

IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION

Case No: BM23/2019

Courtroom No. 41

1<sup>st</sup> Mezzanine, Queens Building  
Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday, 10<sup>th</sup> October 2019

Before:  
THE HONOURABLE MR JUSTICE KEEHAN

B E T W E E N:

A (APPLICANT)  
and  
B (FIRST RESPONDENT)  
and  
C (SECOND RESPONDENT)  
and  
D (THIRD RESPONDENT, BY HIS CHILDREN'S GUARDIAN)  
and  
SECRETARY OF STATE FOR THE HOME DEPARTMENT (INTERVENER)

Dr Jackson, counsel, instructed through the direct access scheme, appeared on behalf of the Applicant

Mr Brown, counsel, instructed by Lichfield Reynolds LLP, appeared on behalf of the 3<sup>rd</sup> Respondent child, through his Guardian

Ms Candlin, counsel, instructed by The Government Legal Department appeared on behalf of the Intervener

JUDGMENT  
(Approved)

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MR JUSTICE KEEHAN:

1. This is an application for an adoption order made by the applicant, A, in respect of one young person, D, who is known as D.
2. D, as I shall refer to him, was born on 18 September 2001 and therefore attained his majority about a month ago. His parents are B and C. D is a party to this application and appears through his children's guardian.
3. Because of issues relating to immigration status, which I shall refer to in a moment, the Secretary of State for the Home Department was joined as an intervener.
4. The children's guardian supports the adoption application. The Secretary of State for the Home Department, having previously opposed the application, now adopts, for reasons I completely understand, a neutral stance.
5. B and C are not present at this hearing and they have no notice of this application because, despite strenuous efforts by the applicant and by the solicitor for the guardian, it has not been possible to trace them.
6. The background history may be stated for these purposes fairly shortly. D was born in the Ukraine on 18 September 2001. He arrived in this country on 10 August 2015 to visit his aunt, A. He was 13 years old at the time.
7. Shortly after his arrival, A learned of the escalation of military conflict between the Ukraine and Russia and made contact with B and C and they asked the applicant to keep D in the United Kingdom with her.
8. On 2 September 2015 an application was made to the Secretary of State for the Home Department to regularise D's status in the UK on the basis of claiming asylum. At the same time, the applicant notified her Local Authority, that D was living with her.
9. The applicant, and indeed D, asserted that the last time that they had had any communication with B and D was some time in February 2016 when there was a Skype call between D and B and C. The applicant asserted, and D supported this assertion, that since then there has been no contact of any description, at all, between D and the applicant, on the one hand, and the parents, on the other.
10. On 29 April 2016 D's application for asylum was rejected. A year later on 22 May 2017 D's appeal against that decision was dismissed. On 22 September an upper tribunal judge refused the application for permission to appeal the decision and on 26 October 2017 another tribunal judge refused the applicant permission to appeal the decision of the first-tiered judge. On 12 July 2018 immigration solicitors acting on behalf of D made further representations to the Secretary of State for the Home Department, but on 16 September 2018 the Secretary of State refused to treat the submissions made on behalf of D as a new claim.
11. On 21 November 2018 the applicant gave formal notification to the Local Authority of her intention to make an application to adopt D. On 3 December 2018 the immigration solicitors, to whom I have referred, subsequently made a claim for judicial review in the upper tribunal.
12. On 28 February 2019 the applicant made this application to adopt D. On 12 April 2019 permission to claim judicial review was refused by a judge of the Upper Tribunal.
13. The application for judicial review was subsequently renewed and was refused. .
14. As I have mentioned, on 18 September 2019 D became 18 years of age.

### **The Law**

15. When considering this application, I have well in mind the provisions of s.1 Adoption and Children Act 2002, in particular s.1(2), that the paramount consideration of the court is the

child's welfare throughout the whole of his life and I have regard to the welfare checklist set out in s.1(4).

15. I also have regard to the Article 6 and Article 8 rights of the applicant and of D.
16. I am satisfied that the conditions set out in the 2002 Act for the making of an adoption order in respect of this applicant are all satisfied.
17. By Section 47(2) of the Act, I have to be satisfied that either (a), the parents of D consent to the making of the adoption order or (b) that they have consented under Section 20 and do not oppose the making of the adoption order, or (c) that the parents' or guardian's consent should be dispensed with.
18. Having regard to the provisions of s.51 of the 2002 Act, I am satisfied that the applicant satisfies that condition on the basis that although she is still formally married to her husband, they have been separated for a considerable period of time, are still living apart and the separation is likely to be permanent.
19. Pursuant to s. 52(1) of the 2002 Act, I cannot dispense with the consent of the parent of a child being placed for adoption or to the making of an adoption order in respect of that child, unless I am satisfied that (a), the parents cannot be found or (b) the welfare of the child requires their consent to be dispensed with.

### **Analysis**

20. I met with D at court last week. I found him to be an extremely impressive young man. He is plainly extremely bright. He has been doing exceptionally well at school, in his public examinations and he has the laudable desire to read medicine at university and to become a doctor. To that end, he has had a number of placements with consultants at various hospitals nearby where he lives and he is planning to obtain further placements in due course. He will be taking examinations for university in early course.
21. When I met with D, he spoke in very moving terms of his love for and his relationship with the applicant. He told me of his earnest desire that he should be able to call her his mother, which he cannot do at the moment.
22. In relation to his examinations, he movingly told me that he sits at the breakfast table with the applicant and she gives him advice and guidance on how to deal with examinations, telling him that if he finds it difficult to answer a particular question, he should move on and come back later on. He said that when he is sitting his examinations, he has the voice of the applicant in his head, advising him as to how he should best tackle the examinations.
23. I am in no doubt that the applicant very much loves D and he very much loves her and that she has given him excellent care, security and stability since he came to live with her in this country in 2015.
24. One concern, I must confess I did have in relation to this application, was that given the failure of D to secure, by whatever means, the permission of the Secretary of State for the Home Department to reside in this country, as to whether this application was a device to circumvent the decisions of the Secretary of State and of the tribunals.
25. However, now that D has attained his 18th birthday, under the provisions of British Nationality Act 1981, he does not automatically acquire British Citizenship which he would have done if the adoption order had been made prior to him attaining his majority. It is in those circumstances that the Secretary of State has changed her position to one of assuming a neutral stance.
26. I am satisfied that all reasonable and proper efforts have been made, both by the applicant and by the children's guardian to trace D's parents in the Ukraine.
27. They have contacted the Ukrainian Authorities for assistance in tracing them; they have written to their last known home address; they have used email; they have written to their

- last employers, all to no effect. I am entirely satisfied and find that D has had no contact, nor has the applicant, with the mother or the father since February 2016.
28. It would appear that they have, for whatever reason, abandoned D, knowing that he is in the loving care of his paternal aunt.
  29. In those circumstances, and pursuant to s.52(1)(a) of the Adoption and Children Act 2002, I am content to find and I am satisfied, that D's parents, neither his mother nor his father, can be found.
  30. Even if I were not satisfied of that, I would then turn my attention to s.52(1)(b), and I would find myself entirely satisfied that the welfare of D requires his parents' consent to be dispensed with because they have had no involvement in his life and because he is very seriously desirous of having the applicant as his legal mother. Accordingly I would dispense with their consent to D's adoption.
  31. In all of those circumstances, I am entirely satisfied that it is in the welfare best interests of D, now and throughout the whole of his life, that I make an adoption order in favour of the applicant in respect of D.
  32. That I know will be very warmly welcomed by the applicant, but if she will forgive me saying so, more importantly, it will be very warmly welcomed by D himself.
  33. If, on being told of the order I have made, D would wish to meet with me again, I have no doubt appropriate arrangements can be made.

**End of Judgment**

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This transcript has been approved by the judge.