Neutral Citation Number: [2020] EWHC 1227 (Fam)

Case No: FD19P00678
FD20P00028

IN THE HIGH COURT OF JUSTICE
FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/05/2020

Before :

THE HONOURABLE MRS JUSTICE JUDD DBE

- -

Between :

F X and M J X	**Applicants**
- and -	
CAFCASS LEGAL	**Advocate to the court**

- -
- -

Ms Ruth Cabeza (instructed by **Helen Blackburn of The International Family Law Group LLP**) for the **Applicants**
Christopher Osborne, (Cafcass Legal) as Advocate to the court

Hearing date: 9th March 2020

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JUDGMENT

If this Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed to be 10am on 18 May 2020. A copy of the judgment in final form as handed down will be automatically sent to counsel shortly afterwards

THE HONOURABLE MRS JUSTICE JUDD DBE

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.

Mrs Justice Judd:

Introduction

1. This is an application by FX and MX for orders under the inherent jurisdiction for recognition of adoption orders made in the Philippines on 13th September 2006 with respect to two children, AX (born 2002) and BX (born 2003). There is also an application by the children (through their uncle who is acting as their next friend) for a statutory declaration pursuant to section 57 Family Law Act 1986 of their status as the adopted children of the parents.

2. The applicants have at all times been represented by Ms Ruth Cabeza of counsel. The children have not been represented, but Cafcass Legal accepted an invitation to act as amicus curiae to the court. Notice of the proceedings has been given to the Secretary of State for the Home Office, and to the Attorney General, but neither has applied to intervene.

Background

3. FX was born and brought up in Wales, and MX was born and brought up in the Philippines. They met as pen pals in the early 1980s, and met in person for the first time when FX visited the Philippines in 1988. They married in Wales in 1989, and lived in Wales for the first few years of their married life. They hoped to have children, but they lost a baby in early pregnancy and were then turned down for IVF treatment.

4. In 2002 they travelled to the Philippines for a lengthy holiday to see the maternal family. When they were there they were introduced to AX, the son of MX's younger brother. Because AX's parents were looking for work (they already had three other children) he was looked after by relatives. FX and MX were the ones who looked after him the most, and as they described it they "fell in love with him, completely". Because of the way they felt about him, a suggestion was made by AX's parents that they might wish to adopt him, and when FX and MX returned back to Wales at the end of the visit, they gave this very serious consideration. They came to the conclusion that they wished to go and live permanently in the Philippines, to offer a home to AX and his newly born sister, BX, and also to be closer to the maternal family and MX's mother.

5. In preparation for the move, FX and MX gave up their full time jobs, and sold their home in Wales. They packed up all their belongings to be shipped out. Once they arrived in the Philippines they rented a home in Cebu City. FX applied for permanent residence which was granted in 2006. AX and BX were placed in their care by the

birth parents in September 2005. Both children have been treated by them as their own children, brought up and supported by them ever since, even though FX has for the last few years been back in Wales following some issues with his health.

6. FX and MX began the formal process of adopting the children in 2006. The birth parents (MX's brother and wife) gave formal consent, and the application was submitted to the Regional trial court in Mandaue City on 17th March of that year. A social welfare officer was assigned to make enquiries, and she filed a Home Study report. Notice of the application was reported in a local newspaper as required by domestic law, and the adoption order was made on 13th September 2006 (backdated to the date of the application). A certificate of finality was then issued on 9th October 2006.

7. In 2009 MX suffered an extreme allergic reaction which led to her becoming seriously ill and requiring a period of hospitalisation. Then in 2010, FX suffered health difficulties, having to undergo abdominal surgery for an intussusception. There is no national health service in the Philippines, and the cost of these operations placed the family's finances under severe strain. Such was the difficulty that FX had no option but to return to the UK to find work to support them. He arrived in 2011, after six years away. He obtained a job. In 2013 FX was able to afford a return visit to his family. Whilst he was there, however, FX began to suffer from a hernia, which was treated after he returned to the UK. The family looked into whether they would all be able to come over, but discovered that the children's adoption would not automatically be recognised here as the Philippines was not listed in the Adoption (Registration of Overseas Adoptions) Order 1973. Subsequent to this, by virtue of a 2013 Order, which is not retrospective, adoptions in the Philippines are recognised.

8. Due to the difficulties with recognition, the family have remained separate, with MX and the children remaining in the Philippines, and FX over here, working and supporting them. MX's mother, the children's grandmother has since died, and MX is now wanting to move back here together with AX and BX. To that end, they have made the applications I have referred to above.

The Law

Declarations under the Inherent Jurisdiction

9. The circumstances in which the status of an adopted child and the parents may be recognised in England and Wales are set out in Section 66 Adoption and Children Act 2002. This adoption does not meet the criteria therein for a domestic adoption (s66(1)(a)), a Convention adoption (s66(1)(c)or an Overseas adoption (s66(1)(d). It is for this reason that the applicants are applying for recognition pursuant to s66(1)(e), "an adoption recognised by the law of England and Wales and effected under the law of any other country".

10. The principles to be applied by the court when determining whether to recognise a foreign adoption under the inherent jurisdiction were set out half a century ago in **Re Valentine's Settlement [1965] Ch 831**, which was considered and affirmed more recently by the former President of the Family Division, Sir James Munby in **Re N (a child)(Secretary of State of the Home Department intervening) [2016] EWHC 3085 (Fam) [2018] 2WLR 449**. In the course of a detailed judgment in which he

undertook a thorough analysis of a number of first instance decisions, he said, at paragraph 122:

"As we have seen (para 74 above), analysis of the reasoning In Re Valentine's Settlement indicates the existence of four, and only four, criteria:

(i) the adoptive parents must have been domiciled in the foreign country at the time of the foreign adoption;
(ii) the child must have been legally adopted in accordance with the requirements of the foreign law;
(iii) the foreign adoption must in substance have the same essential characteristics as an English adoption. As MacDonald J put it (paras 115, 117 above): did the concept of adoption in the foreign jurisdiction substantially conform with the English concept of adoption?
(iv) there must be no reason in public policy for refusing recognition. that the welfare of the child and the application of s.1 ACA, and the extent to which there is a similarity of process, are factors that should be considered.

In paragraph 129, Munby P stated that the welfare of the child throughout his life and the extent to which there is a similarity of process, are factors that should be considered within the context of the public policy criteria, rather than as criteria in their own right.

Statutory Declarations pursuant to s57 Family Law Act 1986

11. Pursuant to s57 any person whose status as the adopted child of any person depends on whether he has been adopted by that person by either a Convention adoption or an overseas adoption within the meaning of the Adoption and Children Act 2002, or an adoption recognised by the law of England and Wales and effected under the law of any country outside the British Islands may apply to the High Court of family court for a declaration of status. The court shall have jurisdiction to entertain an application under s57(1) if, and only if the applicant is either domiciled in England and Wales on the date of the application or has been habitually resident in England and Wales throughout the period of one year ending with that date.

Domicile

12. At birth every person receives a domicile of origin. That domicile of origin can be displaced by a domicile of choice which comes about by a combination of residence with an intention of permanence in another country for an indefinite length of time. If the domicile of choice is later abandoned, then the domicile of origin will revive, unless displaced by a subsequent domicile of choice.

13. A legitimate child born during the lifetime of his or her father has a domicile of origin in the country at which his father was domiciled at the time of his birth. As an adoption order means that a child is treated in law as if he or she was born to the adopters, that child may acquire a new domicile of origin at the time of the adoption. Section 3 of the Domicile and Matrimonial Proceedings Act 1973 provides that a child has a domicile of dependency until the age of 16, and s4 provides that when parents are living apart the dependent domicile of the child will align with that of the mother. In the case of **Harrison v Harrison [1953] 1 WLR 865,** two questions were identified that the court might wish to ask when considering whether a child has established a domicile independent to that of their previous domicile of dependence, namely (a) has the child formed the intention to discard their domicile of choice; and

(b) has the child been physically present in a country in which they seek to assert a new domicile of choice?

The application for a declaration under the inherent jurisdiction.

14. Here it is asserted on behalf of the applicants that the four requirements as set out in **Re Valentine's Settlement** and **Re N** are met. I will deal with them each in turn.

15. The first requirement relates to domicile. At the time of the adoption application in the Philippines, I accept that both of the applicants were domiciled there. They had given up their jobs in the UK, and sold their home. They had packed up all their belongings and had them shipped out. MX's domicile of origin was the Philippines, so it is not at all difficult to find that this had revived once she returned to live there. FX had a different domicile of origin, but he had acquired a domicile of choice quickly by all his actions and intentions at that time. I note that he applied for and was granted permanent residence in the Philippines by 2006.

16. As to the second requirement, I have the benefit of an expert report from Lorena Supatan, who is an attorney practising in Filipino family law. She clearly advises that the children were lawfully adopted in that country. In her report she sets out all the evidence that the applicants provided to the court, and notes that they were required to, and did, prove that they were of legal age, good moral character, mentally and physically fit, and at least 16 years older than the children they intended to adopt. They were taking care of AX and BX and loving them as their own, and were in a position to support them. A detailed home study report had been completed and recommended that MX and FX were suitable as adopters. The biological parents had given their full consent, and the children were relatives of MX. The adoption was in the best interests of the children and in accordance with their welfare.

17. The expert evidence also confirms the third requirement is met, namely that the effect of the adoption under the law of the Philippines is that the children were and are considered the legitimate children of the applicants, and that all the legal ties between the biological parents and the children were severed. The adoption order granted the adopters and adoptees all the reciprocal rights of succession in legal and intestate succession without distinction from legitimate filiation. In this it has the same essential characteristics of an adoption order in this country.

18. So far as the fourth requirement is concerned, that there should be no public policy reason to decline to make the declaration sought, there is no evidence here that the adoption of the children took place for any reason other than the entirely genuine one that the applicants loved them and wished to bring them up as their own. This is what they have done over the last fourteen years, albeit FX has had to spent most of his time since 2011 in this country. I accept that he has done this in order to support the family financially, and that he has continued to be committed to them in every way. MX has been with them at all times and physically brought them up over the last nine years. Looking at the case overall, I can see no public policy reason for refusing to make the declaration sought.

19. It is plainly in the best interests of both children throughout their lives that their adoption is recognised here, in the country where their father is now resident and

domiciled. The application is supported by Cafcass. In addition I accept Ms Cabeza's submission that the applicants and the children have an established family life together pursuant to Article 8 ECHR, which this court should respect and recognise. It follows therefore that the declaration sought under the inherent jurisdiction in relation to the adoption of AX and BX will be granted.

The application for a declaration pursuant to s57

20. The plain difficulty with this application is that of the children's domicile. They have remained at all times since their birth in the Philippines. At the time they were adopted their father was domiciled there and not in the United Kingdom. In her skeleton argument, Ms Cabeza has suggested that it might be possible for the court to find that upon the return of their father to this jurisdiction in 2011, the children's domicile changed along with his, but I think this is too much of a leap for the court to make. Although the reason for the long separation of the father from his family was economic, I do not think that the parents can be characterised as living together over this period (which would have enabled the children to have a domicile of dependency in this country). If they had, how could the father's domicile have reverted to his domicile of origin? The fact that the parents were living separately means, according to s4 of the Domicile and Family Proceedings Act, that the children's domicile of dependency would have been the same as that of their mother, namely the Philippines.

21. Being over 16, the children are now at an age where they are able to acquire a domicile which is independent of their parents. Looking at the two questions posed in the case of **Harrison** above, however, the answer to the one – physical presence in the new country – is clearly not met. I have little evidence about the children's individual views as to where they wish to make their future lives, but even if I assume that the answer to that is in this jurisdiction, that is not sufficient. In those circumstances I have come to the conclusion that I cannot grant the declaration being sought under s57.

22. I make it clear that had it not been for the issue of the children's domicile, the declaration would have been granted, as the relevant factors have been considered by me above when coming to a decision to make the declaration under the inherent jurisdiction. No doubt if the children do establish a domicile here they can make another application should they wish to do so. The Attorney General has been given notice of these proceedings and has not sought to intervene.

Conclusion

23. I therefore make the declaration sought under the inherent jurisdiction, and the application under s57 must be dismissed, although another application may well be successful at a later time. I wish to thank counsel and solicitors, particularly Ms Cabeza on behalf of the applicants, for the excellent way in which this case has been presented and argued. I am also extremely grateful to Cafcass Legal for their submissions and the great assistance they have given to the court.