the Applicant submits that it is in the best interest of the minor in the instant case for an order for the Applicant to adopt the minor.

[9.] The representative for the Department of Social Services brought several issues to the Court's attention, namely:

- (i) Why was the biological mother, who is purportedly a well-abled, healthy individual unable to take care of her child;
- (ii) Whether this adoption process is used to circumvent the laws of The Bahamas in regards to citizenship.

[10.] The Attorney General opposes the granting of an adoption order on the grounds of public policy as it appears that the purpose of the application is pass on citizenship to the minor. Section 11 of the Act states the overall effect of an adoption order:

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...

[11.] Section 4 of The Bahamas Nationality Act speaks specifically to the effect of an adoption order in relation to citizenship:

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.**

[Emphasis added]

[12.] Counsel for the Attorney General submits that although the general wellbeing of a minor child is an important factor, the Court ought to consider the evidence before it to determine whether the purpose of the adoption order is to confer citizenship. In **Re H (a minor)** (1982) Fa.121 at pages 133 *Hollings, J.* observed:

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?...

[Emphasis added]

[13.] The Court must consider the issue of nationality or public policy which may have some bearing in determining whether to grant an adoption order; however, it is not the only factor that the Court must consider. Any issue of nationality or public policy must be balanced by the question of the minor's welfare. The age of the minor may also factor into the Court considerations as observed by *Hobhouse, LJ* in **Re K (A Minor) Adoption Order Nationality** 1995 Fam. 38 stated that:

This situation can be contrasted with that of a young child or baby who has many years ahead of it before it will become an adult. There, there is substance to the question of the welfare of the child. The court must evaluate what will best serve the need to safeguard and promote the welfare of the child throughout its childhood and take this aspect into account as the primary consideration in deciding whether or not to make the adoption order. Where the child is young, the judge's evaluation of this aspect is likely to be determinative and it would have to be a strong consideration of public policy which would displace it. Where, as in the present case, the welfare issue is negligible, it may be difficult for the applicant for the adoption order to find grounds which are sufficient to counterbalance the public policy considerations of not allowing a right of entry or abode to be acquired....

[Emphasis added]

[14.] Counsel for the Applicant submits that the application is genuine and merely for the purpose of conferring citizenship on the minor. Further that the minor is entitled to apply for citizenship under Article 7(1) of Constitution:

A person born in The Bahamas after 9th July 1973 **neither of whose parents is a citizen of The Bahamas shall be entitled, upon making application on his attaining the age of eighteen years or within twelve months thereafter in such manner as may be prescribed, to be registered as a citizen of The Bahamas:**

[Emphasis added]

[15.] Counsel for the Applicant also invites the Court to consider the dictum of *Stewart, J* in **WSP & CSP (Re: MZ, a minor)** 2020/FAM/and/00532 which involved the adoption of foreign born minor of tender years. *Stewart, J* at para. 34 made the following observations in her ruling:

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. [Emphasis added]

[16.] The Court is also guided by the dictum of *Hepburn, J* in **Re: TCB and JAB, Re: JS and JFS** BS 2011 SC 142, that age of a minor may be a factor which the Court ought to weigh in determining whether the true motive of the adoption order is acquisition of citizenship:

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.** [Emphasis added]

[17.] In the instant case the minor who is currently 8 years old, born in The Bahamas of non-Bahamians, on work permits, residing in The Bahamas. The Applicant is a godparent of the minor who has been her primary caregiver since February, 2023. The biological mother, JS, was -until recently- a live-in housekeeper, whose income has been reduced due to less work hours and expenses related to accommodation. The biological father, SJ, is married, works at local business, maintains a family in his home country and does not contribute to the welfare of the minor.

[18.] The Court also notes that biological mother indicates that she intends to return to her home country at some point in the near future. No evidence has been presented to the Court that the Applicant or the biological parents have received or agreed to receive, made or given, any payment or other reward in consideration of the adoption of the minor.

[19.] The Court considered the evidence and information before it and has considered the issue of citizenship in determining whether to grant the adoption order. The Court has also considered that the welfare for minor is paramount and having regard to the age of the minor and balancing

the same with public policy. The Court finds that the minor's welfare outweighs any issue of nationality or public policy.

Disposition

[20.] In all the circumstances of the case, the Court having reviewed the evidence and the submissions, and in keeping with the guiding principle of the CPA the Court hereby exercises its discretion and finds that an adoption order will best safeguard and promote the welfare of the minor.

[21.] It is hereby ordered:

- (i) That the Applicants are hereby authorized to adopt the minor.
- (ii) The minor is to be known by the name set out in paragraph of 14 of the Statement in Support of Application for the Adoption Order filed herein.
- (iii) The Registrar General make appropriate entry in the Adopted Children Register.

Dated: 9 June 2026

[Original Signed and Sealed]

Constance Delancy
Justice