Neutral Citation Number: [2024] EWHC 364 (Fam)

Case No: ZC136/23

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20th February 2024

Before :

MRS JUSTICE ARBUTHNOT

Between :

Mr X	**Applicant**
- and -	
Mrs X	**First Respondent**
- and -	
Y COUNTY COUNCIL	**Second Respondent**

- -

Ruth Cabeza (instructed by The International Family Law Group LLP) for the **Applicant**
First Respondent appeared in person
Eirini Exarchou (solicitor at Y Council Legal Department) for the **Second Respondent**

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Hearing date: 23rd January 2024

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JUDGMENT – TIME BARRED ADOPTION

Mrs Justice Arbuthnot :

Application

1. This was an application made by Mr X to adopt Z, who turned 18 on 28 September 2023. The application was made on 26 September 2023, two days before Z reached his 18th birthday.

2. Written notice of Mr X's intention to apply for an adoption order had been given to Y County Council ("YCC") on 7 July 2023 which was outside the period stipulated by section 44(3) of the Adoption and Children Act 2002 ("the Act").

3. The other parties were the first respondent Mrs X, the mother of Z and the wife of Mr X. The second respondent was YCC.

4. The applicant was represented by Ms Cabeza, the first respondent was a litigant in person and Ms Exarchou represented YCC.

Issue

5. Section 44(3) of the Act requires the proposed adopter to give notice to the local authority, here YCC, of their intention to apply for the order. The section stipulates that notice is to 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.

6. Contrary to section 44(3) notice was given to YCC on 7 July 2023, some two and a half months before the application.

7. Given there was a breach of section 44(3) of the Act, the issue for this court was whether this precluded an adoption order from being made.

8. The applicant and the respondents argued that although there was a breach of section 44(3) of the Act, it was in Z's best interests that an adoption order should be made.

Background

9. Until the war, Mr X, a British national, and the family lived in Ukraine. They arrived here in March 2022. The family consisted in the parties who are married, their daughter W, and Mrs X's son Z by a previous partner who was now dead. Z had been adopted by Mr X in Ukraine in 2015. So far as the family ever considered the matter, they believed that a lawful adoption in Ukraine was valid in England and Wales. Mr X discovered by chance that this was not the case.

Evidence

10. I have read a helpful rule 14.11 report prepared by YCC that described a close and loving family which included Mr X's older children and grandchildren who live in England.

11. I had been provided too with statements from the parties and from Z, and I was assisted by Ms Cabeza with a skeleton argument setting out the authorities. The application had the support of YCC.

12. The date written notice was given to YCC was not in dispute: 7 July 2023.

Law

13. The rules which apply to non-agency adoptions such as this are to be found in sections 42-51 of the Act. The relevant criteria are set out below:

a) Section 42(3): Z must have had his home with Mr X for a particular period, as this is a step-parent adoption the required time is six months. Z had had his home with Mr X since July 2009, since he was aged about two. That was when Mr X and Z's mother met and formed a relationship. That criteria is met.

b) The next condition, also met, is that the mother has to have given her consent to the making of the order. I have read her statement, her views have been obtained through YCC and she has told me today that she positively supports the adoption.

c) The condition in section 47(8) is that child has never been married and I have not heard anything to suggest Z has been, and he is shaking his head, so I take that as a final confirmation that he has not been married.

d) It is also a condition that an adoption order cannot be made if Z is aged 19. He is not.

e) An application cannot be made unless at the date of the adoption application the adopter is either domiciled in the British Islands (section 49(2)) or has been habitually resident in the British Islands for a year at the date of the application (section 49(3)).

   Mr X arrived in the UK in March 2022 and the application was made 18 months later. I find the requirement of habitual residence is met.

f) In relation to section 49(4), the application must be issued before Z's 18th birthday. It was issued two days before his 18th birthday.

g) Finally, section 51(2) has been met as the applicant is the step-parent of Z as he is married to Z's mother.

14. The issue I had to consider was whether the time limits set out in section 44(3) applied or whether the court could waive the lower time limit. The requirement was that notice of an intention to adopt had to be given not less than three months or more than two years prior to the time the application to adopt was made. Written notice was given two and a half months before the adoption application, rather than three months, two weeks less than required.

15. The formal requirements for notice had been considered before. In *Re A (A Child) (Fam D) [2021] 1WLR 138*1 a decision of Mr Justice Keehan, he held the section could be given a purposive construction in an application for an adoption order where the upper time limit had been exceeded by two months.

16. In his judgment he considered Sir James Munby P's decision in *In re X (A Child) (Parental Order: Time Limit)* [2015] Fam 186 where the then President considered the time limits set out in section 54(3) of the Human Fertilisation and Embryology Act 2008. In that case the application for a parental order had been made outside the time limit set out in the legislation. The then President considered statutory interpretation in deciding that the court did have jurisdiction despite the expiry of the time limit. Mr Justice Keehan decided that there was no reason why the approach taken by the then President in relation to a parental order could not be taken in an application for an adoption order.

17. The underlying purpose of the statutory requirement had to be considered along with the subject matter, the background and the effect of non-compliance on the parties.

18. In a number of cases since the then President's decision, the courts have read down purposively statutory time limits and the breach of those have not become a bar to an application succeeding.

19. The purpose of the written notice to YCC was to enable the local authority to investigate the application, assess the parties and then offer advice to the court.

20. I was very grateful to Ms Exarchou for YCC and the social worker. The local authority rule 14.11 report was very thorough and supported the application. It set out that there were advantages and no disadvantages to an adoption order being made. YCC took no issue with the failure to comply with Section 44(3), and the adoption social worker supported wholeheartedly the making of the order.

21. It was clearly in Z's best interests throughout his life that an adoption order should be made. He had been adopted in Ukraine and believed that he was in the same legal position in this country. He had been living with the applicant as a family member for 16 years, the applicant was married to his mother, and the applicant had had another child with the mother, W, Z's half-sister. The half-siblings had a close and loving relationship.

22. The failure to comply with Section 44(3) was a technical matter. I was satisfied that it was by chance that the applicant and his family discovered that an adoption order made in Ukraine was not valid here. It was luck that this came to light before Z was 18 – when it was likely to have been too late.

23. I concluded that the breach of the lower time limit did not cause any disadvantage or prejudice to any party or the court. In the circumstances, giving a purposive construction to the subsection, the breach would not be a bar to the order being made. I respectfully agreed with the approach taken by Sir James Munby P and Keehan J.

24. Even if I were wrong to waive the lower limit, I was satisfied that pursuant to section 3 of the Human Rights Act 1998 I was required to read down the statute so that the

application before me satisfied the statutory requirements and did not breach the Article 8 rights of the parties and Z. Were I not to do so, Z would be denied the chance in this country to be part of his family, when he was so under the law of Ukraine. I was satisfied that such an outcome would be an affront to public policy.

25. Accordingly, I make the order.