Neutral Citation Number: [2015] EWHC 2316 (Fam)

Case No: FD14P00822

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 July 2015

Before :

MRS JUSTICE PAUFFLEY

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Between :

PK	**Applicant**
- and -	
Mr and Mrs K	**Respondents**

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Dennis Sharpe (instructed by **Denise Lester of Moss Beachley Mullem and Coleman**) for the Applicant
The Respondents did not appear and were not represented

Hearing date: 14 January 2015

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Judgment

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 Pauffley :

1. After a brief hearing involving only oral submissions and consideration of written material filed on behalf the applicant, a further opportunity was afforded to the respondents to engage with the court process. The timeframe for their response was 14 days from the date of service of certain documentary material. After almost a month and in the absence of any contact from the respondents, an order was issued without a further hearing.

2. The order made under the court's inherent jurisdiction was highly exceptional and particular on its facts. It revoked an adoption order made more than 10 years ago; and provided for the applicant, a 14 year old young woman, to change her last name to that of her biological mother.

The legal framework – revocation of adoption orders

3. The legal framework in relation to revocation of adoption orders is well known. It stems from a series of Court of Appeal decisions notably *Re B (Adoption: Jurisdiction to Set Aside) [1995] Fam 239* and more recently *Re Webster v. Norfolk County Council and the Children (by their children's guardian) [2009] EWCA Civ 59.* The key passages from each were considered by Bodey J in *Re W (Inherent Jurisdiction: Permission Application: Revocation and Adoption Order) [2013] 2 FLR 1609.*

4. I could not improve upon Bodey J's analysis. He observed it was common ground that "the only possible vehicle for revocation would be the inherent jurisdiction of the High Court … but only in exceptional circumstances." Bodey J cited a passage from *Re B (supra)* where Swinton Thomas LJ said this – "To allow considerations such as those put forward in this case to invalidate an otherwise properly made Adoption Order would in my view undermine the whole basis on which Adoption Orders are made, namely that they are final and for life, as regards the adopters, the natural parents and the child. In my judgment, (Counsel) is right when he submits that it will gravely damage the lifelong commitment of adopters to their adoptive children if there is the possibility of the child, or indeed the parents, subsequently challenging the validity of the Order."

5. Bodey J also referred to the judgment of Wall LJ (as he then was) in *Re Webster v Norfolk County Council)* and to the following extract – "Adoption is a statutory process; the law relating to it is very clear. The scope for the exercise of judicial discretion is severely curtailed. Once Orders for Adoption have been lawfully and properly made, it is only in highly exceptional and very particular circumstances that the court will permit them to be set aside."

6. It is also relevant to consider this extract from the leading judgment of the Court of Appeal in *Re M (Minors) (Adoption) [1991] 1 FLR 458* referred to by Wall LJ in *Webster v Norfolk County Council*. Glidewell LJ emphasised the highly unusual nature of the case at *459 F-G:* "In my view, this is … a classic case of mistake. It is quite clear that the present appellant was wholly ignorant of his former wife's condition and, had he known of it, he obviously would not have consented to the adoption. That ignorance vitiates his consent and means that it was of no effect. In the absence of that consent it is very doubtful whether the adoption order would have been made. Since it is clearly in the best interests of the children that the adoption order should be set aside, I would extend the time for both these appeals … and allow both appeals. I should say, as a postscript, that this is, if not unique, at the very least a wholly exceptional case. I say that because I do not want the setting aside of this adoption order in these circumstances to be thought of as being some kind of precedent for any related set of facts in some other case."

7. In the *Re W* case, having weighed the advantages and disadvantages, Bodey J came to the clear conclusion that he should refuse to invoke the inherent jurisdiction. He said this – "It is far less likely than likely that a revocation order would ultimately come to be made and the 'process' would stir up all the sorts of potential problems at the human level which I have tried to envisage. In short, it is a Pandora's box and the court should, in my view, only go there if it seems proportionate, necessary and reasonably likely to be ultimately successful. I do not think the application fulfils those prerequisites."

Change of name – key principles

8. The application by PK to change her name involves applying the well-known principles from three particular cases – *Dawson v. Wearmouth [1999] 1FLR 1167; Re W, Re A, Re B [1999] 2FLR 930* and *Re W (Change of Name) [2013] EWCA Civ 1488.* On any application, the child's welfare is paramount. Each case must be decided on its own facts with the welfare of the child as the paramount consideration and all of the relevant factors weighed in the balance. As Ryder LJ said in the second *Re W* case, "the test is welfare pure and simple."

Essential background

9. The facts of this case are central to any determination. As relevant, they are as follows. PK was almost 4 years old when, in May 2004, an adoption order was made in favour of Mr and Mrs K. About two years later, in 2006, PK was sent to live in Ghana with members of Mr and Mrs K's extended family. According to PK, she was subjected to significant abuse from those who had responsibility for looking after her in Ghana.

10. In mid July 2014, PK came to England and was reunited with her biological mother and maternal grandmother. She became a ward of court as the result of her own application in August. Orders were made granting PK's mother interim and then full care and control.

Mr and Mrs K's position

11. All the signs are that Mr and Mrs K have relinquished responsibility for PK. They did attend court early on in the wardship proceedings accompanied by their son and others. PK felt intimidated by their presence. They raised no objection to the application that PK should live with her natural mother. Thereafter, Mr and Mrs K have played no part in the proceedings. Significantly, they have failed to respond to all attempts made by PK's Solicitors to elicit a response to the applications (i) that the adoption order be revoked and (ii) that PK's last name be changed back to that of her natural mother.

12. There are two obvious inferences to be drawn from the history combined with the lack of engagement on the part of Mr and Mrs K. The first is that they relinquished actual responsibility for looking after PK nine years ago. The second is that they have no intention to oppose her applications which will have the effect of breaking the legal links between them and PK.

13. The balancing exercise here results decisively in favour of granting PK's twin applications.

Discussion and conclusion

14. Whilst I altogether accept that public policy considerations ordinarily militate against revoking properly made Adoption orders and rightly so, instances can and do arise where it is appropriate so to do. This case, it seems to me, falls well within the range of "highly exceptional and very particular" such that I can exercise my discretion to make the revocation order sought.

15. There are, it seems to me, powerful reasons in favour of revocation. The sole contraindication surrounds the public policy issue.

16. On any view, PK's childhood has been troubled and disrupted. It might have been thought that when, aged almost four, she became an adopted child her future was assured. Almost certainly, the expectation of the judge who made the adoption order was that PK would enjoy stability, consistency and security as the adopted child of Mr and Mrs K. No professional involved with PK at the time she was adopted could have envisaged that within two years she would be cast out from the home of Mr and Mrs K and sent to live with extended family members in Ghana.

17. Nor could there have been any indication that whilst in Ghana, PK would be abused by the adults with whom she had been sent to live. Her experience of adoption, particularly the arrangements made for her after the age of six, would seem to have been extremely abusive. She is desperate to draw a line under that part of her life.

18. When, last year, PK returned to England, she was reunited with her biological mother and maternal grandmother. She is delighted to be back with them.

19. PK has been assessed by her own Solicitor, Miss Lester (a member of the Law Society's Children Law Accreditation Scheme) as well as by one of the CAFCASS High Court team to be competent to give her own instructions. She is intelligent, articulate and highly motivated to pursue her applications and achieve her ambitions.

20. PK has extremely strong feelings about her legal status. It is very important to her that the court takes account of her wishes and firm views which are that she should no longer be the adopted child of Mr and Mrs K but instead revert to having legal status as a member of her biological family.

21. PK very much wishes to once more assume the last name of her biological mother to reflect that she is her child and belongs to that family. She urges me to permit her to change her name enabling her to apply for an amended birth certificate and a passport showing that her name is the same as that of her natural mother.

22. PK remains frightened and wary of Mr and Mrs K. She does not wish them to know precisely where she is living.

23. There is no potential difficulty, as there was in *Re W*, Bodey J's case, arising out of the need to notify PK's natural parents or for that matter her adoptive parents. In this instance, all of those adults who should be aware of the application have been served. There is no prospective trouble. Mr and Mrs K, by their inaction, have signified their lack of interest in PK's future. It is probably fair to assume their position is one of tacit acceptance.

24. PK's mother and grandmother are thrilled to have her restored within their family. They are committed to providing for her long term future; and fully support her applications.

25. If I were to decline to revoke the adoption order and refuse to allow PK to change her name back to that of her natural mother, it seems to me that there would be profound disadvantages in terms of her welfare needs. PK would continue to be, in law, the

child of Mr and Mrs K. They would have parental responsibility and the legal rights to make decisions about and for her. But there would be considerable, maybe even insuperable, obstacles in the way of them exercising parental responsibility for PK given that they play no part in her life and she wishes to have nothing to do with them.

26. Moreover, against the background described, there would be emotionally harmful consequences for PK if she were to remain the adopted child of Mr and Mrs K.

27. The only advantage of a refusal of the application to revoke the adoption order would be the public policy considerations in upholding a validly made adoption order.

28. I am in no doubt. The right course is to allow both applications in these highly exceptional and very particular circumstances and for the reasons given.