



Neutral Citation Number: [2020] EWFC 60 (Fam)

Case No: ZC35/19

IN THE FAMILY COURT
Sitting at the Royal Courts of Justice

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2020

Before:

MRS JUSTICE THEIS

Between:

G

1st Applicant

- and -

X

2nd Applicant

- and -

W

1st Respondent

- and -

Z

(Through Her Children's Guardian, Ms Lillian Odze, 2nd Respondent)

Ms Kathryn Cronin (instructed by Goodman Ray) for the 1st & 2nd Applicants
Ms Maria Stanley (instructed by Cafcass) for the 2nd Respondent
The 1st Respondent Did Not Attend the hearing

Hearing date: 31st July 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MRS JUSTICE THEIS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Theis DBE:

1. This matter concerns an adoption application in relation to Z, age 3. The Applicants are G and X, represented by Ms Cronin and her instructing solicitor, Ms Dally. Z is a party to these proceedings through her Children's Guardian, Ms Odze, and is represented by Ms Stanley. Ms Prudence has prepared the Annex A report including two more recent Addendum reports and has also attended this hearing.
2. All parties agree that an adoption order should be made, which is the order the court is going to make. Due to the background to this matter and the importance of this order not only for Z but also for the Applicants it is right the court should set out the relevant background and explain the reasons for the decision.
3. It is important to say at the outset that the Applicants consider this to be an open adoption, in that they hope and expect Z will have some continuing contact with her birth mother and the wider maternal family. That wish has been greatly assisted by the recent evidence the court has.

Relevant Background

4. G was born in this jurisdiction, is a British citizen by birth and a Spanish and Mauritian citizen by descent. X is a Spanish born citizen.
5. G moved to Spain with her family when she was aged 9. It is submitted she did not lose her English domicile during her residence thereafter in Spain, as her family continued many English traditions, ensured her continuing education in and fluency in English and maintained close family links with their relatives who remained here. In January 2020 the Applicants relocated permanently to live in this jurisdiction. It was a carefully planned move, involving moving jobs, the transfer of their savings here and locating a permanent home here. They are now very well settled and supported and their lives enmeshed with close relatives here.
6. Z was born in Mauritius to W, a single mother, then aged about 21. W has an older daughter Y (now approximately 5 years old), cared for by her parents. W has consistently stated that she was unable to care for Z. She began looking for adoptive parents during her pregnancy as she did not wish to leave her child in an orphanage. The Applicants, through G's cousin, V came to hear of her situation, and they communicated with W in the later stages of her pregnancy and the Applicants were present at Z's birth and assumed her care. At the Applicant's instigation W was included in the choice of Z's name.
7. Z's father, K, is not named on her birth certificate. He and the birth mother had a brief relationship, they were not married, separated during her pregnancy and he has taken no further part in Z's life. The Applicants only became aware of his identity when G opened a sealed letter written soon after Z's birth which W had provided for Z when she is older. The letter gives the father's name but no contact details. The information from the Mauritian lawyer is the Applicants cannot initiate a search for the birth father's whereabouts or proceedings to prove his paternity, as such enquiries can only be made within 2 years of the child's birth by W, which did not take place.

8. The Applicants, through V made efforts to trace the birth father by the steps outlined in the statements. It has not been possible to trace him, no further steps are suggested by any party and the court is invited to determine that no further steps are required to be taken.
9. W relinquished Z's care at her birth. On 11 April 2017 she attended at the Supreme Court and in the presence of an attorney and Court officer signed the statement confirming what she had done, that it was with her agreement and setting out her reasons for doing so due to her personal circumstances and confirming her consent to the applicants to remove Z from the jurisdiction.
10. The birth father does not have parental responsibility for Z in Mauritius or in this jurisdiction. W has parental responsibility for Z in Mauritius and here. The Applicants have parental responsibility for Z in Mauritius but did not have this status here prior to the child arrangements order on 9.6.2020.
11. One of the issues that has concerned this court and Ms Odze has been the question of W's consent to the adoption. Section 52 (5) ACA 2002 requires it to be given unconditionally and with full understanding of what is involved. She has now given witnessed formal consent to this adoption.
12. The evidence demonstrates the considerable steps the applicants have taken to obtain W's formal consent. These steps have included repeat telephone calls to W and the maternal grandmother from V between May 2019 – March 2020. V met with the W in May 2019, unfortunately she failed to attend two subsequent appointments in September 2019 and January 2020. W was visited by a Court appointed Usher to serve her with hearing papers and the adoption consent form. She signed to show she received these papers but did not sign the consent form. The recent statements by Ms Dally and V confirm the Applicants instructed Mauritian barrister, Ms Luchman to meet with W and seek to arrange to obtain her consent. She sought to arrange to meet W in prison, her home, at her office and by telephone. W was absent or failed to attend these meetings. Ms Luchman also tried to arrange for the Court Usher to effect personal service of the letter and Court order on W but these efforts were also unsuccessful, although the Usher left the papers at the home of the maternal grandmother as W was residing there. W subsequently confirmed to V she had received them.
13. Over this period V, has established a line of communication with the maternal - grandmother and through her arranged to meet W on 23 July 2020. It is clear the maternal family have had a number of difficult events they have had to manage, including recent deaths of close family members then W being charged with drug related offences and being remanded in custody until her recent release on bail.
14. As set out in V's statement W explained the family's views about the attempts at service via the lawyer and the Usher which they saw as intrusive, embarrassing and unhelpful. As described in her recent statement V was able to read and explain the agreed consent questions, the terms of the consent form and assured W about the agreed contact arrangements proposed by the Applicants. She was able to do this in a way that assisted W as she speaks the Creole language and was sensitive to the views expressed by the family. I agree with Ms Cronin when she describes her explanations were painstaking, sensitive and effective. W signed the consent form in V's presence. As reported by V, W made clear she had no regrets about the adoption. V was able to play a voice message

from the Applicants who apologised to W for causing her distress and embarrassment over the adoption formalities and assured her of their intention to maintain Z's contacts with her. V confirmed that the birth mother appreciated their message.

15. The consent form was not signed before a notary or witnessed by a lawyer but as V's statement makes sets out this was a careful, fair and properly adapted process. I accept this signed consent form stands as evidence of a fair, transparent process that was respectful to W and her family. The short video clip sent with the papers shows W's relief and happiness that the process was satisfactorily concluded and will form a valuable part of Z's life story book, together with W's letter and the other information the Applicants have.
16. I accept the applicants meet each of the relevant adoption criteria.
17. The court gave leave on 1 April 2019 for the Applicants to make their application under s 42(5) ACA 2002, even though Z had not lived with them for 3 years. Notice of their intention to adopt was given to the Local Authority on 23 April in accordance with s 44 ACA 2002 and waited the required 3 months before making their application on 20 August 2019.
18. As set out in the comprehensive and detailed Annex A report the Applicants co-operated with all requirements to enable the report to be completed. This is a very positive report, recognising the Applicant's commitment and devotion to Z, how she has been fully integrated into their family and the unconditional love she has from the Applicants and the extended family and the consequent stability and strength of the relationships.
19. As regards the other eligibility criteria the Applicants are over 21 years, are married and Z is not married or in a civil partnership and is under the age of 18 years. G has retained her domicile of origin. She was born here and I am satisfied the evidence demonstrates she retained her attachment and ties to this jurisdiction. The Applicants permanently relocated here in January 2020. The planning for it, X's resignation from his employment, and the transport of their household furniture and their possessions all support this.
20. Section 47(2) ACA 2002 requires that each parent or guardian of the child consents unconditionally and with full understanding of the legal consequences of the adoption order to the making of the adoption order or that the parent or guardian's consent should be dispensed with. A parent within the meaning of the ACA 2002 is a parent with parental responsibility.
21. Section 52 ACA 2002 permits the Court to dispense with a birth parent's consent if (s52(1)(a) satisfied that the parent lacks capacity or cannot be found or (s52(1)(b) the welfare of the child requires the consent to be dispensed with.
22. W has given her consent to this adoption as outlined above. Although it is not in the form set out in PD5A it is to like effect. Ms Cronin and Ms Stanley have drawn the courts attention to the requirement in rule 14.10 (6) that any form of consent executed outside this jurisdiction must be witnessed by one of the persons listed, such a notary public. That has not taken place here, as the consent has been witnessed by V. Ms Cronin, supported by Ms Stanley, submits that under Rule 14.10 (2) the court has a

general power to direct about how the consent is given. The phrase '*as the court directs*' could include, for example, consent given in other ways than in the prescribed form. They submit when the court looks at all the evidence in this particular case it can be satisfied this consent was given by W and was given in a way that was entirely informed and voluntary. This is supported by the video clip of W's message and the wider information given in V's statement. I agree with that analysis. It is clear from the information the court has every effort has been made to engage W in the adoption process and to make sure she is kept informed. The evidence given in V's statement demonstrates that W's consent is given freely and with full understanding, which is supported by the appropriate questions W asked V and the content of her video message.

23. As regards K's consent, it is not required as he does not have parental responsibility and, in any event, I am satisfied that the evidence demonstrates he cannot be found.
24. In determining whether an adoption order should be made the court is guided by what meets Z's lifelong welfare needs in accordance with s 1 ACA 2002. Those welfare needs are the courts paramount consideration.
25. This is an order that is supported by the Applicants, their extended families, the birth family and local authority. Although Z is too young to express her wishes and feelings they are evidenced by the descriptions of how settled, happy and confident she is in the Applicants care. Ms Prudence notes the ease with which Z has adjusted to the move here, which reflects her strong sense of security with the Applicants. Ms Odze also notes that Z is a much loved and cherished child with strong attachments to the Applicants.
26. Z's needs are clearly being met by the Applicants as described by both Ms Prudence and Ms Odze. The Applicants have sensitively begun life story work understanding how important it is for Z's continued stability and security for her to have a full and transparent understanding of her own background. This open adoption will ensure that Z will know and be encouraged to spend time with her birth family, as described in the Annex to the order made on 9 June 2020. She has a loving explanation of her relinquishment by W and an adoptive family with positive views on and a commitment to post adoption contact, with a real appreciation of how it will benefit Z. Z has been placed with the Applicants since birth, she has established and valued relationships with all the extended family and G's own origins, will enable Z to know and value her own Mauritian background.
27. Although there has been some delay in being able to make this final order, I am satisfied it has been a delay that has benefitted Z and Ms Odze was right in the issues she outlined in her report dated 2 June 2020 about taking further steps to seek to engage W. With the additional information it has enabled the court to make this order with the consent of W in a way that gives her the re-assurance about ongoing contact, has retained the line of communication between the adults who are important for Z in a way that meets Z's lifelong welfare needs.
28. For the reasons set out above I will make an adoption order.