



Neutral Citation Number: [2020] EWFC 86

Case No: NE340/19

IN THE FAMILY COURT
SITTING as if from THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London WC2A 2LL

Date: 04/12/2020

Before:

THE HONOURABLE MR JUSTICE COBB

In the matter of H (Step-Parent Adoption)

The **Applicant** (Stepfather) was unrepresented
The **First Respondent** (Mother) was unrepresented
Miss Claire Middleton (instructed by **Richard Reed Solicitors**) for the Children’s Guardian

Hearing dates: 1 December 2020

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HONOURABLE MR JUSTICE COBB

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 Honourable Mr Justice Cobb:

1. This is an application for an adoption order in relation to a child who I shall call Hope; this is not her real name, but is the name by which she wishes to be known for the purposes of this judgment. Hope is a national of Thailand; she was born in Chon Buri, a province of eastern Thailand and is now 17 years old. The Applicant is her stepfather (SF); the First Respondent to the application is her birth mother (M). Hope is the Second Respondent to the application, and is represented by her Children's Guardian, who appears at the hearing by Miss Claire Middleton.
2. M consents to her husband's application to adopt Hope. The adoption application is also supported by the relevant Local Authority and by the Children's Guardian. As will be apparent from the judgment below, Hope's birth father (F), believed to be in Thailand, does not have parental responsibility for Hope, and in any event cannot be found.
3. I publish this short judgment only to give some exposure to the advice received in this case from the expert in Thai law set out at [9]-[14] below.

Background

4. Hope was born in Thailand in 2003. M was not formally married to F; insofar as they regarded themselves as married, it was a union which was never registered. The couple lived together for the first few months of Hope's life, before F moved out of the home, and then disappeared. F's name was registered (as the birth father) on Hope's birth certificate but his parental status has not otherwise been recorded by the Thai authorities or the Thai Court. F has not been seen for many years, and has played no part in Hope's life.
5. I believe that it was in or about 2005 that M met SF and they formed a relationship. In 2009, M travelled to England and later that year M and SF were married; at that time Hope remained living with her maternal grandparents. In 2011, and with the permission of the Thai authorities, Hope travelled to the UK to join M and SF, and to live. Attempts were made (formally and informally) during the process of Hope's emigration from Thailand to locate F (in order to ascertain whether he gave his consent), but he could not be found. Hope has lived in this country since 2011. Both M and Hope have indefinite leave to remain in this country. M and SF have two daughters who are aged 10 and 7.
6. In August 2019, SF issued an application to adopt Hope, under *section 46 Adoption and Children Act 2002* ('ACA 2002'). A direction for an *Annex A* report was made shortly thereafter, and this was prepared in October 2019. In the same month, HHJ Simon Wood directed that a formal request be made to the Thai Embassy to invite their assistance in tracing F, and/or to provide any information as to his whereabouts. HHJ Wood further directed that formal legal advice be obtained as to the legal status and/or parental responsibility of F in this case. The case was then set down for final hearing. Progress of the application was then materially impeded by a number of factors – a period of sick leave of one of the key professionals in the case, difficulties over the funding arrangements for the expert report containing the advice concerning the law in Thailand, and the impact of the Covid-19 pandemic on the court lists.

7. The *Annex A* report reads very positively, and the social worker confirmed at the hearing that it remains her view that (one year on from the date of the report) adoption continues to be in the best interests of Hope. The social worker noted that the making of an adoption order would consolidate the existing family relationship and would symbolically bring the family together providing Hope with the same status as her two younger sisters. It is acknowledged that adoption would formalise the existing relationship between Hope and SF and provide Hope with a legal father who has been fully involved in her life since she was 3 and will continue to be for the remainder of her childhood and beyond.
8. The Children's Guardian has undertaken her own independent enquiries; she has witnessed M's consent to the making of the adoption order, and has confirmed that Hope is very keen for the adoption order to be made. The Children's Guardian considers that the making of an adoption order would be a positive affirmation of Hope's current identity and positive relationship with F, and as I said above, she supports the adoption order. Hope has written to me as follows:

“To me being adopted would mean so much, we've been meaning to do it for some time now and to think that it's really happening is unbelievable. I've felt part of the family ever since I moved here, and I have always been treated equally to both of my sisters. My dad has supported me through everything and has played a big part in my life for as long as I could remember. I have no intentions on finding or speaking to my birth father, I don't feel the need to as I have never met him and he has never tried to contact me or wants to be involved with me. I find that being a father isn't just about who gave you life, [F] has been the only father figure I know and to have him officially be my dad would be amazing”.

F's position: Legal Advice

9. Advice has been obtained from lawyers, JNP Legal, Bangkok, Thailand, in relation to Hope's legal status in Thailand. The advice, dated 6 November 2020, draws heavily from the Thai Civil and Commercial Code ('CCC'), while referencing, too, a number of the relevant Judgments from the Supreme Court of the Kingdom of Thailand.
10. Thai law does not define Parental Responsibility, but *section 1564* of the CCC stipulates that “parents are bound to maintain their children and to provide a proper education for them during their minority”. Under *section 1546* a child born of a woman who was not married (in a registered marriage) to a man is deemed to be the legitimate child of such woman; the advice of JNP continues:

“... it is clear that under Thai law, for any child born from parents whereby their union/marriage has not been registered, the child will be considered the legitimate child of the mother alone”.

It is said that this position (per *section 1546*) has been confirmed by the Supreme Court of the Kingdom of Thailand in “several ... judgments”. It is further said that

“only a legitimate parent would have rights, duties, and parental power of a child”. Where a child’s father and mother were married (in a registered marriage) to each other at the time of the birth, a child would be considered legitimate by birth (*section 1547*) and both parents would have equal “rights and responsibilities”. There are three ways in which a father may acquire rights:

- i) The subsequent (registered) marriage of the parents;
 - ii) The registration of paternity made on application by the father;
- Or
- iii) A judgment of the court as to paternity.

11. Interestingly, the fact that a biological father is recorded as the father of the child on her birth certificate would not be deemed to constitute the child’s legitimation; “it is merely considered the biological father’s notification of the child’s birth”

12. The advice in this case, in summary, is that as:

- i) M and F never registered their marriage (this is relevant to a consideration of Hope’s status: *section 1546 CCC*),
- ii) F has not specifically and formally registered himself as the father of Hope (i.e. *other* than by his name appearing on the birth certificate¹) (*section 1547 CCC*),
- iii) F did not make an application to the Courts for recognition of parental status.

F would not be regarded as the legitimate father of Hope according to *section 1547* of the CCC. This advice is not affected by the fact that Hope adopted F’s surname in her early life.

13. Under Thai law, I am advised that as F is not:

“... the legitimate father of [Hope] and never petitioned for his parental power over her, it therefore follows that without parental rights his consent is not required for the adoption of [Hope]”.

14. The Thai authorities would regard SF as “entitled” to adopt Hope given that he is 25 years older than Hope and has the benefit of the consents of M and Hope. It is to be noted that under Thai law, if the person to be adopted is 15 years or older, his/her consent must be obtained (*section 1598/20 CCC*). The advice concludes:

“Parental Power according to *section 1546* of the [CCC] lies solely with [M]. It follows therefore that [F]’s consent would not be required as he does not have any parental

¹ As indicated above, the name of F appearing on the birth certificate is not deemed to constitute the child’s legitimation. It is merely considered the biological father’s notification of the child’s birth. The fact that he gave notice of the birth of Hope does not give F parental power over her (per advice).

power over the child. For [SF] to adopt [Hope] consents only from [M] and [Hope] would be required”.

Discussion

15. An adoption order is a transformative order, irrevocable in nature, and extinguishing for ever the legal relationships between a child and his/her birth parent(s); the order further changes the legal relationships with the successful applicant(s) (see *section 46 & 67(1)/(3)(a) ACA 2002*). No such order should ever be made lightly, or without due investigation.
16. In this case the Applicant satisfies the ‘adoption preliminaries’, set out (and as relevant in this case) in *section 42 & 49 & 52 ACA 2002*. The condition that Hope has had her home with the applicant adopter for not less than six months preceding the application is amply satisfied; Hope has lived with the Applicant since 2011. The Applicant is domiciled here, and is married to the child’s mother. I am satisfied that this would be a proportionate order to make – it is one of those cases clearly contemplated by the European Court of Human Rights in *Söderbäck v Sweden* [1999] 1 FLR 250, particularly at [31]: the *article 8 ECHR* rights of F are not strong – F has had very limited contact with Hope, and none for many years – and Hope is thoroughly integrated into her current household. In preparing this judgment, I re-read the discussion of the *Söderbäck* principles in a step-parent adoption such as this in the judgment of McFarlane LJ in *Re P* [2014] EWCA Civ 1174 at [48] and have applied the same in reaching my conclusion.
17. Secondly, having considered the reports of the social worker and the Children’s Guardian, I can confirm that I am satisfied that it is in Hope’s paramount interests that she be adopted by SF. She plainly wishes this to happen, and has confirmed to the social worker that she felt she would be able to say if she did not. Hope has had no meaningful relationship with F, nor his family, throughout her life, and will therefore not ‘lose’ such relationships by the proposed adoption. The social worker was satisfied that Hope spoke “openly” about her relationship with SF and demonstrated that she understood well the implications of the adoption. I am satisfied from all that I have read that M and SF provide a “secure stable and loving home” (per social worker) for Hope. SF has been a continuous figure in Hope’s life since Hope was 3 years old.
18. Thirdly, I am satisfied that the consent of F is not required in this case on at least one of three possible grounds. First, he does not appear to have parental responsibility for Hope (see *section 52(6) ACA 2002*). Insofar as his consent had been required, I would have been content, secondly, to dispense with it on the ground that he could not be found (*section 52(1)*) and/or that, thirdly, in any event, Hope’s welfare requires that his consent is dispensed with (*section 52(2)*) and that an adoption order should be made. SF is the only father Hope has ever known. As I refer at [8] above, Hope says, meaningfully and poignantly, that “being a father isn’t just about who gave you life, [F] has been the only father figure I know and to have him officially be my dad would be amazing”.
19. I enjoyed meeting with Hope at court earlier this week; she is an engaging young person with an aptitude for maths and physics, and a well-placed ambition to pursue a degree (and possibly a career) in computer science. She is, I am told, a talented artist,

and supports her local premiership football team. She has plainly benefited from the loving and stable home life which the Applicant and M have given her during her childhood, and I predict that she has a bright future ahead of her, from the secure base of her family.

20. For all the reasons set out above, I am delighted therefore to make the adoption order sought by SF, sealing legally – and throughout her life – the important and established place which Hope occupies in this family. I am satisfied that no other order would be appropriate or sufficient in this case.
21. That is my judgment.