

This is an approved transcript of an ex tempore judgment given on 7 September 2023.

IN THE FAMILY COURT SITTING AT OXFORD

Neutral Citation number: [2023] EWFC 221

St Aldates
Oxford
OX1 1TL

2.52pm – 3.14pm
Thursday, 7th September 2023

Before:
HER HONOUR JUDGE VINCENT
Sitting as a s9 Deputy High Court Judge

B E T W E E N:

MRS H

Applicant

and

MS A & ORS

Respondents

Mr Jonathan RUSTIN (instructed by Goodman Ray solicitors) appeared on behalf of
the Applicant

THE RESPONDENT MOTHER appeared In Person

NO APPEARANCE by or on behalf of the Respondent Father

Mr Simon MILLER (instructed by RWK Goodman) appeared on behalf of the Child
through the Guardian Ginny DAVIES

Ms Katherine LACEY appeared on behalf of Reading Borough Council

APPROVED JUDGMENT

This judgment is linked to Re A (sexual abuse – care and placement orders) [2023]
EWFC 222

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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.

HHJ VINCENT

1. Care proceedings were started soon after A's birth. There were serious concerns about his safety and wellbeing if he were to be placed with either of his parents. His mother has a conviction for sexual abuse of two of her older children. There were real concerns about A's father's ability to understand and protect A from the risks posed to him by his mother.
2. I was the judge who dealt with those proceedings. On 14 September 2022, I made final care and placement orders to the Local Authority. I approved its long-term plan for A to be placed with his maternal aunt and her husband, Mr and Mrs H.
3. I gave permission, pursuant to section 28 of the Adoption and Children Act 2002, for A to travel to Canada while still in the care of the Local Authority, for the purpose of getting to know his aunt and uncle, and for a home-study assessment of them to be carried out.
4. Following the conclusion of care proceedings, but before A had travelled to Canada, Adoption Options, a private international adoption agency, completed that home-study assessment. It confirmed that Mr and Mrs H were eligible to adopt. Mrs H and her husband were then matched as adopters, and Article 17(C) agreement to the adoption was given by both Canada and England on 5 December 2022.
5. However, appallingly for the family, just as A was supposed to be transitioning to their care in December, Mr H suffered an untimely, unexpected and sudden death. It has been a great shock and sorrow for all the family. I extend my sincere condolences to Mrs H and to her family for her loss.
6. It is a testament to the love, courage and commitment of Mrs H, that through

her grief, she did not lose sight of her nephew A. She has met him, bonded with him, loves him, and remains committed to him. Following a period of reflection and with a lot of discussions with her family, particularly with her three adult children, she confirmed that she wished to continue with the process of adopting A, as a sole adopter.

7. She made that decision with the support of her adult children, and other members of the extended family, including her sister. She is also supported by a wide network of friends and colleagues.
8. The Article 15 and Article 16 reports were subsequently updated, and the renewed Article 17(C) agreements from Canada and from this jurisdiction are dated 9 and 10 March 2023 respectively. On 10 March 2023, A was placed with Mrs H as his prospective adopter. She then made her application to this Court for a Convention adoption order on 26 June 2023.
9. I am grateful to Mr Rustin who has set out the legal requirements for making the adoption order in his written submissions to the Court. I will go through them.
10. Firstly, Mrs H is making an application for an inter-country adoption order between two states which are both signatories to the Hague Convention of 29 May 1993 on the Protection of Children and Co-operation in Respect of Intercountry Adoption. This instrument was given effect within the UK by the Adoption (Intercountry Aspects) Act 1999, which gives the Secretary of State the power to make regulations to implement the Convention. The relevant regulations are contained within Part 3 of the Adoption with a Foreign Element Regulations 2005. Part 3, chapter 2 of those regulations provides the regulatory framework which governs the adoption of a child who is habitually resident in the British Isles by a person who is habitually resident in the British Islands by a person who is habitually resident in a Convention country. These regulations together with the relevant provisions in the Adoption and Children Act 2002, provide the statutory framework which gives the Court the power to make a Convention adoption order.
11. Mrs H meets the eligibility requirements of section 50 of the Adoption and Children Act 2002. None of the restrictions in section 48 of the Act apply. She is entitled therefore to apply for adoption pursuant to section 49 of the Act, as a single person applying.
12. The conditions which must be met before I can make a Convention adoption order are set out within section 42 of the Adoption and Children Act 2002 (as amended by regulation 56 of the Adoption with a Foreign Element Regulations 2005). Section 42(2) requires the child to live with the adopters at

all ties during the period of ten weeks preceding the application. We know that that position is satisfied because A has been living with Mrs H since 10 March 2023.

13. Section 42(7) requires the court to be satisfied that there have been sufficient opportunities to see the child with the applicant in the home environment. Consistent with the requirements of that section the local authority has made arrangements for A to be seen by its agents in Canada. I am satisfied that there have been sufficient opportunities to meet with A and his adopter.
14. Then we move on to the requirements in respect of habitual residence, which are set out in regulation 50 of the Adoption with a Foreign Element Regulations 2005. A Convention adoption order shall not be made unless the applicant has been habitually resident in a Convention country outside the British Islands for a period of not less than one year ending with the date of the application. Mrs H is and has been at all material times habitually resident in Canada. Regulation 50(b) requires the child to be adopted to be habitually resident in any part of the British Islands on the date on which the agreement under Article 17(c) of the Convention was made.
15. A had been living in England up and until 10 March 2023, which was the day the agreement under Article 17(c) was made. On that day he travelled to Canada.
16. However, he did not acquire habitual residence in Canada just by virtue of travelling there. This was provided for in the final order, which made it clear that A was going to retain his habitual residence in England, where he remained in the care of the local authority, unless/until his placement was confirmed.
17. Consequently, I am satisfied that the requirements of Regulation 50 of the Adoption with a Foreign Element Regulations 2005 are met and so I have the jurisdiction to grant the Convention adoption.
18. Those technical requirements being met, I have had regard to all the various reports filed in support of the application, starting with the home-study assessment, which was completed in Canada. Here in this jurisdiction, there is the annexe A report from Ms K. These reports are detailed and comprehensive, cover both A's history, his particular needs and a very far-reaching assessment of Mrs H that takes in all her past and current circumstances. The reports cover interviews with her children, members of her extended family, consider her work life, education, and the support she has around her.

19. These reports are a privilege to read. Mrs H is a loving and kind person, she is very well-educated, as was her husband, and she enjoys a rewarding career. She is dedicated and devoted to all her children and has supported them in all ways, bringing them up to be fine, upstanding, lovely young people, who live rich and rewarding lives. They have been brought up valuing and showing kindness and compassion to others. They share religious and cultural observance of their [redacted] faith.
20. The applicant is much loved and respected within her family and within her wider community. The referees in support of her application hold her in very high esteem. They trust and have well-founded faith that she will be as devoted and loving a parent to A as she has been to her own children.
21. In her analysis, the children's guardian has reviewed all the relevant documents. She has established the technical requirements but also considered the substance of the reports. She supports Mrs H's application.
22. A has been placed for adoption, all the requirements are met, the professional evidence is overwhelmingly in support of adoption. A's birth father has not taken part in the proceedings but is said to be supportive of the adoption. A's birth mother has bravely made the decision not to seek to oppose the adoption order. In the circumstances, I am entirely satisfied that it is the right thing to do to establish A's placement as permanent and to make the adoption order.
23. It is right that the law now recognises A's loving relationship with his aunt. She is committed to caring for him for all of his life. I acknowledge their relationship, her commitment to secure his placement in Canada and by making the order, enshrine the current arrangements as permanent.
24. I do need to think about contact before I make the order, but note there is no formal application before me. Ms A has shown courage to come back to Court. I imagine it was not easy for her to walk back into this building when she has had difficult experiences here. I acknowledge her commitment to A in doing so.
25. In terms of contact, I am grateful that the Guardian and the Local Authority, the social worker has given it serious consideration, they have discussed this issue with Mrs H, who also has given this a lot of thought.
26. The potential benefits of having contact for A with his birth mother and birth father are that it will help him understand his life story and his own identity, and it will help him understand that he is loved and that he was not rejected. Mrs H is supportive of that objective. She proposes doing that through annual letterbox contact - letters sent with updates. However, Ms A is asking for

regular video contact and for that contact to take place on special occasions.

27. I have looked at the earlier submissions and I have considered them. As expressed in my earlier judgment, there are particular concerns about video contact in this case. The abuse that took place of the mother's children was through making videos and through sharing images on social media, so there is a particular risk factor there. I would want to know that there were updated risk assessments, specifically around that before I endorsed any contact of that sort for A.
28. The mother's contact with her older children is supervised by social work professionals. In this case, the mother is asking for A's new adoptive parent to be the supervisor. This causes her some difficulty.
29. A has already suffered from the disruption of moving from his foster parents who were very important and loving figures to him, to his new household. He is settling very well, but is still in the process of adjusting to that new environment and to his new life. There is a risk that it would be disruptive and confusing for him to have further contact through video calls. There is some concern that Ms A may not be able to manage her own emotions and to prioritise A's welfare, in circumstances where she does not actively support the need for an adoption order and there have been past concerns about her ability to understand the risks and have insight into that.
30. Finally, while Mrs H is supportive of some contact, she does not support video contact. Case law is clear that it is not appropriate to impose a court order for contact upon an adoptive parent who does not feel able to facilitate it.
31. Mrs H has reasonable grounds for taking the position that she does. There are questions about any order I make, whether it would be enforceable in Canada in any event, but for all of the reasons that I have given, I would not approve contact being anything more than what is proposed by the Local Authority. Had there been a formal application before me, I would not give permission for the birth mother to apply for a contact order.
32. As a result, the contact that is proposed between A and his birth mother will be the same as the contact that is proposed between A and his birth father - letterbox contact - but it is a matter for Mrs H to make those decisions in the future.
33. I note in passing, that A's foster parents are very important figures in his life. I was very pleased to read about how they supported A to move to Canada and about the lovely relationship they have built up with Mrs H. They have already travelled to Canada to visit and will continue to be significant people in A's life.

34. In conclusion, I will make the adoption order for A to Mrs H. I approve the local authority's proposals in respect of contact. By operation of Article 23 of the Convention, the adoption order that I have made in this jurisdiction should now be recognised in the receiving state of Canada.
35. There is no need for a further application to be made, but a certificate needs to be issued once the paperwork is finalised. The Secretary of State, the essential authority in England, needs to issue a certificate under Article 23 of the Convention which certifies that the adoption was made in compliance with the Convention and must therefore be recognised by all Convention states.
36. I acknowledge Ms A's courage in coming to Court today. I am glad that she has been supported. I make the adoption order and I wish Mrs H and A the very best for the future.

HHJ Joanna Vincent
Family Court, Oxford
14 September 2023