

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.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE FAMILY COURT
Sitting at the Royal Courts of Justice
[2021] EWFC 115



No. ZC21Z00122

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 21 July 2021

IN THE MATTER OF L
IN THE MATTER OF THE ADOPTION AND CHILDREN ACT 2002

Before:

MRS JUSTICE THEIS

(In Private)

B E T W E E N :

J

Applicant

- and -

K

Respondent

MS N. GAMBLE (solicitor) appeared on behalf of the Applicant.

THE RESPONDENT was not present and was not represented.

J U D G M E N T
(Via Video Conference)

MRS JUSTICE THEIS:

Introduction

- 1 The court is concerned today with an adoption application in relation to a little boy, L, who is now two and a half years of age. The applicant J is 50 years of age. The respondent is K, the gestational surrogate who carried L as a result of a surrogacy arrangement entered into between the parties.
- 2 The court is in a position to be able to give a judgment today because of the detail of the material that the court has available, in particular the two detailed statements by J dated 17 February 2020 and 7 July 2021, the Annex A report filed pursuant to r.14.11 Family Procedure Rules 2010 from Miss Clare Moatti, the detailed preparation that has been undertaken by J's solicitor, Ms Gamble, and the comprehensive skeleton argument. This material has enabled the court to be able to have all the information that it needs to be able to reach a decision today.

Relevant background

- 3 The background to this matter is that J has for some-time known that she wanted to have a child of her own. Following the breakdown of relationships, she decided to seek fertility treatment as a single person in the United Kingdom which was unsuccessful. She decided to consider surrogacy and engaged a United States surrogacy agency. Through that agency she was introduced to K, the respondent.
- 4 Following their introduction, they entered into a gestational surrogacy agreement in November 2017. That was a commercial surrogacy arrangement, permitted in the jurisdiction in which it was entered into and is supported by the underlying legal framework that operates there.
- 5 An embryo was created with donor gametes and transferred to the respondent surrogate in May 2018. Pregnancy was confirmed and L born in early 2019. J had wisely and appropriately issued the necessary applications in the United States to be able to secure her legal status in relation to L on his birth. That was confirmed by way of the parentage order made by the Superior Court in California just after L's birth.
- 6 J and L stayed in the United States for about five weeks following the birth whilst the necessary immigration procedures were undertaken. A US passport was issued, and they came to this jurisdiction soon afterwards.
- 7 Following their return here to the family home in south west London, J was contacted by the local authority who had been alerted by the UK Border Agency. There were two visits by the social worker and the file was closed, as there were no welfare concerns.
- 8 In April 2019, J applied for L to be granted British nationality on a discretionary basis under the Home Office British Nationality Policy on Surrogacy. That was granted in July 2019 and a British passport was issued for L.
- 9 J now seeks an adoption order to be able to secure her legal parental relationship in this jurisdiction with L, to provide him with the security as his legal parent. To do that it was

necessary for an application to be made for leave to make the application before the three-year residence requirement set out in s.42 Adoption and Children Act 2002 (ACA 2002). The application was made on 20 March, and this court granted leave under s.42(6) ACA 2002 on 12 May, made directions in relation to service of the order, the application and the statement in support on the local authority. Upon expiry of the relevant notice period under s.44(3) the adoption application could be made. I also made directions that if the r.14.11 report had not been filed the matter could be restored for further directions.

- 10 Following the 12 May order, J's solicitors wrote to the local authority on 17 June giving them formal notice of the intention to make an adoption application for the purposes of s.44 ACA 2002. This prompted the allocation of the r.14.11 report to be prepared by Ms Clare Moatti.
- 11 That report was prepared in accordance with the provisions in r.14.11. The Family Procedure Rules 2010 provides for the structure of those reports and what they should contain. The final report is dated 1 December 2020. As part of the preparation of that report Ms Moatti was able to visit L monthly, met with J on seven occasions, individually undertook the necessary safeguarding checks, took up the references that were offered and also the details in relation to the medical information. The report is clear in its recommendation, it supports the court making an adoption order.
- 12 Following receipt of that report the adoption application was made on 14 June 2021. I made directions on paper on 21 June, directing that it was not necessary for L to be joined and to have a children's guardian as I did not consider, in the circumstances of this case, it was necessary. I made directions for J to file an updating statement, which she did dated 7 July, and for the application, directions order and updating statement to be served on the local authority with a direction for them to notify the court and the applicant whether they intended to attend this hearing or make any representations. That was duly done. They have confirmed that they support the application, support the order being made, do not wish to make any further representations or attend the hearing.
- 13 I also made directions in relation to service on the respondent, K. She was served and responded to say that she was not going to attend the hearing but very clear her support for the adoption order remains.

Relevant legal framework, discussion and decision

- 14 The legal framework within which this application is being considered is because, as a matter of law in this jurisdiction under s.33 of the Human Fertilisation and Embryology Act 2008, the respondent, K, remains L's legal parent, even though that position is different in the United States. If this court makes an adoption order it will serve to extinguish K's legal relationship with L and will secure J as L's legal parent. An adoption order will provide the legal security for L and J; the effect of such an order is made very clear by s.67(1) of the Adoption and Children Act when it states as follows:

“An adopted person is to be treated in law as if born as the child of the adopters or adopter.”
- 15 It has been described previously as a transformative order. It is. It has lifelong consequences, and so the court rightly has to ensure that it has all the information available

to be able to make such an order. In considering whether it should make such an order the court is guided by s.1 of the Adoption and Children Act 2002, namely the child's lifelong welfare needs, having regard to the matters set out in s.1(4).

- 16 In her very helpful, and characteristically detailed, skeleton argument, Ms Gamble has provided the court not only with the framework to ensure that J has the requisite eligibility to make this application, but also has considered and looked at the position in relation to ss.83, 92 and 95 ACA 2002 in relation to whether they cause any reluctance on behalf of people/person in J's situation to be able to make this application.
- 17 For the reasons that I have just set out, I am not going to deal with those matters in detail as it is not necessary for the purposes of this judgment. There may be different cases with different circumstances where it may be necessary to go into that in more detail.
- 18 What I need to consider in relation to J's situation is whether she meets the eligibility requirements under the ACA 2002. She does, for the following headline reasons:
- (1) Under s.49 she is a single adopter. She has been habitually resident in this jurisdiction for one year.
 - (2) In accordance with s.51 she is over 21 years of age.
 - (3) As a result of the leave that I gave previously, that the application can be made before the three-year period has expired.
 - (4) In accordance with the provisions in ss.42–44, the local authority has been given notice, it has had the opportunity to be able to undertake the necessary investigations it is required to do, and it clearly had sufficient opportunity to be able to see L with J in a home environment as required under s.42(7).
 - (5) There is updating medical information available in accordance with r.14.12.
 - (6) The respondent, K, consents to this court making an adoption order which satisfies the requirements in ss.47 and 52. There is a notarised consent dated 23 January 2020, and the recent communication giving her notice in relation to this hearing has confirmed that her support and consent she gave then remains firmly in place. Both J and K remain in contact exchanging updating information in relation to L's progress. There is nothing in the papers to suggest that that consent has changed in any way.
- 19 I am satisfied that J is able to make this application, that the relevant criteria and procedural requirements have been met, which means that the court, in considering whether to make an adoption order, needs to consider whether this order will meet L's lifelong welfare needs.
- 20 It is quite clear from the statements that have been filed by J that L has settled extremely well since they arrived in this jurisdiction. She gives detail in relation to his routine and the progress he is making. Her statements are supported by photographs and information in relation to their day-to-day life. He is clearly developing extremely well and in a creative and imaginative way that seems to include (as set out in the most recent statement) having a

mud kitchen in the garden, and spending a lot of time there cooking up various different delicacies for everyone to be tempted by.

- 21 In her report Ms Moatti sets out the details in relation to her inquiries, makes a clear recommendation supporting the adoption order being made and says:

“L is at the centre of the applicant’s life. She clearly enjoys parenting, is focused on L’s needs and tries to always be the best parent she can. L presents as a happy, contented toddler, strongly attached to the applicant and comfortable in his life. L is completely accepted and integrated into the applicant’s extended family. The applicant is aware the circumstances of L’s life are different to most children and L will ask questions about his background. She will need to answer skilfully to help L comprehend and be comfortable with his past. Above all, J loves L and wants to become his legal mother throughout his childhood by granting of an adoption order.”

- 22 As Ms Moatti observes, the adoption order will reflect the close relationship which exists between J and L, and that only an adoption order will legally secure L’s position.
- 23 Having considered the recommendation and information provided in the context of the framework of the welfare checklist in s.1(4) ACA 2002, it is quite clear L’s lifelong welfare needs will be met by this court making an adoption order because only that order will reflect the reality of L’s life, not only his reality now but going forward, not only during his minority but in the years beyond. It also recognises the circumstances through which he was born, due to the continuing relationship that has remained between J and K. What it will do is to secure the parental legal relationship between J and L, which can only meet his lifelong welfare needs.
- 24 So, for those very brief reasons, I have very great pleasure in making an adoption order.
-

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

This transcript has been approved by the Judge.