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IN THE FAMILY COURT
Sitting at the Royal Courts of Justice
[2019] EWFC 38



No. ZE18Z00122

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 25 January 2019

Before:

MRS JUSTICE THEIS

(In Private)

B E T W E E N:

PG

Applicant

- and -

CD

Respondent

THE APPLICANT appeared in Person.

THE RESPONDENT appeared in Person.

MS D. GARTLAND appeared on behalf of London Borough of Tower Hamlets.

MS M. CAREW appeared on behalf of the Children's Guardian.

J U D G M E N T

MRS JUSTICE THEIS:

Introduction

- 1 This is an application made by PG to adopt C, born in 2002 in Sierra Leone, who is now 16 years of age. Her birth mother is CD, and her birth father is EF. It is accepted that EF has played no part in C's life and the evidence points to his relationship with CD ceasing prior to C's birth. C has had no contact with him since her birth and his current whereabouts are unknown.
- 2 CD married PG in 2014. So, this is a stepparent adoption. They have one child of their marriage, W born in 2009 (born before they got married). C came to this country with CD and W in February 2018. PG is here on a spousal visa for a period of 3 years and C has a visa that is valid until November 2020. W and PG are both British citizens and have British passports.
- 3 The Secretary of State for the Home Department ('SSHD') has been given notice of this application and by letter dated 30 November 2018, he informed the court he did not wish or intend to take any part in these proceedings. A direction was made in November for an EX660 request to the Home Office to provide documentation provided to them, which has been served and disclosed to the parties. Nothing arises from that save for the contents of a letter that accompanied the disclosure dated 26 November 2018 from KW, who is described as an executive officer. In that letter, she says as follows:

“Home Office Computer records show that on 4 February 2018, CD was issued with entry clearance to the United Kingdom valid until 4 November 2020 on condition that recourse to public funds was prohibited, endorsed with a leave to enter outside of the rules as the dependent of a person in Her Majesty's Forces, PG.”

- 4 Nowhere in the papers in these proceedings or in any application made to the Home Office has it been suggested that PG was somebody who had been employed or worked with Her Majesty's Forces. As Ms Carew says, that is a mistake that appears in that letter albeit it has not been corrected, and I am proceeding on the basis that is a mistake. In the next paragraph in the letter, it confirms that:

“On 4 February, C was issued with entry clearance to the United Kingdom, valid until 4 November 2020, on condition that recourse to public funds was prohibited to her mother, CD and her sponsor was named as PG.”

Attached to the letter the SSHD provides the relevant information in relation to the immigration applications; nothing turns on them in this case. All parties before me agree an adoption order should be made in favour of PG in relation to C.

Relevant Background

- 5 CD is now 40. She was born in Sierra Leone, where she lived until she came to this jurisdiction. PG is now 57. He was born in Sierra Leone, but came to this country in 1981, initially as a student. He married SY in 1984. He became a naturalised citizen here in 1987. Through his marriage to SY, he had three children: They all live in this jurisdiction, independently in their own accommodation. They are known to C and have a close relationship with her. PG worked in the United Kingdom until about 1992. He then moved to the United States until 1995. There is some suggestion in the papers that he had a

relationship with somebody else in the United States, that a child that was born who is now an adult and lives in the United States. No further information is given. PG returned to this country and worked as a finance officer until 2008.

- 6 In December 2005, on a trip to Freetown to stay with a friend, he met C and CD, who were living at a friend's house.
- 7 In 2009, PG started work for a London local authority until 2011, when he was made redundant. He then moved to Freetown in 2011, opened a business there which he ran until December 2014. It was forced then to close because of a combination of the Ebola crisis happening at that time and his own ongoing illness. In early 2015, he returned to this jurisdiction.
- 8 In 2007, C, who by then had known PG for about two years, was adopted by PG and his then wife, SY. The order was made by the Sierra Leone High Court on 21 May 2007, at a time when PG and SY were living in the United Kingdom. Between 2007 and 2011 they returned back to Sierra Leone to visit C. By this stage, in fact, PG and CD had started their relationship because their daughter W was born in 2009.
- 9 Following W's birth, PG and SY divorced in 2010. In December 2011 PG moved to live in Freetown, Sierra Leone, and stayed there until he returned here in 2015. On 22 September 2014, PG and CD were married in Sierra Leone.
- 10 Whilst PG returned to the UK in 2015, C, W, and CD remained living in Sierra Leone. Applications were made through the Home Office to be able to secure their entrance to this country so they could all live together. In February 2018, the applications in relation to C and PG were granted and they came here with W. W was entitled to British citizenship and came here on her British passport.
- 11 The adoption application was issued by the East London Family Court on 9 October 2018 on Form A60, which is an application for an adoption order when a child is habitually resident overseas and is brought into the United Kingdom for the purposes of adoption.
- 12 At the first directions hearing I gave permission for the application to be amended and treated as an application for a step-parent adoption under sections 46 and 51 of the Adoption and Children Act 2002 (ACA 2002), rather than as an application that engaged section 83 ACA 2002. The intention behind the application was for the family to be reunited in one country and to regularise the status of C within the family and her status in the United Kingdom. The applicants gave notice to the local authority as they are required to do under the relevant provisions and the report, pursuant to rule 14.11 (3) Family Procedure Rules 2010 (FPR 2010), was prepared by Mary Fernandes dated 16 October 2018. It recommends the making of an adoption order.
- 13 Pursuant to the directions made by HHJ Purkiss on 23 October 2018, C was joined as a party to these proceedings and has been represented by Ms Carew (CAFCASS Legal) through C's guardian, Kate Goodridge.
- 14 Directions made on 1 November included provision for a hearing to consider the legal status of both EF and SY and whether they needed to be given notice of or served with this application. Following the filing of skeleton arguments on behalf of the local authority and the guardian in January, it was agreed that they did not need to be give notice and as a result of the court's consideration of those skeleton arguments, that hearing was vacated, and the application remained listed for today as a final hearing.

- 15 The applicant is unrepresented. The court has the benefit of statements from both PG and CD which they have signed today, the report that I have already referred to from Ms Fernandes, the guardian's report, and the material sent in response to the EX660 request. No party has required any oral evidence and although I have raised some matters of law in submissions, I also have not required any oral evidence.

Status of birth father

- 16 Turning to the status of EF and SY. First, EF. It is acknowledged he is C's birth father. Although his name is on the birth certificate that was registered in Sierra Leone, he does not acquire parental responsibility under section 4(1)(a) of the Children Act 1989 as that only applies in circumstances if parents are not married where the child's birth is registered or re-registered under section 10 or section 10A of the Births and Deaths Registration Act 1953 after December 2003. C's birth was not registered under the provisions of this Act. Consequently, EF does not have parental responsibility in this jurisdiction as a result of being on the birth certificate in Sierra Leone. In any event, as C was habitually resident in Sierra Leone at the time of her birth, the applicable law in relation to that is very likely to be that in Sierra Leone. The relevance of his parental responsibility is whether (1) he should be served with this application and (2) whether his consent to the application is required or can be dispensed with under section 52(1)(a) ACA 2002. The definition of parent in relation to section 52 is a parent with parental responsibility, which EF is not.
- 17 An additional feature of this case is even if EF did have parental responsibility, did it continue after the adoption order made in Sierra Leone in 2007. I am satisfied that it did not. In those circumstances, he is not a parent with parental responsibility either because he did not acquire it or, in any event, it was extinguished by virtue of the adoption order in 2007. In those circumstances, he does not need to be served with the application or become a party. Even if I am wrong about that analysis regarding his status, I am satisfied that under rule 6.36 of the Family Procedure Rules 2010, the court would have dispensed with the need to serve him due to his lack of contact with C since 2002, and there are no current details as to his whereabouts since then. Likewise, if he is not a parent as he has no parental responsibility, his consent is not required to be considered by the court and, in any event, I am satisfied the court would have concluded he could not be found pursuant to section 52(1) ACA 2002.

Status of applicant's former wife (who had adopted the child in another jurisdiction)

- 18 Turning now to SY's status. The adoption order in Sierra Leone was made in 2007 but it is not an order which is automatically recognised in this jurisdiction, as it is not included in the list in The Adoption (Recognition of Overseas Adoptions) Order 2013 SI1801/2013. There is provision in section 57(3) of the Family Law Act 1986 for an application to be made for a declaration that an adoption made abroad is recognised here. The procedure, application, and principles applicable to such applications are well established. As no such application has been made, it means that as a matter of law here the status of the Sierra Leone adoption order remains unrecognised and invalid. The consequence of this is that as a matter of law here, C's parents remain CD and EF. CD has parental responsibility pursuant to section 2 (2) of the Children Act 1989 and, as I have already set out, EF does not have parental responsibility.
- 19 The enquiries undertaken by Ms Fernandes confirm that SY has no wish to assert any status in relation to C in these proceedings. She has not sought to make any application for the adoption order made in Sierra Leone in 2007 to be recognised here and has played no role in C's life since 2010. So, I accept the submission of Ms Gartland and Ms Carew that SY has

no legal status in relation to C here and is therefore not required to be given notice under Part 14 of the Family Procedure Rules 2010. Additionally, there is nothing arising from the enquiries made by the local authority to indicate that there is any reason for any other course to be taken.

- 20 Having dealt with the reasons why neither EF or SY need to be served with or given notice of these proceedings, I shall now turn to consider the legal framework in which the court is considering this application.

Legal Framework

- 21 The legal framework is helpfully summarised by Ms Gartland in her skeleton argument. The gateway provisions the court has to consider are, firstly, whether PG is over 21 years of age. He is 54. So, the requirement under section 51(2) of the ACA 2002 is satisfied.
- 22 The second matter is he either needs to be domiciled or habitually resident here. It is quite clear that he has habitual residence here because he has been here since 2015 in the context of a much longer period of time when he has been here, he has integrated into the community here and all the other requirements in relation to establishing habitual residence are clearly satisfied. The second gateway requirement under section 49(3) ACA 2002 is met.
- 23 The third matter is he is a partner of a parent of the child, so through a combination of section 51(2)(b) and section 67(2) ACA 2002, he is able to pursue this application.
- 24 Fourthly the court has to be satisfied that C has lived with him for a period of six months prior to the making of the application to satisfy the requirement in section 42(3) ACA 2002. C arrived here with CD in February 2018 and even though the application, in some parts of it, are dated in August 2018, it was not actually issued until 9 October 2018. So that that requirement is met.
- 25 The final requirement is the court has to be satisfied under section 42(7) ACA 2002 that sufficient opportunities to see the child with the applicant have been given to the local authority in the home where the local authority is. Ms Fernandes clearly sets out that she has been given sufficient access to the family to be able to enable her to complete her report. I am therefore satisfied the relevant gateway requirements are met by PG.
- 26 The court then needs to consider the lifelong welfare interests of C under section 1 of the ACA 2002, having regard to the criteria set out in subsection (4).

Discussion and Decision

- 27 Turning now to the evidence the court has available and the court's decision. The court has a number of documents, primarily the statement signed today by PG and CD, the detailed report from Ms Fernandes, and the report from Ms Goodridge. In considering this order the court is concerned C's lifelong welfare needs.
- 28 Ms Gartland, in her helpful submissions, has drawn the court's attention to the approach of the European Court of Human Rights in the case called *Soderback v Sweden* [1999] 1 FLR 25 where there is a distinction to be made in relation to the type of adoption application that the court is considering, as part of the proportionality evaluation about any interference with Article 8 rights. The distinctions the court needs to consider are, firstly, between an adoption which is a compulsory placement outside a family against the wishes of the parents

as against, as in this case, a stepparent adoption by definition where the child is to remain in the care of one of the parents, namely CD.

- 29 Secondly, the factors which the court may wish to consider which are likely to reduce the degree of interference with Article 8 rights of the child and any non-consenting parent (there is no such non-consenting parent in this case, as I have determined that EF is not a parent in the sense that he has no parental responsibility).
- 30 The court then needs to go on to consider whether it makes it more likely that adoption is a proportionate measure by considering matters such as if there was a non-consenting parent, the role that they had had in the child's life, balanced against the *de facto* position of the family ties which have existed in the home of the child's parent and stepparent, in this case, PG and CD.
- 31 There are, in considering the relevant features in this case, nine factors the court needs to weigh in the balance in this case. Firstly, EF has played no role in C's life since her birth. C has had no contact with him and as I have determined, he has no legal status in relation to her here.
- 32 Secondly, PG has been an active and responsible stepfather to C since 2005. He adopted her with his former wife in Sierra Leone in 2007 and has provided financial and emotional support throughout that time over the last 13 years.
- 33 Thirdly, C's mother and PG married in 2014 and prior to that, in 2009, they had a child together, W.
- 34 Fourthly, between 2011 and 2015, PG lived with C, her mother, and W in Freetown, Sierra Leone.
- 35 Fifthly, PG took steps for C, her mother and W to join him in the United Kingdom through applications he made in 2017 resulting in the visas being granted in February 2018.
- 36 Sixthly, they have lived here as a cohesive family unit since February 2018 and remain so at the time when this court is considering making an adoption order.
- 37 Seventhly, the detailed enquiries undertaken by the local authority support the order being made. The report by Ms Fernandes and the conclusions she reached are based on secure evidence-based foundations. She had a total of six visits to the family home between April and June 2018. She details her contact with the referees that were put forward, she had interviews with three out of five of the referees, detailing each of those conversations with her analysis in relation to what they said. Her report is a model of its kind as through her comprehensive enquiries and the careful analysis at the end of her report, the court can confidently rely on the recommendations she makes.
- 38 Ms Fernandes deals first of all with C's position, describing her as able to articulate her wishes in relation to this application, including the length of time that she has known PG, that she has always regarded PG as her father and the vital role he has played in her life. C is described as having strong attachments with him, which continue to date. She has never known her birth father and never seen him. C also has a strong attachment to her mother and a stable and loving relationship with her. Ms Fernandes sets out what PG has provided for C and observes at the end of her report what her observations are in relation to what she has seen during the six visits that she has had to the family home:

“During visits, I observed the interactions between PG and CD and they appear to have a loving and mutually supportive relationship. They spoke highly of each other and there appears to be a mutual respect and admiration for each other. They both spoke openly about the relationship and demonstrated that they can and have worked together to parent C which they are doing at present. They are very capable of caring for C on a long-term basis.”

39 She continues at the bottom of E33 as follows:

“During my interaction with C, she understands her father PG’s concerns and is happy to oblige. She is very happy to be in London and enjoys being with her church youth group wherein they have various activities. She also mentioned that her father has registered them in the local library and C has spoken to me warmly about PG as her father. She has an understanding of adoption and that it would make PG her legal father.”

Later at E34 she says as follows:

“C is well integrated in the family and is experiencing, the security, consistency and love.”

She then makes her recommendation that the adoption order should be granted.

40 The eighth matter is that C has told both Ms Fernandes and her guardian what her wishes and feelings are. Firstly, in Ms Fernandes’s report she states as follows:

“C is aware that she was adopted as a child by PG in Sierra Leone. For C, PG has always been her father and she has an attachment with him. She has a good relationship with her stepsisters and her stepbrother. C’s wish is for the stepparent adoption process to go ahead. As for her, PG is her father and has always been there for her providing her with love, guidance, and support.”

41 Ninthly, when I consider the detailed report of Ms Goodridge in relation to her enquiries following her visit at the family home on 26 November 2018, at paragraph 13 she reports C as saying as follows:

“C wants to remain with her mother, and sister, and PG, the only father figure in her life, and for his adoption of her to be made legal in the UK, ‘So we can stay together as always’.”

42 At paragraph 19 she continues:

“C views PG as a constant, supportive, and reassuring presence in her case, ‘a very good dad’. C fully considers him her father although she is of the age and understanding to recognise he does not have such legal status in the UK. As PG already fulfils the parental role in C’s life, the granting of the stepparent adoption will have little or no impact on C’s day to day life. I take the view that the significance of this order is more related to the fact that PG has applied for it and it offers a further demonstration to C of his commitment to her.”

- 43 Then at paragraphs 20 through to 22, Ms Goodridge sets out the analysis which underpin her recommendation that the adoption order should be made, which I accept.
- 44 In undertaking the welfare analysis this court is required to do, I am satisfied that an adoption order in favour of PG will give C the lifelong security her welfare requires. It will reflect the reality of her life. PG is the only father figure she has known. He has demonstrated enormous and consistent commitment to her over the last 13 years. That has not wavered and is confirmed in the reports of Ms Fernandes and Ms Goodridge. C wants the order to be made so, in her words, “We can stay together as always.” It is an order she wants, and the evidence amply demonstrates it will meet her lifelong welfare needs. For those reasons, I will make the adoption order.
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CERTIFICATE

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