Neutral Citation Number: [2020] EWHC 3296 (Fam)

Case No: BR25/2020

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/11/2020

Before :

MR JUSTICE KEEHAN

- -

In the matter of Re A (A Child: Adoption Time Limits s44(3))

- -

- -

Ms L MacLynn (instructed by **Irwin Mitchell**) for the **Applicant**

Hearing dates: 24th November 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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MR JUSTICE KEEHAN

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.

The Hon Mr Justice Keehan :

Introduction

1. This case concerns an application by Ms Z ('the applicant') to adopt A who attained her majority in September of this year. The adoption application, however, was made and then issued by the court in August 2020 before she had attained her majority.

2. An issue has arisen as to whether this application fails to comply with one of the statutory criteria of s.44 of the Adoption and Children Act 2002 ('the 2002 Act) and if so, whether this breach precludes the court from making an adoption order in favour of A. Accordingly the matter was reallocated to me to determine those issues.

3. I wish to record my sincere and grateful gratitude to Ms MacLynn, counsel for the applicant, and to her instructing solicitors for accepting the court's request to act for the applicant on a pro bono basis. Ms MacLynn provided me with an extremely helpful and comprehensive skeleton argument. Her instructing solicitors prepared and provided me with a helpful bundle of documents.

Background

4. The applicant is a British citizen of St Lucian origin and has lived in England for her entire life. She works as an ambulance care assistant. She has four children of her own, all older than A. In 2002, the applicant's grandmother died in St Lucia and she went there to assist with the family arrangements and to attend the funeral. While she was there, the applicant met with her cousin, Mr Y. Mr Y and his partner had very recently had a baby, A, for whom they did not feel able to care. They asked the applicant if she would take care of A and give her a better life in the United Kingdom.

5. The applicant agreed to take A back to England with her and care for her alongside her own children. Mr Y and his partner signed a deed in the presence of a St Lucian lawyer on 17 October 2002, stating that they were "relinquishing parental and legal custody of A" to the applicant, as well as giving her permission to take A to the United Kingdom "or any other territory she thinks appropriate reasonable and safe". The deed also stated that the birth-parents gave the applicant permission to take all reasonable decisions regarding A's education while she lives in the United Kingdom, health, religious upbringing, immigration and "any other matters touching the life of our child".

6. The deed signed by A's parents might be described in this jurisdiction as a document delegating parental responsibility, with reference to section 2(9) of the Children Act 1989. A's birth-parents refer to A throughout as "our child" and there is no reference to adoption in that document. There was no discussion of adoption at that time nor any proceedings to that effect in St Lucia.

7. The applicant returned to England shortly thereafter in October 2002, bringing A with her. The basis upon which A entered the country is not clear at this stage, and the Home Office has been requested to confirm A's immigration status. A has remained in the care of the applicant ever since. She has never returned to St Lucia. A regards the applicant as her mother and the applicant's older children as her siblings. She is regarded as a much-loved daughter and little sister in return. The applicant has

ensured that A has attended school and has met all of her emotional, physical and other needs. A is currently attending college and turned eighteen in September 2020.

8. A's birth-parents initially had some contact with her by telephone however this ceased when A was about five years old. When the applicant has returned to St Lucia, she would take photographs of A for the parents. A's birth-father visited England to see A in 2007 and 2010, latterly intimating that he wanted to take A back to St Lucia. The applicant subsequently sought and obtained a residence order. A's father did not engage in the court proceedings and has not been in touch with A since.

9. As A reached her teenage years, the applicant began to think about formalising her relationship with A, particularly in light of the fact that her birth-parents had not taken any part in her life. Having made some inquiries but without the benefit of legal advice, the applicant gave the local authority in which she and A lived, a London Borough, notice that she intended to apply to adopt A. That notice was provided by way of a letter dated 1 June 2018 and it triggered inquiries into the applicant's suitability to adopt A by a social worker, Ms B.

10. Ms B made a number of enquiries including meeting the applicant and A and speaking to a number of referees. As a result of those enquiries, she fully supported the making of an adoption order. Ms B did not complete an Annex A report as her practice was not to do so until the adoption application has been made. The applicant did not in fact make the application for some time in large part due to having to deal with the death of her own father and that of another family member. It was not until 24 February 2020, with the encouragement and support of Ms B, that she signed her application and sent it to the court.

11. The applicants first application to adopt A was received by the relevant family court on 4th May 2020. It was returned to her by the court staff on 18th May 2020 together with a covering note because it contains so many errors and/or had information missing.

12. The second adoption application was not received by the court until 3rd August 2020 and it was not issued until 10th August: that is two years and two months after the applicant had given notice of intention to adopt to the relevant local authority on 1st June 2018.

13. It is important to note the following:

    i) Ms B has been the adoption social worker for this case since the involvement of the local authority was triggered by the notice of intention to adopt;

    ii) Ms B has been in regular contact with the applicant and with A since the summer of 2018;

    iii) in February 2020 the applicant notified Ms B that she intended to issue an adoption application;

    iv) Ms B supported the applicant make the first and second option applications;

    v) Ms B fully supported the application for A's adoption by the applicant; and

vi) the adoption agency /the local authority took no issue with any technical failure to comply with the statutory criteria of the 2002 act and supported the court making an adoption order in this matter.

The Law

14. Any application for adoption must be made before the person to be adopted has attained the age of 18: s.49(4) of the 2002 Act. The order may be made after that date but can only be made before the subject's 19th birthday: s.47(9) of the 2002 Act. In this case, although A attained the age of eighteen in September 2020, the application was made before that date. The court can only make an adoption order in relation A on or before 28 September 2021.

15. A was not brought to the UK for the purposes of adoption, nor was she adopted by the applicant in St Lucia before being brought here. Whilst A's parents clearly intended the applicant to care for her and had in effect delegated their parental responsibility to her, their own intentions as to their longer-term involvement with A at that time were not clear. Over time it has however become clear that they either did not intend or did not feel able to have any involvement with A at all, leading the applicant to make this application. Accordingly, this is not an intercountry adoption and therefore the provisions of s.83 of the 2002 Act and the Adoption with a Foreign Element Regulations 2005 do not apply.

16. The pre application adoption requirements are set out in ss.42-44 of the 2002 Act which provide:

> "Child to live with adopters before application
>
> (1) An application for an adoption order may not be made unless—
>
> > (a) if subsection (2) applies, the condition in that subsection is met,
> >
> > (b) if that subsection does not apply, the condition in whichever is applicable of subsections (3) to (5) applies.
>
> (2) If —
>
> > (a) the child was placed for adoption with the applicant or applicants by an adoption agency or in pursuance of an order of the High Court, or
> >
> > (b) the applicant is a parent of the child, the condition is that the child must have had his home with the applicant or, in the case of an application by a couple, with one or both of them at all times during the period of ten weeks preceding the application.
>
> (3) If the applicant or one of the applicants is the partner of a parent of the child, the condition is that the child must have had his home with the applicant or, as the case may be, applicants at

all times during the period of six months preceding the application.

(4) If the applicants are local authority foster parents, the condition is that the child must have had his home with the applicants at all times during the period of one year preceding the application.

(5) In any other case, the condition is that the child must have had his home with the applicant or, in the case of an application by a couple, with one or both of them for not less than three years (whether continuous or not) during the period of five years preceding the application.

(6) But subsections (4) and (5) do not prevent an application being made if the court gives leave to make it.

(7) An adoption order may not be made unless the court is satisfied that sufficient opportunities to see the child with the applicant or, in the case of an application by a couple, both of them together in the home environment have been given—

> (a)where the child was placed for adoption with the applicant or applicants by an adoption agency, to that agency,
>
> (b)in any other case, to the local authority within whose area the home is.

(8) In this section and sections 43 and 44(1)—

> (a) references to an adoption agency include a Scottish or Northern Irish adoption agency,
>
> (b) references to a child placed for adoption by an adoption agency are to be read accordingly.

43 Reports where child placed by agency

Where an application for an adoption order relates to a child placed for adoption by an adoption agency, the agency must—

> (a)submit to the court a report on the suitability of the applicants and on any other matters relevant to the operation of section 1, and
>
> (b)assist the court in any manner the court directs.

44 Notice of intention to adopt

(1) This section applies where persons (referred to in this section as "proposed adopters") wish to adopt a child who is not placed for adoption with them by an adoption agency.

(2) An adoption order may not be made in respect of the child unless the proposed adopters have given notice to the appropriate local authority of their intention to apply for the adoption order (referred to in this Act as a "notice of intention to adopt").

(3) The notice must be given not more than two years, or less than three months, before the date on which the application for the adoption order is made.

(4) Where—

> (a) if a person were seeking to apply for an adoption order, subsection (4) or (5) of section 42 would apply, but
>
> (b) the condition in the subsection in question is not met,the person may not give notice of intention to adopt unless he has the court's leave to apply for an adoption order.

(5) On receipt of a notice of intention to adopt, the local authority must arrange for the investigation of the matter and submit to the court a report of the investigation.

(6) In particular, the investigation must, so far as practicable, include the suitability of the proposed adopters and any other matters relevant to the operation of section 1 in relation to the application.

(7) If a local authority receive a notice of intention to adopt in respect of a child whom they know was (immediately before the notice was given) looked after by another local authority, they must, not more than seven days after the receipt of the notice, inform the other local authority in writing that they have received the notice.

(8) Where—

> (a) a local authority have placed a child with any persons otherwise than as prospective adopters, and
>
> (b) the persons give notice of intention to adopt, the authority are not to be treated as leaving the child with them as prospective adopters for the purposes of section 18(1)(b).

> (9) In this section, references to the appropriate local authority, in relation to any proposed adopters, are—
>
> (a) in prescribed cases, references to the prescribed local authority,
>
> (b) in any other case, references to the local authority for the area in which, at the time of giving the notice of intention to adopt, they have their home, and "prescribed" means prescribed by regulations."

17. Since A was not placed in the care of the applicant by an adoption agency but by her parents, this is a 'non-agency adoption'. Therefore s.42(5) requires A to have had her home with the applicant for not less than three years for the period of five years preceding the adoption application. There is no issue with that requirement in this case, since A has had her home with the applicant for over 18 continuous years.

18. The applicant did give notice to the local authority of her intention to adopt A on 1st June 2018. That notice, however, was more than two years before the date on the second application, namely 3rd August 2020; by just over two months.

Submissions

19. Ms MacLynn submitted that there were three issues for the court to determine:

    i) When was the application "made" for the purposes of determining compliance with the notice requirements in s.44(3)?

    ii) When was notice given for the purposes of determining compliance with the notice requirements in s.44(3)? And can notice be renewed?

    iii) If the court determines that the application was made on 3rd August 2020 and notice was given on 1st June 2018, does the failure to comply with the requirements of s.44(3) mean the application cannot proceed?

20. Her submissions may be broadly summarised as follows:

    i) s.44(3) refers to the date on which the adoption application was made and not the date on which the proceedings were commenced or were issued. Since the applicant's first application was made in May 2020 the requirement of the subsection is satisfied because this date was within two years of 1st June 2018 ;

    ii) in the alternative, s.44(3) and the Family Procedure Rules 2010 ('the FPR') do not set out any requirement for the form in which a notice to adopt is given to the relevant local authority. Therefore because the applicant had been in regular contact with the adoption social worker and, in particular, told the social work in February 2020 that she was going to issue an adoption application, the court could deem this to be the date on which a notice of intention to adopt was given. If the court did so deemed this to be the date on which notice of intention to adopt was given, the provisions of s.44(3) were satisfied and there was no breach of the statutory requirements;

iii) in the alternative, it was submitted that the court should take a purposive approach to the construction of s.44(3) and permit the application to proceed; and

iv) in the further alternative, it was submitted that section 3 of the Human Rights Act 1998 ('the 1998 Act') requires the court to 'read down' s.44(3) so as to give effect to the applicant's and A's Article 8 rights to family life.

21. In relation to Ms MacLynn's submission that the first adoption application was made within the time limit set by s.44(3) in May 2020, I regret this cannot succeed. The provisions of s.44(3) refers the date when 'the' application was made rather than 'an' application was made. The only application upon which the court could make an adoption order is the one which was made on 3rd August 2020. This is outside the two year time limit prescribed by s.44(3).

22. In respect of the second submission as to the date when the notice of intention to adopt was given, I gave this careful consideration, but it too cannot succeed. The notice of intention to adopt was given to the local authority in writing on 1st June 2018. I accept there is no prescribed form in which the notice is to be given either in the 2002 Act or in the FPR. Nevertheless, what the applicant said to the adoption social worker in February 2020 can best be described as a notice to issue an adoption application and no more.

23. There is, however, very considerable force in Ms MacLynn's final two submissions. In support of her submission that I should take a purposive approach to the construction of ss.44(3) she referred me to a number of well-known authorities.

24. In *Re X (A Child: Surrogacy: Time-limit)* [2014] EWHC 3135 (Fam), the former president, Sir James Munby, considered, in the context of an application for a parental order, the requirement set out in s.54(3) of the Human Fertilisation and Embryology Act 2008 ('the 2008 Act') that:

> "the applicants must apply for the order during the period of 6 months beginning with the day on which the child is born".

The question in that case was whether the court had jurisdiction to make a parental order if the application was made outside the time-limit imposed by statute.

25. The then President concluded that the court did have jurisdiction notwithstanding the expiry of the relevant time-limit. In respect of statutory interpretation, he considered a line of authorities starting with *Howard v. Boddington* (1872) 2 PD 203, where Lord Penzance observed:

> "The real question in all these cases is this: A thing has been ordered by the legislature to be done. What is the consequence if it is not done? In the case of statutes that are said to be imperative, the Courts have decided that if it is not done the whole thing fails, and the proceedings that follow upon it are all void. On the other hand, when the Courts hold a provision to be mandatory or directory, they say that, although such provision may not have been complied with, the subsequent proceedings

> do not fail. Still, whatever the language, the idea is a perfectly distinct one. There may be many provisions in Acts of Parliament which, although they are not strictly obeyed, yet do not appear to the Court to be of that material importance to the subject-matter to which they refer, as that the legislature could have intended that the non-observance of them should be followed by a total failure of the whole proceedings. On the other hand, there are some provisions in respect of which the Court would take an opposite view, and would feel that they are matters which must be strictly obeyed, otherwise the whole proceedings that subsequently follow must come to an end. Now the question is, to which category does the provision in question in this case belong? … I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

26. The then President also referred to the case of *Dharmaraj v. Hounslow London Borough Council* [2011] EWCA Civ 312, where Toulson LJ said that:

> "The modern approach towards breach of a statutory procedural requirement is to consider the underlying purpose of the requirement and whether it follows from consideration of that legislative purpose that any departure from the precise letter of the statute, however minor, should amount to the document being regarded as a nullity"

27. Sir Stanley Burnton observed in the case of *Newbold & Others v. Coal Authority* [2013] EWCA Civ 584 that:

> "In all cases, one must first construe the statutory … requirement in question. It may require strict compliance with a requirement as a condition of its validity … Against that, on its true construction a statutory requirement may be satisfied by what is referred to as adequate compliance. Finally, it may be that even non-compliance with a requirement is not fatal. In all such cases, it is necessary to consider the words of the statute …, in the light of its subject matter, the background, the purpose of the requirement, if that is known or determined, and the actual or possible effect of non-compliance on the parties. We assume that Parliament in the case of legislation … would have intended a sensible … result."

28. These cases were referred to by the then President in the context of an application for a parental order pursuant to the 2008 Act, however there is no reason why they would not be equally applicable when considering an application for an adoption order and the construction of the 2002 Act. There are, after all, many parallels between the

making of a parental order and an adoption order from the perspective of the subject child. The court must treat the child's welfare throughout his life as paramount in respect of both. In *Re X* (ibid), the then President, endorsing the comments of Theis J in *A v P (Surrogacy: Parental Order: Death of Applicant)* [2011] EWHC 1738 (Fam) said as follows at paragraph 54:

> "Section 54 goes to the most fundamental aspects of status and, transcending even status, to the very identity of the child as a human being: who he is and who his parents are. It is central to his being, whether as an individual or as a member of his family. As Ms Isaacs correctly puts it, this case is fundamentally about Xs identity and his relationship with the commissioning parents. Fundamental as these matters must be to commissioning parents they are, if anything, even more fundamental to the child. A parental order has, to adopt Theis J's powerful expression, a transformative effect, not just in its effect on the child's legal relationships with the surrogate and commissioning parents but also, to adopt the guardian's words in the present case, in relation to the practical and psychological realities of X's identity. A parental order, like an adoption order, has an effect extending far beyond the merely legal. It has the most profound personal, emotional, psychological, social and, it may be in some cases, cultural and religious, consequences. It creates what Thorpe LJ in Re J (Adoption: Non-Patrial) [1998] INLR 424, 429, referred to as "the psychological relationship of parent and child with all its far-reaching manifestations and consequences." Moreover, these consequences are lifelong and, for all practical purposes, irreversible: see G v G (Parental Order: Revocation) [2012] EWHC 1979 (Fam), [2013] 1 FLR 286, to which I have already referred. And the court considering an application for a parental order is required to treat the child's welfare throughout his life as paramount: see in In re L (A Child) (Parental Order: Foreign Surrogacy) [2010] EWHC 3146 (Fam), [2011] Fam 106, [2011] 1 FLR 1143. X was born in December 2011, so his expectation of life must extend well beyond the next 75 years. Parliament has therefore required the judge considering an application for a parental order to look into a distant future.

29. In the case of *Re TY (Preliminaries to Intercountry Adoption)* [2019] EWHC 2979 (Fam), Cobb J had no difficulty extending the approach to statutory construction of the apparently mandatory time-limit contained in s.54 of the 2008 Act to the time-limits set out in s.44(3) of the 2002 Act. At paragraphs 30 - 31 he said as follows;

> "The purpose of the requirement to give no less than three months' notice of the intention to adopt is to enable the local authority to commence their investigation of the application, assess the parties, and be in a position to offer advice to the court when the matter is placed before it for directions (per section 44(5)/(6)) (see [20] above). Ms Kakonge advises me

> that the respondent Local Authority is now ready and able to undertake this assessment, and further submits that this assessment (in Annex A form) can be completed in less than the 12 weeks conventionally sought. She points out that the Local Authority is not starting this work with a blank canvas; as mentioned earlier ([7]) it commissioned PACT to complete an assessment of Ms CM in 2014 so much of the background investigation has been done. This assessment supported Ms CM's application to adopt TY in Jamaica.
>
> Parliament cannot really have intended that the application for an adoption order, with all its transformative characteristics would have to fail in limine and barred forever simply because of the failure of the applicant to comply strictly with this notice requirement (or indeed the earlier notice requirement) in the legislation. An adoption order, after all,
>
> "… has an effect extending far beyond the merely legal. It has the most profound personal, emotional, psychological, social and, it may be in some cases, cultural and religious, consequences. It creates what Thorpe LJ in Re J (Adoption: Non-Patrial) [1998] INLR 424, 429, referred to as "the psychological relationship of parent and child with all its far-reaching manifestations and consequences." Moreover, these consequences are lifelong and, for all practical purposes, irreversible" (Sir James Munby P in Re X at [54])
>
> Parliament surely intended a "sensible result". To rule that the adoption application should not be permitted to proceed on the basis of this non-compliance with what appears to be a mandatory requirement would not be a "sensible result".

30. There have been a number of cases in the context of the 2008 Act since *Re X* was decided, where the courts have applied the same approach of reading down purposively in relation to the statutory time-limits, but where the court has determined that it would be nonsensical to treat the lack of compliance with the time-limits to be a bar to the application proceeding.

31. In *Re A and B (No 2 Parental Order)* [2015] EWHC 2080 (Fam), Theis J held that in considering non-compliance with statutory time-limits in the context of s.54, it was relevant that the applicants had acted in good faith and had been open with professionals.

32. I respectfully agree with all of the observations and comments made by Sir James Munby, Theis J and Cobb J.

33. In respect of the final submission that I should read down the provisions of s.44(3), I note that s.3 of the 1998 Act provides as follows:

> "Interpretation of legislation

> (1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.
>
> (2) This section–
>
> (a) applies to primary legislation and subordinate legislation whenever enacted;
>
> (b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and
>
> (c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility"

34. The effect of s.3 of the 1998 Act is that when considering the interpretation of legislation the court must have regard to not just the intention of Parliament but it should seek to adopt any possible construction which is compatible with and upholds convention rights. *R v A* [2001] UKHL 25 para 44 and *Ghaidan v Godin-Mendoza* [2004] UKHL 30 para 41.

35. Article 8 of the Convention includes a positive obligation which requires the State to ensure that de facto relationships are recognised and protected by law *Marckx v Belgium* 2 EHRR 330 para 31. It requires the court to provide protection of the rights of children which are real and effective and not theoretical and illusory.

36. The concept of 'family life' was considered by Munby J, as he then was, in *Singh v. Entry Clearance Officer New Delhi* [2004] EWCA Civ 1075 when he said at paragraph 59:

> "It is also clear that "family life" is not confined to relationships based on marriage or blood, nor indeed is family life confined to formal relationships recognised in law. Thus family life is not confined to married couples. A de facto relationship outside marriage can give rise to family life (Abdulaziz, Cabales and Balkandali v United Kingdom at para [63]), even if the parties do not live together (Kroon v The Netherlands (1994) 19 EHRR 263 at para [30]), and even if the couple consists of a woman and a female-to-male transsexual (X, Y and Z v United Kingdom (1997) 24 EHRR 143 at para [37]). So there can be family life between father and child even where the parents are not married: Keegan v Ireland (1994) 18 EHRR 342 at para [44]. Likewise there can be family life between a parent and a child even where there is no biological relationship: X, Y and Z v United Kingdom at para [37] (family life existed as between the female-to-male transsexual partner of a woman and the child she had conceived by artificial insemination by an anonymous donor). A formal adoption creates family life between the adoptive parents and the child: X v Belgium and

> the Netherlands (1975) 7 D&R 75, X v France (1982) 31 D&R 241, Pini v Roumania (unreported – 22 June 2004). Family life can exist between foster-parent and foster-child: Gaskin v United Kingdom (1989) 12 EHRR 36"

Discussion

37. The purpose of the upper time-limit set out in section 44(3) is not explicitly set out in the Act, but in view of the consequences of notice being given (triggering an investigation by the local authority into the applicant's suitability to adopt), the purpose must be to enable the local authority to offer advice to the court at the initial directions hearing on the basis of reasonably up to date information and to be in a position to provide an Annex A report within a reasonable timescale thereafter.

38. Parliament cannot have intended that failure strictly to comply with the upper time limit would have the result of the application being barred completely. This would particularly lack any sense in the circumstances of this case where the local authority has had continued knowledge of the intended application right up to the time when the application was issued by the court and indeed supported and encouraged the applicant to make the application.

39. The applicant acted in good faith and has been open with the local authority throughout.

40. The default period in this case is just over eight weeks, relatively short in the context of the upper time-limit of two years. This is also a relevant factor.

41. Very helpfully, the same social worker, Ms B, has remained involved with the family throughout. Ms B has indicated that she has in fact completed most of the necessary enquiries and would be in a position to update those enquiries where necessary and complete the Annex A report reasonably quickly.

42. The making of an adoption order in this case would be genuinely transformative for A and the applicant. It would give life-long legal recognition to the factual mother-daughter relationship that A has had with the applicant for her entire childhood. It is the only way in which the reality of A's family life can be given any legal recognition. The emotional and psychological consequences for the applicant and subject child in the particular circumstances of this case if the application is not allowed to proceed are enormous.

43. The making of an adoption order in this case may also assist with formalising A's immigration status and enabling her to remain living in England. This is a legitimate consideration bearing in mind that A's welfare throughout her life is paramount in the substantive application: see *S v Bradford Metropolitan District Council and another* [2015] EWCA Civ 951 and *Re N (A Child)* [2016 EWHC 3085. Because A has already attained the age of 18 before the making of any adoption order, she is not likely to obtain automatic British nationality under ss.1(5) and 1(5A) of the British Nationality Act 1981 as amended by the 2002 Act. However legal status as an adopted child of a British citizen is likely to assist with any immigration application she needs to make, which is ultimately in her welfare best interests.

44. On the other hand, no one would suffer any adverse consequences if the application were permitted to proceed. A's welfare in the circumstances of this case clearly outweighs any public policy argument in favour of adhering to a strict statutory construction: see *Re A and B (Children: Surrogacy: Parental Orders: Time Limits* [2015] EWHC 911.

45. Even if the court is not persuaded that a purposive construction of s.44(3) enables the application to proceed notwithstanding the failure to adhere to the upper time-limit, the effect of s.3 of the 1998 Act is that the court must read down s.44(3) so as to permit an extension of the time-limit. There can be no doubt in this case that A and the applicant's Article 8 rights are fully engaged. They have lived together in a family relationship since A was only a few weeks old, for over 18 years. Moreover, it is the only parental relationship that A has ever had. She does not know her birth-parents.

46. In the course of submissions Ms MacLynn drew my attention to two matters, namely:

    i) upon the making of an adoption order A will not automatically acquire British citizenship because she is 18 years of age (above). Therefore it is not necessary to refer this matter to the Secretary of State for the Home Department; and

    ii) FPR r14.12 requires health reports to be filed in respect of the applicant and of A which given A's age is neither necessary or proportionate on the facts of this case. I was invited to dispense with the requirement for these health reports.

47. I agree with both submissions. I see no need to refer this case to the Secretary of State for the Home Department. I am content to dispense with the requirement for the applicant to file medical reports in the circumstances of this case.

Conclusion

48. It is manifestly in the welfare best interests of A for an adoption order to be made in favour of the person she considers to be her mother, namely the applicant. The failure to comply with the provisions of s.44(3) of the 2002 Act is purely a technical matter. I am wholly satisfied that:

    i) the applicant had acted in good faith at all times;

    ii) the breach has not caused any disadvantage or prejudice to any party or to the court;

    iii) the local authority have been constantly involved with A and the applicant since the summer of 2018; and

    iv) the local authority take no issue with the failure to comply with s.44(3) indeed Ms B, the adoption social worker, strongly supported an adoption order being made.

49. In these circumstances and giving a purposive construction to the provisions of s.44(3) of the Act the adoption application may proceed notwithstanding the noncompliance with the requirement for the application to have been made within two years of the notice of intention to adopt having been given.

50. Even if I am wrong, I am satisfied that pursuant to s.3 of the 1998 Act A's Article 8 rights require me to read down the provisions of s.44(3) of the 2002 Act so that this application satisfies the statutory requirements. To do otherwise would be to deny A the transformative benefits of an adoption order such an outcome would be nonsensical and affront to public policy.

51. Accordingly, this adoption application may proceed. I note there is a directions hearing in early January 2021 at the relevant family court.