



Neutral Citation Number: [2022] EWFC 168

Case No: ZC96/22

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 28/11/2022

**Before :**

**THE HONOURABLE MRS JUSTICE JUDD DBE**

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**Between :**

**Mr X  
and  
Mrs X  
- and -  
M**

**1<sup>st</sup> Applicant**

**2<sup>nd</sup> Applicant**

**Respondent**

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**Lucy Reed** (instructed by **Harrison Clark Rickerbys**) for the **1<sup>st</sup> and 2<sup>nd</sup> Applicants**  
**The Respondent was not represented**  
**Niamh Daly** (instructed by a **Local Authority**)

Hearing dates: 31<sup>st</sup> October 2022  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 2 December 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg <https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html>).

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MRS JUSTICE JUDD

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 Hon Mrs Justice Judd :**

Introduction

1. This is an application for the adoption of a young person, K, who is now aged 18. The application is made by close relatives who have brought him up as their own son since he was four years old.

Background

2. The background to the case is tragic. K's birth mother was born and brought up in Country A. His father was a British citizen. The father and birth mother met in Country A where the father was working, and K was born there. When K was very young, his birth mother killed his father in circumstances which are set out in some detail in the court documents that have been disclosed from the criminal proceedings in Country A. I will not set out the details here, but they were horrific as the murder was planned, involved others, and was carried out for financial gain. After a trial mother was convicted of murder and sentenced to life imprisonment, and her appeal was dismissed. There are detailed judgments from both the court of first instance and the Court of Appeal in that jurisdiction, which I have read.
3. K was placed in an orphanage where he remained for several months. The applicants, who are members of the father's family, went to Country A to apply for custody and permission to bring him to this country. There were court proceedings there, which led ultimately to the birth mother accepting that she was not in a position to care for K. She entered into an agreement, which was ratified by the court, to relinquish custody and parental responsibility in favour of the applicants, and that they could bring him up in this country.
4. K has been cared for by the applicants since that day. They are part of a close and loving wider paternal family. Since coming over here K has had no contact with his birth mother or any member of the maternal family. He and all of the family have suffered trauma as a result of the father's murder, and they grieve him to this day. K is a British citizen. Proceedings were brought in this country and he was made a Ward of Court, with care and control granted to the applicants. This remained throughout his childhood, but lapsed on his 18<sup>th</sup> birthday.
5. The applicants wished to make the application some time ago, but did not proceed beyond the stage of giving notice to the local authority as they

were originally advised that they would have to have parental consent from K's birth mother. They were very concerned about the impact of this on K, and other relatives.

### The Statutory and Regulatory Framework

6. Notwithstanding the international elements this is a domestic adoption. The applicants and K are habitually resident here and all have British nationality. The provisions of the Adoption and Children Act 2002, the Children Act 1989 the Family Procedure Rules 2010 and the Adoption Agency Regulations 2005 all apply. The child concerned must have lived with the adopters for three years (s42(5)). The application may be made by a single person or a couple (s49(1)), and at least one of the couple must be either habitually resident or domiciled in the British Isles for not less than one year (s42(2) and (3)). The application for an adoption order may only be made if the person to be adopted has not attained the age of 18 at the date of the application, and an adoption order cannot be made after the person to be adopted has attained the age of 19 (s49(4) and s47(9)).
7. The adoption agency must prepare a report on the suitability of the applicants to adopt and any other matters relevant to section 1 ACA, and assist the court in any manner directed (s43).
8. This application was made before K's 18<sup>th</sup> birthday although he has attained that age since. He is a party to the application but following the first hearing, I determined that it was not necessary to appoint a Guardian to act on his behalf. He is now a legal adult and has very clear views, although he has said he does not wish to attend court or be represented.
9. PF1 and PF2 were parties to the proceedings in Country A in 2009, and the order which granted parental responsibility and custody to the applicants also granted it to them. PF1 has since died, and PF2 has said that whilst they support the making of the order they do not wish to participate in these proceedings. For that reason I have decided not to join PF2 as a party. Any parental responsibility PF2 has had will have come to an end on K's 18<sup>th</sup> birthday.
10. The parties to the proceedings are thus the applicants and the local authority. There remains the question as to whether the birth mother should be joined.

The status of the birth mother

11. If the birth mother qualifies as a parent within the meaning of the ACA 2002, she should be an automatic respondent to this application (r14.3 Family Procedure Rules 2010) and her consent must be either given or dispensed with (ss 47 and 52 ACA) before any order can be made.
12. A court order made on 25<sup>th</sup> May 2009 by the Presiding Judge at the court in Country A included provisions terminating the mother's parental responsibility with her consent. Dr. N, an expert in family law in Country A instructed in these proceedings, has provided a comprehensive opinion that this order was valid and final under the law in Country A. Not only did the order terminate the parental responsibility of the birth mother, but it also granted parental responsibility to the applicants and PF1 and 2. Although it appears from the documents that the mother initially contested the proceedings, the order terminating her parental responsibility was made by agreement, and there is a document to that effect, signed by the mother and her legal representative.
13. Dr. N also states that, according to the law of Country A, parental responsibility terminates on the 18<sup>th</sup> birthday of the child as it does here.
14. For the purposes of our domestic adoption law, a parent is defined in s52(6) ACA as a 'parent having parental responsibility'. Parental responsibility is governed by s2 Children Act 1989 (CA 1989). Where the child's parents were not married at the time of the birth, the mother shall have parental responsibility (s2(2)), and the father shall have it if he acquires it in accordance with the provisions of s4. Whilst there is provision for the parental responsibility of a father to be terminated, there is no corresponding statutory provision in respect of a birth mother, save by the making of an adoption order.
15. Under Article 16 of the 1996 Hague Convention on the Protection of Children 1996, the attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the habitual residence of the child (Article 16(1)). Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State (Article 16(3)). It is notable that there is no reference here to the termination of parental responsibility. Article 4 provides that the Convention does not apply to decisions on adoption or measures preparatory to it. Whilst the decision as to parental responsibility may not have been part of a decision on adoption or a

measure preparatory to it, (if it was, the Convention would not apply under Article 4), the provisions of Article 16 do not apply to cases where parental responsibility has been terminated by judicial intervention.

16. It is thus to the common law that the court must look when determining whether the Country A court order can be recognised. In her skeleton argument Ms Reed for the applicant submitted that the effect of the order was that the mother had no parental responsibility in English law, and that there was no requirement to join her as a party. Ms Daly, for the local authority submitted that because there is no provision in English law to terminate a mother's parental responsibility that the court should take a cautious approach.

17. In Re AMR (Adoption: Procedure) [1999] 2 FLR 807, Judge Gee, sitting as a Judge of the High Court, determined that the consent of parents whose parental responsibility had been terminated by a Polish court to adoption of the child was not required. He stated that it was clear that Polish family law concepts corresponded in large measure to those here, and that judicial comity, authority and common sense pointed to the need to recognise that order. In similar vein, in Re AGN (Adoption: Foreign Adoption) [2000] 2 FLR 431 Cazalet J decided that a foreign guardian (in this case an orphanage), invested with rights under a foreign order recognised under English law was capable of being a guardian whose agreement to an adoption order needed either to be given or dispensed with pursuant to s16 of the Adoption Act 1976. In his judgment, Cazalet J referred to the dicta of Salmon LJ in Re Valentine's Settlement; Valentine and others v Valentine and others [1965] Ch 831,

*“Whilst it is, of course, a principle of English law that it will not recognise the right of a foreign court to impose a change of status on anyone not domiciled in its jurisdiction, it is equally a principle of English law generally to recognise the right of a foreign court to make an order changing the status of anyone over who it has jurisdiction. What happens, as here, when these two principles conflict? When the adopted child and its natural parents are domiciled within the jurisdiction of the foreign court and the adoptive father is not domiciled within its jurisdiction? There is no escape from the necessity of choosing between the two principles for no compromise is possible”.*

18. The significance of the decision in Re AGN is that the definition of guardian as provided by the foreign court was accepted even though there was no corresponding provision within domestic law for a body such as an orphanage to perform that function. In coming to this decision it

should be noted that Cazalet J disagreed with the decision of Holman J in the case of Re D (Adoption: Foreign Guardianship) [1999] 2 FLR 418 where he held that there should be a strict construction of the term guardian as provided for in the CA 1989.

19. More recently, in the case of C v C [2019] UKPC 40, the Privy Council upheld the decision of the Jersey Court of Appeal to rely upon a declaration of paternity made by a court in Latvia. Lord Wilson, giving the judgment of the Board, stated in paragraph 44:-

*“And thus, although recognition in England and Wales of foreign decrees of divorce is now governed by sections 45 to 48 of the Family Law Act 1986, the principle of jurisdictional reciprocity, endorsed at the highest level, remains part of the common law in relation to certain family matters, in particular, according to the decision in the Valentine’s Settlement case, to adoption’.*

20. Ms Daly has referred me to the case of A and B v P Council [2014] EWHC 1128, which was a decision of Theis J whereby she concluded that the court should not recognise an order of the Thai court granting parental responsibility to the father, but this was not a case where recognition of that order under common law was considered.

21. Following the authorities above, I have concluded that this court can and should recognise the order made by the court in Country A in 2009. Parental responsibility under the law of Country A is defined very much as it is here. The mother and K were domiciled and habitually resident there at the time of the making of the order and the mother was legally advised at the time she gave her consent. The reasons for her doing so were overwhelming and in the best interests of the child, and the order made and acted upon many years ago. The fact that there is no corresponding provision here to terminate a mother’s parental responsibility should not mean that that a decision to that effect in another country cannot be recognised if there are no reasons of public policy reasons to the contrary. There is no doubt that the court would have been able to recognise an order terminating a father’s parental responsibility and it would seem anomalous if the same principle could not apply to a mother in these circumstances.

22. It follows from this that the mother is not a parent with parental responsibility within the meaning of s52(6) ACA, and accordingly there is no requirement to serve her with the proceedings or to either obtain or dispense with her consent to the adoption.

23. Given the importance of this issue, I wish to add the following. If I had concluded that the mother's parental responsibility had not been terminated by virtue of the 2009 order, I would have exercised my case management powers under rule 14.3(3)(b) FPR 2010 to remove her as a party without notice. I am very conscious that such a course of action would be exceptional in any case, but never more so than in proceedings concerning adoption where the birth mother has received no notification. In *Re P (Discharge of a Party)* [2021] EWCA Civ 512, a case concerning an analogous provision in the Court of Protection Rules 2017, the Court of Appeal made it absolutely clear that such wide ranging powers to remove a party have to be exercised in accordance with the overriding objective and with wider principles of law and justice which have been developed and recognised both at common law and under the Human Rights Act 1998.
24. In my judgment the extraordinary and extreme circumstances of this case justify such a draconian order, not only because of the matters I have set out above but also because the applicants and K object to the mother being notified so strongly that if this was to be directed they would apply for leave for the adoption application to be withdrawn.
25. The reasons for their objections are set out in some detail in a statement filed on their behalf and contained in the court bundle. The applicants believe that notification to the mother poses a risk of harm to K, both physical and emotional. The murder of the father was premeditated and for financial gain, and was carried out by the mother with other relatives and the assistance of a 'hit man'. The applicants fear that notifying the mother could lead to K being traced by people who wish to gain financially from him and/or cause him harm. They also fear that notifying the mother will affect K emotionally. He suffered great trauma in his early life as a result of his mother's crimes, spending several months in an orphanage whilst proceedings about his future took place. The applicants secured the services of an eminent expert, Dr. Dora Black, to advise them how to ameliorate the emotional harm caused to him. K has flourished with the exceptional care and loving security he has been provided with by the applicants and wider paternal family, but he remains vulnerable, suffering from an episode of depression in early 2020.
26. The applicants also point out that the mother has not seen or had any contact with K since the goodbye visit about 15 years ago, as advised by Dr. Black. She committed a terrible crime and deprived K of his father. She has no parental responsibility in her own country, and so far as she is concerned, relinquished parental responsibility to the applicants long ago.



27. These factors are so clear and compelling that I consider that it would be just and right for the mother to be removed as a party without notice to her. In coming to this conclusion, it is an important factor that I am dealing with a young man of 18, now an adult rather than a child. I have also had regard to the case of Re A, B and C [2020] EWCA Civ 41, and the list of factors relevant to considering whether to give notice to fathers and relatives.

Non-compliance with s44(3) Adoption and Children Act 2002

28. At the time the application was made, the applicants met all the conditions required to adopt K set out in sections 42 and 49 ACA. Unfortunately, there is one procedural defect in that their application was given less than three months before the application was made, in breach of s44(3). In most cases this could be cured by the application being withdrawn and another issued, but here that cannot happen because K is now 18. Given that the application was made only two weeks early, Ms Reed on behalf of the applicants invites the court to adopt a purposive interpretation to the statute pursuant to the obligation under s6 Human Rights Act 1998. She submits that it would be nonsensical to treat the non-compliance with time limits, especially in such a minor way, as a bar to the application proceeding and to K being adopted at all. In making this submission, Ms Reed refers to a number of cases including Re A (A Child: Adoption Time Limits s44(3) [2020] EWHC 3296 (Fam) [2021] 2 FLR 625; and Re A and B (No 2 Parental Order) [2015] EWHC 2080 (Fam).

29. This is a course of action that is supported by Ms Niamh Daly on behalf of the local authority.

30. I agree that it would be nonsensical to treat a failure to comply with a time limit in such a minor way as a bar to the application proceeding. The requirement in the statute must be read purposively, and the application can therefore go ahead.

31. In the Annexe A report prepared in this case there is limited information about the birth mother, but this is unsurprising in all the circumstances. The court bundle contains detailed documents from the mother's criminal trial (and appeal) as well as documents from the family proceedings which means that the court can be confident about the history given by the applicants. The report prepared by the local authority is entirely positive and supports the making of the order.

## Decision

32. Section 1 of the ACA provides that whenever a court or adoption agency is coming to a decision relating to the adoption of a child the paramount consideration must be the welfare of the child throughout his life. The court must have regard to the matters set out in subsection 1(4). I have all these matters firmly in mind.
33. There can be no doubt from all the evidence I have before me that despite the terrible events in his early life that K has been lovingly cared for by the applicants and brought up as their son. He has thrived in their care, assisted by wider members of the paternal family and friends too. He has done well at school and socially too. For his part, he regards the applicants as his parents and always will. To all intents and purposes that is what they are, and it is entirely understandable that they all wish this situation to be fully recognised in law.
34. At the age of 18, K's wishes and feelings are an overriding consideration, but all the other matters in the welfare checklist point in the same direction, namely that it is in his best interests throughout his life for this order to be made. This court is only giving legal effect to what took place long ago. K does not have any contact with his birth mother or members of the maternal family, and whether or not he ever does so will be a matter only for him. His father died when he was very young and all his relationships are with his paternal relatives who have provided him with security and loving support. There is no other order which can provide the same lifelong security and status as this.
35. Had it been necessary to do so, I would have dispensed with the mother's consent. K may be a young adult now, but his welfare and rights to respect for his private and family life pursuant to Article 8 ECHR requires his position as the son of the applicants and their position as his parents to be fully recognised. Such interference with the mother's Article 8 rights as this order brings is both necessary and proportionate in all the circumstances.
36. I therefore make the adoption order sought.