

IMPORTANT NOTICE

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 child[ren] and members of their [or his/her] 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.

Case No: NE142/14

IN THE FAMILY COURT
SITTING AT NEWCASTLE-UPON-TYNE

The Law Courts
The Quayside
Newcastle-upon-Tyne
NE1 3LA

IN THE MATTER OF THE ADOPTION AND CHILDREN ACT 2002
AND IN THE MATTER OF: J (A CHILD)

Monday, 24th September 2014

Before:

HIS HONOUR JUDGE SIMON WOOD

Re: J (A Child)

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Counsel for the Applicant adopters: Ms Ruth Cabeza
Counsel for the Local Authority: Mr Justin Gray
The Mother did not attend and was not represented
Solicitor for the Child: Ms Katrina Pescott

Hearing date: 24 September 2014

JUDGMENT

JUDGMENT

1. THE JUDGE: This is an application dated 9th September 2014 for a Convention Adoption order pursuant to section 46 of the Adoption and Children Act 2002. It is made in respect of C, a boy who was born on 15th October 2006, the child of M. Although C's father has never been identified, to all intents and purposes, he believes his father to be a man called F but that gentleman has no parental responsibility in respect of C and certainly no other legal status.
2. The matter is listed before me today on 24th September just 15 days after the application was issued and it has been listed for directions but, in the circumstances I will explain, all parties ask me to deal with the application and to make the order sought. The order sought is supported by the Local Authority and by C's guardian Rachael MacLennan and it is, I should add, an order very much wanted by C himself who is on the eve of his 8th birthday and thus has a very reasonable age appropriate understanding of his situation.
3. C was made the subject of a care order and a placement order on 6th November 2012. His age and sex already made him a difficult child to place, quite apart from behavioural issues with which he presented. The Local Authority widened the search for adoptive parents to inter-country adoptions and, in July 2013, Country A, where C today lives, approved the adopters as being suitable persons to adopt a child, issuing a declaration of suitability and eligibility, the United Kingdom Department for Education having sent that country's Central Authority information pursuant to Article 16 of The Adoptions with a Foreign Element Regulations 2005. Following a successful match being approved by the Local Authority, with the permission of the court given on 17th September 2013, it was allowed to remove C from this jurisdiction to Country A for the purpose of assessment on it being declared, first, that C should remain the subject of this court's jurisdiction until further order and, second, on the adopters undertaking to the court to return C within six months or such other time as was required by the Local Authority or the court.
4. The process that followed, in the event, took longer than six months and the court extended time on 31st March and it may be that there is a gap in respect of which no formal permission from the court was actually given. I do not think anything turns on that but, on 29th May 2014, the adopters erroneously, and I should say that I do not seek to attach any blame to them, issued an application in this court for a domestic adoption order. Inexplicably, it passed through the court system with a direction from a district judge for an Annex A report without anyone noticing, not least because the court did not serve the application on the Local Authority. I do not seek to excuse the court in any way for failing to hear alarm bells ringing or noting the position.
5. The matter came before me on 1st September, listed as an ordinary domestic adoption for directions when the procedural mess that had unfolded became clear to all. I adjourned it. The application before me today was promptly issued. I appointed Rachael MacLennan as C's guardian and I gave her permission to interview C by Skype, unusually, to enable her to make her enquiries as quickly as possible. The Local Authority also filed its amended Annex A report and Miss MacLennan has reported to the court. I should say that the permission I gave to her was strictly on the basis that in the event the Skype interview proved inadequate for the purpose of her making her enquiries, then she would have to make alternative arrangements and I am

pleased to report that the interview itself, even if C did not fully engage in it, was nevertheless revelatory as to the nature of the relationship between C and the adopters. Certainly, for the purposes of the court, it more than satisfied the enquiries that needed to be made.

6. I am grateful to all in court for the considerable efforts that have been made to ensure that this hearing today is effective. The evidence I have read is overwhelmingly in favour of the making of an order. The adopters with professional help, including some counselling for C, have done an astonishing job with him in terms of settling him, meeting his needs, dealing with his more difficult behaviour and providing him with exactly what he needs in terms of a loving, caring and stable home where he has the best prospect he could ever have of growing up as an emotionally secure young person and then adult, despite the very difficult start in life that he had.
7. C's mother M has been kept abreast of these developments. I am quite satisfied that she has been served with notice of the proceedings today and is fully aware of this hearing. She has not attended, consistent with her report that she would not attend. She does not consent to the making of an adoption order, which is entirely understood by everyone, but, equally, does not oppose it and is, I think, reading between the lines, is really very pleased with the outcome and particularly wants C to know that she loves him very much indeed. I am sure that, at the right time for him, that will be communicated to C in an age appropriate manner. It is very important for him, in the long term, to know that he goes, effectively, with his mother's blessing and it is enormously to his mother's credit that she has approached this application with such generosity. It seems to the court that it is nothing less than an act of selfless love on her part, demonstrating that she can, and has, put C's interests before her own.
8. I am indebted to counsel, particularly Ms Ruth Cabeza, for their considerable assistance, both in writing and orally that they have given in guiding the court through the labyrinthine process that is a Convention adoption. Counsel have spent a good deal of time both prior to today's hearing and during the course of this morning, whilst the court has been dealing with other matters, satisfying themselves of compliance with the Adoption with Foreign Elements Regulations 2005. Whilst there is not the totally complete picture that might have been achievable, I am satisfied that the stage has been reached where the consent of Country A to adoption has been formally given on 29th August and the agreement of the Department for Education has been received dated 23rd September, those being the key consents required by Article 17 of the Convention, that will feature in the certificate issued by the Department for Education on an order being made by the court, thereby ensuring that the issue of the certificate will follow and that the adoption will be legally recognised in the member country.
9. Without descending into particulars, I am satisfied that any failure to comply with the form as opposed to the substance of the steps required to be taken prior to these agreements will not vitiate the ultimate agreement or result in any challenge to the order made, the court having equally in mind not just the need for speedy resolution for the sake of C and his adopters but the risk to C of a challenge, particularly in the circumstances that they prepare to leave Country A and move to Country B, which is the home country of the male adopter, another Convention country.
10. It is clear that C has been placed with his adopters for considerably more than ten weeks and many opportunities to observe him in that placement have arisen. Those

observations all confirm the suitability of the placement and so, in my judgment, there is no necessity by reason of any legal requirement or otherwise to delay the making of an order today.

11. I can only make an order with the mother's consent or by dispensing with her consent using the power under section 52 of the Adoption and Children Act 2002. The court used that power when it made the placement order on the basis that C's welfare demanded that consent be dispensed with. C's circumstances today, if anything, are even more demanding that the court dispense with that consent and so, despite the very high price being paid of the separation of C from his birth family, I am satisfied that it is both necessary and proportionate in Article 8 terms to dispense with the consent of the mother to ensure that C's welfare lifelong is met, despite the high cost of the severance of the family ties. On a proper application of the welfare checklist in the 2002 Act, I am satisfied that the only appropriate order is the order I make, namely a Convention adoption order.
12. I adjourn the matter to a celebration hearing where I hope very much to meet C and his new parents or, in the alternative, I will hear representations as to why, exceptionally, no such hearing should take place.

[Judgment ends]