

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

FAMILY DIVISION

FILE NO. 2019/FAM/adn/00055

BETWEEN

IN THE MATTER of
The Adoption of A (An Infant)

Before: The Honourable Madam Justice D. Newton

Appearances: Iris Donaldson for the Applicants
Genesta Seymour Pro Se

Hearing Date: 22nd January, 2020

Date: 30th January 2020

JUDGMENT

Adoption – Young single mother leaving child with male applicant – Mother not consenting to adoption – Infant spending six plus years with applicant prior to adoption hearing – Whether mother unreasonably withholding consent to adoption – Infant’s welfare paramount

Held – Mother’s consent is dispensed with - Adoption Order granted. It is in the best interest of the child that he remains in the custody and care of the applicants.

NEWTON J

1. On the 30th January 2020 I delivered an oral decision in this matter granting an Adoption Order to the Applicants and promised to give my reasons in writing and I now do so.
2. This application is for an Adoption of an infant (A) pursuant to The Adoption of Children Act Chapter 131 (The Adoption Act) by Originating Summons filed 31st January 2019 and supported by an Affidavit sworn by the applicants (Mr and Mrs P) and filed the 14th February 2019.

The issues

3. Whether the consent of the biological parents are to be dispensed with.
 - Whether an adoption order is in the best interest of this child

The background facts

4. The infant (A), born on the 19th May 2012, is the fourth child of the biological Mother (the Mother) who left him at five months old with her godmother who at the time was married to Mr P. Several months later the parties separated and A was left in the sole care of Mr P. In 2016 he married Mrs P, the joint applicant in these proceedings. A remained the only child in the home following the marriage along with Mrs P's adult daughter. On the application for adoption the biological parents refused to give their consent. While the Mother attended the substantial hearing she nor the father attended for the oral decision despite the Mother being advised of the date and time.

The Evidence

The proposed adopters

5. Mr P is an Attorney while Mrs P is a School Administrator and Property Manager. Both requested to give viva voce sworn evidence in addition to the Affidavit in support of the Application. Mr P stated that he performed

as a single father from the time the infant was five months old until his remarriage some four years later. He explained that he paid for the infants care and never requested any financial assistance from the biological parents. He said that the Mother did not request or insist on the return of A to her custody after she learnt of the breakdown of his marriage to her godmother.

6. Mr P explained that early on he informed the mother that he wished to adopt the child and she said that she had no problem with it. He said she assured him that she will never take the child away from him. On the contrary, he stated, that the biological father was not so co-operative. He explained that the father insisted that he (Mr P) "*do something for me*" which Mr P said he interpreted as a financial request which he said he was not prepared to do, thus he ceased communicating with the infant's father.
7. Mr P said that on several occasions the Mother requested him to assist her with food items for her other children which he happily accommodated. That he took her to the wholesale grocery store and purchased groceries for her and the other children.
8. He said that he wanted the infant to know his siblings and his mother and to this end he took the child for visits leaving him in the Mother's care for several hours. However he said that he was forced to cease this practice as too often A would return ill thus necessitating him incurring medical expenses.
9. He stated further that on another occasion when he went to collect the child it was already dark and he met the Mother sitting under a tree with the children. When he enquired why they were not in the house he said that the mother informed him that she lived with her boyfriend and his father and that she had no key to the house therefore she usually waited outside with her children until either one of them arrived home. As a result of this he ceased taking the child for visits to her. Interestingly, the Mother did not refute this evidence.
10. He said the infant does not know his biological father as they have had no contact with each other.

11. Mr P explained that he is the only father A knows adding that he (A) does not know his biological father and refers to the applicants as “*mummy and daddy*”.
12. Mrs P in her evidence explained that they have a mother/son relationship and that the infant refers to her as mother.
13. Mr P stated that prior to his marriage to Mrs P he was a single father to A. That he was forced to arrange and pay for babysitting facilities for the infant while he was at work and that he ensured that A received all his immunizations.
14. That A’s biological parents did not register his birth therefore he was unable to obtain a birth certificate for him and consequently a passport. That despite several requests to the biological parents, even to the extent of drafting an Affidavit of Birth for their execution, A’s parents refused to cooperate with him to obtain the birth certificate. He explained that he had to resort to family members of the infant who swore the affidavit in order that A’s birth is registered. He however, is still unable to obtain a passport for the infant.
15. Mr P stated that on several occasions the Mother asked him for food for herself and her other children and he would in turn purchase wholesale food items and deliver them to her. Because he always insisted that he (Mr P) “*do something*” for him. Interpreting that as a financial request Mr P said he refused as he was not prepared to give the Father any money.

The biological mother

16. The biological mother, a custodian at a government Primary School, having been served with Notice of the Hearing attended and requested to be heard. She admitted to leaving the infant with her godmother and subsequently Mr P. She also admitted that over the seven years, since the applicants have had the child she has not requested his return. She also confessed that she is unable to provide him with the standard of living that he now enjoys. She

further admitted that upon her request Mr P on occasions had provided her and the remaining children with food items.

17. The Guardian ad Litem's Report referred to the Mother's other children's performance in school highlighting their low grade point average (1.8 and below). The Report also commented on the children's frequent absence from school, an average of 44 days in a school year. When questioned about it she could not give a reasonable explanation as to why the children's absenteeism had been so high.

Report of the Guardian Ad Litem

18. Explaining the relationship between the adopters and the infant, the Report stated that there exists a strong bond between the infant and the applicants. Also, that the infant has been in their care without any definitive position from the biological parents that he should be returned.

19. It also outlined a number of attempts that were made to interview the biological parents through text messages, telephone calls, voice mail telephone messages, without any success. Further, that several appointments were made with the biological parents to meet at varying places including the Social Services Department Office and the Marathon Mall but none were kept by either of the parents.

20. Additionally the report explained that,

“it is unfortunate that the biological parents have not made themselves available to be interviewed leaving it to be concluded from telephone contacts that they do not support the adoption, having declined to give insight into how they will support and guide the Infant”.

21. The report further recommended that considerable weight should be given to the nurturing Mr and Mrs P have given to the infant that has shaped him into a well-mannered, articulate and God conscious young boy.

22. It went on to explain that Mr and Mrs P provided “exceptional care” and that evidence of their interaction with him can be gleaned from the collage

of photographs provided by them showing photographs of the child from infancy to his current age.

23. It concluded that the best interest of the infant is to have his life stabilized so that all entitlements the Applicants can give to him can be done without obstruction and that the adoption is recommended.
24. The Report referred to the Applicants as being “*handicapped*” as they are unable to obtain a passport for him, thus unable to have him accompany them on trips abroad. It concluded that they were given the expectation that they would raise the child as their own. That the best interest of the child is to have his life stabilized so that all entitlements the applicants can give him can be executed without obstruction. The Report recommended that in the best interest of the child that the parents’ consent is dispensed with and an adoption order made.

Consent

25. Adoption orders are made in accordance with the Adoption Act and by *Section 8* the court is required, before making an adoption order, to be satisfied that every person whose consent is necessary has consented and understands the nature and effect of the adoption and that the order if made is for *the welfare of the infant* (emphasis mine) having regard to his wishes.
26. Enshrined in the Adoption Act is the Court’s ability to exercise its discretion to dispense with consent of the biological parents (in this case) in the event it finds that such consent is being unreasonably withheld. (Section 7 (1)(c))
27. The test for reasonableness is an objective one. *Sumner J*, in his judgment in *Re A (Adoption: Mother’s Objections)* [2000]1 FL at page 688 approved the test expressed by *Balcombe LJ*, in *Re L (A Minor) (Adoption: Statutory Criteria)*[1990] 1FLR 305 where he explained that;

“When determining whether a parent had reasonably withheld his consent to the adoption of his child, the test which the court had to apply was whether a reasonable parent in the position of that parent would have withheld his consent. The court should not substitute its own judgment for the view of the parent”.

28. In *re A* supra, some 3 days after the infant was born the mother had placed him in foster care with the intention of adoption. She later sought to withhold her consent to the adoption on the basis that when she had initially given him up she was depressed and was suffering from bulimia. She reasoned that as a result of counselling and her own maturity she had changed her mind. The court refused to take the child from the proposed adopters and return him to the mother on the basis that he had been in their care for eight months, which the court considered was a “*long time*” in the life of a child. The court also found that her decision to withhold her consent was unreasonable in that she had not considered that she formed no bond with the infant and that her refusal was purely an emotional response.
29. In the instant case, the Mother is not asking for the return of the infant. In fact she admitted that she has no issues with the proposed adopters continuing the day to day care of the infant because she is unable to provide him with the care and standard of living they are currently providing.
30. She stated that she will not consent because she does not want her child to be adopted, without giving any further reasons for her decision. This is a child she had not seen in three years and had not cared for since he was five months old, he is now seven years old.
31. In distinguishing the facts of **Re A**, the biological mother in that case was requesting the return of the child that she had voluntarily given up for adoption and was therefore withholding her consent to the adoption. The child was in the care of the proposed adopters for less than 12 months, which the court considered a long time. In the instant case he has been in the care of the applicants for seven years, which is all of his young life. Like the mother in **Re A**, the Mother in the instant case has no attachment to the infant, she has formed no bond with him.
32. The Mother has demonstrated her inability to provide stability and security to this infant. Her actions are best described as “*abandoning*” her child. The effect of her actions is to leave the infant in a state of limbo. I must

consider the potential consequence of allowing the mother to vacillate between allowing the Applicants to have full custody, care and control of A with all of the emotional and financial responsibilities that it entails and being able to *swoop in* and legally remove A at any time that she chooses in the future. I conclude from the evidence that the Mother's intention in withholding her consent is simply to hold her position as a meal ticket for the remainder of the infant's childhood.

33. Applying the reasonableness test, that is, whether a reasonable mother in the position of this mother would have withheld her consent, I considered the Mother's admitted inability to render the standard of care that the child is used to, also the fact that she wishes the applicants to continue to care for the child. This confirms to me not only that she understands the nature and effect of an adoption order but also that she understands that her consent to the adoption is for the welfare of the infant. I find that the Mother's decision is selfish and that her refusal to consent to have the infant adopted is unreasonable. I shall therefore rely on the provisions of the Adoption Act and dispense with her consent.

The best interest of the child

34. Is adoption in the best interest of A? The effect of an adoption order is that it extinguishes all rights, duties, obligations and liabilities of the parents and vests all such rights in the adopted parents as though the child was born to the adopted parents in lawful wedlock. In considering what is best in his interest it is imperative that I consider his welfare.
35. The child's welfare ought to be the paramount consideration when any determination is made respecting him by virtue of *Section 3 of the Child Protection Act*, such consideration to include the child's physical, emotional and educational needs, the wishes 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.
36. In Re H (a Minor) 1992, in outlining the approach the court should take in such cases regarding welfare Hollings J. said,

“It must treat welfare as the first consideration, outweighing any one factor but not all factors.”

37. That from the evidence it must look at the true motive for the application to adopt and if it finds that,

“...part of the motive - or it may be at least as much- is to achieve real emotional or psychological, social and legal benefit of adoption then an adoption order may be proper...”

38. A's welfare is paramount, which dictates that he is entitled to consistency in his nurturing and care and not to be, as previously stated, left in *limbo*. I do not believe that should be left to chance.


Conclusion

39. Considering the question of welfare I refer to the decision of *Hobhouse, LJ* in **Re K (A Minor) 1995 Fam. 38** where he explained that,

“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.....”

40. A is still fairly young, seven years old, he has formed a strong bond with the applicants, as Mr P puts it, they are the only parents he knows. Mr and Mrs Pare nurturing him and providing him with a loving home to ensure he is a well-rounded individual and to secure his transition from childhood into adulthood. I find that A's physical, emotional and educational needs are best met with the Applicants which is evident from his excellent grades in his school report. To deny the application to adopt would expose the infant to a risk of grave psychological and emotional harm.

42. Having taken all the circumstances into consideration I am satisfied that an adoption order will best safeguard and promote the welfare of A during the remainder of his minority. Therefore I order that the applicants are authorized to adopt the said infant and that the appropriate entry is made in the Adopted Children Register.



DONNA D. NEWTON
Justice