



Neutral Citation Number: [2018] EWHC 3468 (Fam)

Case No: FD18P00474

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 05/11/2018

**Before:**

**MRS JUSTICE THEIS**

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**Between:**

Mrs A

**1st Applicant**

- and -

Mr A

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

- and -

SSHD

**As an Interested Party**

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**Ms Joy Brereton** (instructed by **Charles Russell Speechlys**) for the **1<sup>st</sup> & 2<sup>nd</sup> Applicants**  
**Mr John-Paul Waite** (instructed by the **Secretary of State for the Home Department**) for the  
**Interested Party**

Hearing dates: 5<sup>th</sup> November 2018  
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**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.

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MRS JUSTICE THEIS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. 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 Theis DBE:**

### **Introduction**

1. This matter concerns an application for recognition of an adoption order made in the Philippines in 2006 relating to B, now 18 years. The application was made when B was 17 years.
2. The applicants are Mrs A and Mr A who are the parents of B's birth mother, G. They were both born in the Philippines. Mrs A has worked in this jurisdiction since 2001, although returning back to the Philippines each year for periods of up to 3 months. Her husband, Mr A, remained living in the Philippines and cared for their children, including B.
3. The Secretary of State for the Home Department (SSHD) was given notice of this application. In accordance with the directions made by Hayden J on 24 July 2018 a skeleton argument was filed setting out his position, with the applicants directed to file a statement in response and the SSHD to file an addendum skeleton argument. Mr Waite attended this hearing on behalf of the SSHD and indicated through his submissions that in the light of the further statement from the applicants, together with Mrs A's oral evidence, the SSHD's focus was on matters of public policy, in addition to the wider point of ensuring there is a rigorous examination of the evidence.

### **Legal Framework**

4. There is no dispute between the advocates as to the relevant legal principles.
5. The application for recognition is made pursuant to section 66 of the Adoption and Children Act 2002, in particular under section 66 (1)(e) which provides the meaning of adoption as including '*(e) an adoption recognised by the law of England and Wales and effected under the law of any other country*'.
6. The Philippines is a signatory to The Hague Convention on Protection of Children and Co-operation of Intercountry Adoption having become a signatory in 1995 and ratified the Convention in 1996. The Philippines are now listed as a designated country in the schedule attached to The Adoption (Recognition of Overseas Adoptions) Order 2013. Adoptions made on or after 3 January 2014 in any of the countries listed in the schedule (which now includes the Philippines) are automatically recognised in this jurisdiction.
7. At the time of B's adoption in 2006 the Philippines was not a listed country under the 2013 Order, as a result it is to be considered under section 66 (1)(e) as a recognised adoption under the common law.
8. The leading decision setting out the relevant principles is *Re N (Recognition of Foreign Adoption) [2016] EWHC 3085*. The four requirements can be summarised as follows:
  - (1) The adoptive parents having been domiciled in the foreign country at the time of the adoption.

- (2) The child having been legally adopted in accordance with the requirements of the foreign law.
- (3) The foreign adoption must in substance have the same essential characteristics as an English adoption.
- (4) There must be no public policy reason for refusing recognition. In *Re N (ibid)* Sir James Munby confirmed at [129] and [130] that public policy in this context operates in the limited and narrow manner described in *Dicey, Morris & Collins namely* "If the foreign adoption was designed to promote some immoral or mercenary object, like prostitution or financial gain to the adopter, it is improbable that it would be recognised in England. But, *apart from exceptional cases* like these, it is submitted that *the court should be slow to refuse recognition to a foreign adoption on the grounds of public policy merely because the requirements for adoption in the foreign law differ from those of the English law*. Here again the distinction between recognizing the status and giving effect to its results is of vital importance. Public policy may sometimes require that a particular result of a foreign adoption should not be given effect to in England; but *public policy should only on the rarest occasions be invoked in order to deny recognition to the status itself*." Additionally, Ms Brereton drew the court's attention to the different functions of the family court and the SSHD (as set out in *Re N* at para [176]) and (para [177]) although the family court does not act as the policeman for the SSHD it must be alert to the process being used for some impermissible purpose amounting to an abuse of process.

### **Relevant Background**

9. The applicants married in the Philippines in 1982, they were both born in the Philippines and are Philippine nationals. Mrs A is also a naturalised British Citizen having worked in London since 2001. She returns to the Philippines on a number of occasions each year.
10. The applicants have three children, G in her thirties, H in his twenties and B who is 18 years. B is G's biological son, born when she was 18 years old. B's biological father had limited involvement in B's life. Following discussions within the family it was agreed B would be adopted by the applicants and they would look after him.
11. Both of B's biological parents consented to the adoption and the applicants were the subject of a social work assessment which approved them as prospective adopters for B. On 30 March 2006 the applicants applied through the Department of Social Welfare (DSW) and with the assistance of legal advice to formally adopt B in accordance with Philippine law. This was a domestic adoption in accordance with Philippine law.
12. The process is similar to adoption applications in this jurisdiction and on 12 July 2006 the adoption order was granted, B became the legal child of the applicants and a new birth certificate was issued.
13. Mrs A's income from working as a housekeeper in this jurisdiction has supported the family. She has wanted the family to join her in the UK and they have made a number of applications to do this, which have all been unsuccessful. The main reason for refusal was said to be Mr A's deception in declaring that B is his son. The disclosure in these proceedings has made clear that, as in this jurisdiction, once

an adoption order is made the applicants are entitled to apply for a birth certificate that shows they are B's parents, which they did. The certified copy of the birth certificate has been further verified by an authentication certificate that confirms the person who signed the birth certificate was the Civil Registrar General at the relevant time. Having seen that evidence this issue was not pursued any further in this hearing by the SSHD.

14. In her oral evidence Mrs A confirmed that she did not wish to stay here long term and on ceasing to work here plans to return to the Philippines, which she regards as home.
15. The SSHD asked Mrs A in oral evidence about the accuracy of paragraph 9 of her statement in support of the recognition application here, where she stated that G did not provide any support to B following the birth. This was in the context of the other evidence in the case that G cared for B or was at least in the family home with him in the Philippines prior to 2004. Mrs A confirmed her statement was accurate as it was her earnings through her work here that supported the family. It became clear she was referring in her statement to financial support.
16. The applicants sought expert legal advice as to the adoption process in the Philippines. The opinion from Daphne Jereza confirms the process for such an application, including the requirement for pre-adoption counselling, a social work assessment, a court-based application and in granting the petition for adoption the court decision was based on the welfare needs of the child. The court's decision is dated 25 July 2006 and confirms as the adoption was within the family the need for a supervised period had been dispensed with. In her opinion Ms Jereza concludes from the records she has seen and considering the relevant laws on adoption in the Philippines the substantive conditions for making the adoption order were sufficiently met. She confirms that the effect of the adoption order is B is considered the legitimate son of the applicants for all purposes and they are entitled, following the adoption order, to apply for a new certificate of birth for B showing them as B's parents, which they did.

### **Submissions**

17. Ms Brereton submits, following the requirements set out in *Re N*, as follows.
18. Firstly, both applicants were domiciled in the Philippines at the time of the adoption in 2006. The Philippines is their domicile of origin. The evidence supports their ties remaining there including their family home, their relatives and children and ties within the community and finances remain based in the Philippines. Mr Waite sought to suggest that Mrs A's application for permanent leave to remain here in 2005 was inconsistent with this and that her domicile of choice was here. That was refuted in her written and oral evidence, which I accept, where she made it clear her long-term intention is to return to the Philippines. Mr A's domicile was not challenged by Mr Waite on behalf of the SSHD.
19. Secondly, the adoption was carried out lawfully through valid channels and with the benefit of legal representation, as the transcript of the hearing in March 2006 and the decision in July 2006 make clear. The recent disclosure of the social work assessment establishes this was a thorough assessment, similar to a home study

report here. B had been cared for in the family home until 2004 when G left to study abroad. Mr A stepped in to provide the physical care of the child, as did Mrs A on her regular visits, and they both provided since then in their different ways the psychological and other care and support required for B. As set out in the social work assessment G found it difficult to care for B, appreciated the support provided by her parents and both she and the biological father consented to the adoption. There were many features of the adoption process in the Philippines that chime with the procedure here, including (i) it was a decision of the court following a hearing and consideration of the evidence and the welfare needs of the child; (ii) written consents were required from both biological parents; (iii) details of the financial circumstances of the applicant were required to demonstrate they could financially support the child; (iv) police checks were required; (v) medical certificates were provided regarding the applicants health; (vi) three referees were spoken to and what they said recorded; (vii) photographs were provided; (viii) the written decision of the court making the adoption order set out what the DSW had done and the underlying rationale for the decision based on B's best interests. The opinion from Ms Jereza confirms the court was entitled to dispense with the supervised trial period as this was a family placement. Mr Waite took no issues with these submissions on behalf of the applicants. The documents demonstrate the adoption order was made in the full knowledge that Mrs A was working abroad to support the family, with regular trips back home.

20. Thirdly, the foreign adoption is essentially the same in nature and has the same fundamental characteristics, namely terminating the rights and responsibilities of the birth parents and being full, final and irrevocable in nature. Ms Jereza confirms all these characteristics in her legal opinion with underlying rationale and reference to the relevant provisions of Philippine law, which has not been challenged by Mr Waite.
21. Fourthly, the question of public policy. Ms Brereton submits there is no public policy reason against recognition in this case when considering the test laid down in *Re N*. Mr Waite confined his closing submissions to paragraph 21 (iii) of the SSHD's skeleton argument, namely '*the child appears to have been adopted for the purposes of his living in the UK, including now as an adult*'. This was largely based on the submission that the written evidence in paragraph 9 of Mrs A's statement was inaccurate as the birth mother did provide support up until 2004. As I have indicated above, I am satisfied that was accurate as it clearly related to financial support which was provided by Mrs A. None of the other matters listed in paragraph 22 of the SSHD's skeleton argument were pursued in his closing submissions, in the light of the additional documentary and oral evidence.

### **Discussion and Decision**

22. The SSHD has rightly reminded the court of the need for a rigorous examination of the issues, facts and the law.
23. When considering each of the four requirements for recognition the court now has additional documentation attached to the third statement, the oral evidence of Mrs A at this hearing and the legal opinion of Ms Jerez.

24. When considering each of the requirements I am satisfied that they are all met for the following reasons:

- (1) It was clear from the written evidence, supported by Mrs A's oral evidence, that her domicile of origin had not been lost in 2006 at the time of the adoption. Her connections to the Philippines remain very strong, she had no intention to live permanently or indefinitely elsewhere so her domicile of origin had not been lost. She is in this jurisdiction to work, it has never been her intention to live here permanently and she has kept her very strong ties to her domicile of origin in all aspects of her life. Even when pressed by Mr Waite in cross examination she confirmed her intention when she ceases work here is to return home to live in the Philippines.
- (2) The adoption order in 2006 was obtained entirely in accordance with the relevant Philippine law. It was a structured and rigorous process that Ms Jerez has confirmed complied with the relevant statutory requirements. Her legal opinion is detailed and well-reasoned, I accept her conclusions that the adoption order was obtained in accordance with the foreign law.
- (3) The evidence demonstrates the foreign adoption had the same essential characteristics as an English adoption. Its effect was full and final, irrevocable and on making the order it terminated the rights of the biological parents, as such an order does here.
- (4) The court must be alert to any public policy considerations, but I am satisfied on the evidence there was no impermissible or ulterior motive to this adoption. The decision to apply was taken by the applicants for welfare-based reasons bearing in mind G's relatively young age, the difficulties she had in caring for him and the concerns about him remaining as an illegitimate child. There was no ulterior purpose amounting to an abuse of process. Far from it, Mrs A remained clear that she wishes for her family to spend time with her here whilst she is working but when she stops she will be returning back to live in the Philippines. In the light of that evidence the SSHD was left to hang his public policy submissions on what was said to be an inaccurate statement in paragraph 9 about the provision of support, which, in my judgment, is explicable as referring to financial support. As confirmed by Mrs A in her oral evidence, which I accept. The court was satisfied on the evidence available in these proceedings, that there was nothing to suggest that in obtaining B's birth certificate and the foreign adoption order the applicants had acted otherwise than in good faith and with no intention to deceive and complied with the relevant provisions of Philippine law at the time

25. For the reasons set out above in my judgment the requirements in *Re N* are met and the declaration sought should be made.