

IN THE COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
FAMILY LAW DIVISION  
2023/FAM/AND/00106

**IN THE MATTER OF THE ADOPTION OF CHILDREN ACT, CHAPTER 131**

BETWEEN

**AJ and FJ**

Applicants

AND

**OEJ  
(An Infant)**

Respondent

Before: The Hon. Madam Justice Constance Delancy (Acting)

Appearances: Crystal Kelly-Newman for the Applicants, Applicants  
appearing  
Ms. Nyanne Olander, Office of The Attorney-General  
Ms. Susan Missick, Department of Social Services  
Ms. Sheila Johnson-Smith as Guardian Ad Litem

Hearing Date: 15 February 2024

**RULING**

**DELANCY, J. (Acting)**

1. The Applicants who are the biological father of the infant and his wife, are applying pursuant to the Adoption of Children Act, Chapter 131 (“the Act”) to adopt the infant herein. The Applicants are thirty-nine and thirty-seven years old respectively and have had the Infant, now eight years old, in their care since he was six days old.

2. The Infant was born in The Bahamas on 7 July 2015 to a single mother, a Haitian national, Stayse Edmond and the Applicant after a brief relationship. On 2 June 2016 the Applicant and Ms. Edmond swore an Affidavit of Birth to acknowledge the Applicant as the father of the Infant and amend the Infant's surname to that of the Applicant's. Shortly after the Infant's birth Ms. Edmond left the child in the care of the Applicant and his wife.
3. The Infant visited his mother, who at the time resided in Abaco, for a weekend when he was two months old and save and expect the aforementioned brief visit there was no further interaction with her in over eight years.
4. The whereabouts of Ms. Edmond is unknown. The Applicant as the biological father consented to the adoption of the infant by his wife. There is no consent by Ms. Edmond on file and the Applicants are asking the Court to dispense with her consent in the circumstances.
5. The consent a parent or guardian is one of the requirements in the granting an adoption order. Section 7(1) of the Act provides that the court may dispense with any consent if is satisfied of any of the following:-

**“(a) in the case of a parent or guardian of the infant, that he has abandoned, neglected or persistently ill-treated the infant;  
(b) in the case of a person liable as aforesaid to contribute to the maintenance of the infant, that he has persistently neglected or refused so to contribute;  
(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.”** *[Emphasis added]*.

6. The factors that the Court must consider when determining whether to dispense with the consent of a parent or guardian were summarized in the case of **Re B-S**

**(Children) [2013] EWCA Civ 1146** Sir James Munby, President of the Family Division at paragraph 22:

**“The language used in Re B is striking. Different words and phrases are used, but the message is clear. Orders contemplating non-consensual adoption – care orders with a plan for adoption, placement orders and adoption orders – are “a very extreme thing, a last resort”, only to be made where “nothing else will do”, where “no other course [is] possible in [the child’s] interests”, they are “the most extreme option”, a “last resort – when all else fails”, to be made “only in exceptional circumstances and where motivated by overriding requirements pertaining to the child’s welfare, in short, where nothing else will do”: see Re B paras 74, 76, 77, 82, 104, 130, 135, 145, 198, 215.”** *[Emphasis added]*.

7. The Applicants’ Statement In Support of Application for an Adoption Order filed 10 August 2023 and the Guardian ad Litem in her Report filed 27 October 2023 indicate the lack of interaction between Ms. Edmond and the Infant in over eight years and that Ms. Edmond’s whereabouts are unknown. Further the Applicant’s Affidavit sworn 15 February 2024 exhibited a missing persons’ bulletin issued by the Police whereon Ms. Edmond last known sighting was 13 March 2023.
8. By Order dated 19 September 2023 Mrs. Sheila Johnson-Smith was appointed as Guardian ad Litem to safeguard the Infant’s interest in these proceedings. Mrs. Johnson-Smith is not employed with the Department responsible for Social Services. Section 17(2) and 17(3) of the Act provides that:-

**“(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.”**

9. Ms. Missick appeared as the representative of the Department of Social Services acknowledging that the Department was served in accordance with the Act and offered no objection to the adoption of the Infant by the Applicant and his wife.
10. The Infant, born in The Bahamas to a Bahamian father and a single non-Bahamian mother is considered a foreign child, consequently the application was referred to the Office of the Attorney General.
11. Counsel for the Attorney General Office Nyanne Olander appeared and advised the Court that there were no objections to the adoption of the Infant by the Applicant and his wife.
12. The Guardian ad Litem Report concluded that the parental relationship is well established. The Guardian ad Litem stated that she had no hesitation in supporting the Applicant and his wife’s application to adopt the Infant. She described the bond between the Infant and FJ: **“It is obvious that the Infant is well loved by the Applicants, especially Mrs. J\_\_\_\_, as every time she speaks of him, her eyes light up and she smiles. The Infant appears to be a happy child.”**
13. The Court in exercising its power to grant an order of adoption must 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].*

14. The Court notes that the issue of nationality may have some bearing in determining whether to grant an order for adoption but is not the only factor which the Court must consider. Any issue of nationality or public policy must be balanced by the question of the Infant's welfare. Hobhouse, LJ in **Re K (A Minor) 1995 Fam. 38** stated 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 and it would have to be a strong consideration of public policy which would displace it. Where.....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].*

15. The issue of citizenship does not appear to be the motivating factor for adopting the Infant in this case. The Court considered the tender age of the Infant and finds that the Infant's welfare outweighs any issue of nationality or public policy. Further the Court also noted the no objection by the Attorney General to the granting of an order of adoption to the Applicants of the Infant.

16. The Infant has no relationship with his biological mother and for the past eight years the Applicants have been his parents. Further the biological mother, of whom consent is required, cannot be found. In light of the overriding requirement of the Infant's welfare I hereby dispense with the consent of the biological mother of the Infant.
  
17. I find that based on the evidence and in keeping with the guiding principle of the CPA an adoption order will best safeguard and promote the welfare of the Infant. Therefore I hereby order that the Applicants are hereby authorized to adopt the Infant. The Infant 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.

Dated: 21 February 2024

Constance Delancy  
Justice (Acting)