

THE HIGH COURT

[2020 No. 182 MCA]

**IN THE MATTER OF AN APPLICATION BY THE ADOPTION AUTHORITY OF IRELAND
(THE APPLICANT HEREIN) PURSUANT TO SECTION 30(5) OF THE ADOPTION ACT 2010**

- AND -

**IN THE MATTER OF THE PROPOSED ADOPTION OF Y (A MINOR, BORN [STATED
DATE])**

JUDGMENT of Mr Justice Max Barrett delivered on 5th October 2020.

I

Some Law

i. Údarás Uchtála na hÉireann

1. Údarás Uchtála na hÉireann (or, in the English language, the 'Adoption Authority of Ireland') stands established under s.94 of the Adoption Act 2010. Under s.96 of the Act, its functions include "(a)...performing the functions in relation to adoptions that...were [historically] performed by An Bord Uchtála...(f) maintaining the register of accredited bodies; [and] (g) maintaining the register of intercountry adoptions".

ii. Welfare of Child.

2. Section 19 of the Act of 2010 provides, *inter alia*, as follows:

"(1) *In any matter, application or proceedings under this Act which is, or are, before...*

(b) any court,

...the court...shall regard the best interests of the child as the paramount [i.e. not the sole, but the paramount] consideration in the resolution of such matter, application or proceedings.

(2) *In determining for the purposes of subsection (1) what is in the best interests of the child...the court...shall have regard to all of the factors or circumstances that it considers relevant to the child who is the subject of the matter, application or proceedings concerned including -*

(a) the child's age and maturity,

(b) the physical, psychological and emotional needs of the child,

(c) the likely effect of adoption on the child,

(d) the child's views on his or her proposed adoption,

(e) the child's social, intellectual and educational needs,

(f) the child's upbringing and care,

(g) the child's relationship with his or her parent, guardian or relative, as the case may be, and

(h) any other particular circumstances pertaining to the child concerned.

- (3) *In so far as practicable, in relation to any matter, application or proceedings referred to in subsection (1), in respect of any child who is capable of forming his or her own views, the...court...shall ascertain those views and such views shall be given due weight having regard to the age and maturity of the child."*

iii. Nature of the Within Application.

3. By originating notice of motion of 10 August 2020, the Adoption Authority comes to court seeking an order pursuant to s.30(5) of the Act of 2010 "*approving the making of an adoption order in respect of...Y by the Applicant herein, without consultation with the birth father, in circumstances where the birth father, in circumstances where the birth mother has provided a statutory declaration stating that she is unable to identify the birth father and the Authority has no other practical means of ascertaining the identity of that father*". This is therefore what the court understands is often referred to as an 'identity case'.
4. Section 30 sits within Chapter 2 of Part 4 of the Act of 2010, which deals with consents to adoption and seeks to ensure that there is adequate consent to all adoptions (the relevant consent in issue in this application being the consent of a relevant non-guardian, specifically the natural father of Y). It is not necessary to quote the entirety of s.30, which provides, *inter alia*, as follows:

"(1) *In this section 'father', in relation to a child, includes a person who believes himself to be the father of the child.*

(2) *Subject to this section, on the receipt of an application for an adoption order, the Authority shall take such steps as are reasonably practicable to ensure that every relevant non-guardian of the child is consulted in relation to the adoption.*

(3) *Where the Authority is satisfied that, having regard to–*

(a) *the nature of the relationship between the relevant non-guardian of a child and the mother or guardian of the child, or*

(b) *other than in the case where the relevant non-guardian of the child is a person referred to in paragraph (b), (c) or (d) of the definition of 'relevant non-guardian', the circumstances of the conception of the child,*

it would be inappropriate for the Authority to consult the relevant non-guardian in respect of the adoption of that child, the Authority may, after first obtaining the approval of the High Court, make the adoption order without consulting the relevant non-guardian concerned.

(4) *If the identity of the father referred to in paragraph (a) of the definition of 'relevant non-guardian' (in this section referred to as 'that father'), is unknown to the Authority and the mother or guardian of the child will not or is unable to disclose the identity of that father, the Authority shall counsel the mother or guardian of the child, indicating –*

- (a) *that the adoption may be delayed,*
 - (b) *the possibility of that father of the child contesting the adoption at some later date,*
 - (c) *that the absence of information about the medical, genetic and social background of the child may be detrimental to the health, development or welfare of the child, and*
 - (d) *such other matters as the Authority considers appropriate in the circumstances.*
- (5) *After counselling the mother or guardian of the child...the Authority may, after first obtaining the approval of the High Court, make the adoption order without consulting that father if –*
- (a) *the mother or guardian of the child either refuses to reveal the identity of that father of the child, or provides the Authority with a statutory declaration that he or she is unable to identify the father, and*
 - (b) *the Authority has no other practical means of ascertaining the identity of that father.”*

5. The term “*relevant non-guardian*” is defined in s.3(1) of the Act of 2010 as meaning, “*in relation to a child*”, *inter alia*, “(a) *a father of the child who is not a guardian of the child pursuant to the Act of 1964*” (with the phrase “*the Act of 1964*” being itself defined in s.3(1) to mean the Guardianship of Infants Act 1964).

II

Facts/Background

6. Among the evidence before the court is a helpful affidavit sworn by a senior member of the Adoption Authority in which the deponent avers, *inter alia*, as follows:
- (i) the natural mother was very young when she became pregnant with Y;
 - (ii) Y was conceived when the natural mother was away on a trip some years ago;
 - (iii) during that trip the natural mother had a consensual sexual encounter with the natural father while she was in a state of some intoxication;
 - (iv) the two (father and mother) did not exchange details, nor does the natural mother know the natural father’s name;
 - (v) the natural mother has been counselled as to, and is aware of, the consequences of not being able to identify Y’s birth father.
7. When describing the above circumstances in her statutory declaration, Y’s mother seems, if the court might respectfully observe, to be very hard on herself, whereas the court,

with respect, sees, on the evidence before it, someone who has done so much of which to be hugely proud; in this regard, the court was particularly taken by the declaration by Y's mother that "*I wish to state that Y coming into my life, saved my life. I was...off the rails [when younger]...Becoming a parent to Y gave me a reason to transform my life for the better, so I could be the best parent possible for him and give him the best upbringing I could. To this day, he is and always will be the best thing that ever happened to me.*" There is real personal greatness in those, frankly inspiring, sentiments, and the court felt privileged to read them.

8. Continuing with the affidavit sworn by the Adoption Authority staff member, he moves on to aver, *inter alia*, as follows:

(vi) the proposed adopter is the husband of the natural mother;

(vii) they have been in a long-time relationship and have been married for some years;

(viii) the proposed adoptive father is aware of the circumstances of Y's birth;

(ix) the adoptive father regards himself as Y's father and believes that adoption will reflect the reality;

(x) Y has undertaken his own research into the law on adoption;

(xi) Y wishes to be adopted by the proposed adoptive father and has considered this carefully;

(xii) Y wishes to have the same legal relationship with his father as his half-sister (the biological child of Y's mother and the proposed adoptive father);

(xiii) Y sees adoption as providing the opportunity to become a "*complete and permanent family*".

9. The deponent for the Authority further avers, *inter alia*, that "[T]he Authority is of the view that this proposed adoption is in the best interests of the child".

10. The various proofs are in order.

11. Among the exhibits to the above-mentioned affidavit is a report by a social worker from within Túsła. Her conclusion as to the proposed adoption is that "[I]t is a proportionate means to achieve and support Y's...ambition and wish to have [the proposed adoptive father]...as his legal and long term parent and that this is in his best interests".

12. As to Y's views concerning the proposed adoption, the Túsła report contains the following observations:

"Y recalled that when he first considered adoption with his mum and [the proposed adoptive father]...when they were getting married, he was aware of the situation at that time that involved his mum having to adopt him, as well as [the proposed

adoptive father]....Y, although interested in adoption, did not want...to proceed with it as a result...Y in more recent times again researched adoption, and from this discovered that that there had been a change in the law in adoption....

Y appears to have been active in the recent research regarding adoption and it was...Y that brought the information and change of legislation to light for [Y's mother and the proposed adoptive father]....Y was aware that his name did not have to change and that his mum did not have to adopt him. This new information...Y shared with his mum and [the proposed adoptive father]...From here they made contact directly with the Adoption Service....

Presently...Y had no plans to effect any change to his name, he sees himself as being Y [Surname] and as his mum remains [Name][Same Surname], Y does not plan to change his name to [that of his proposed adoptive father]....Y explained that it was 'more than just a name change', that it was not as simple as having the same surname, but instead becoming a family where each member of it are 'all the same in the eyes of the law'.

In discussing what changes...Y hopes for in adoption, he was clear that adoption would offer for him and [the proposed adoptive father]...a legal relationship that would be the same as [the proposed adoptive father's]...legal relationship with this sister, [Name]....It would also provide the same legal relationship as his and his mum's. He described this by saying that they would all become a 'complete and permanent family'.

In [discussing]...the option of Guardianship...Y was not familiar with this option, he stated that he had never heard of it before my conversation with him. As we discussed what Guardianship was and as...Y learned that Guardianship concluded at the age of 18 years. He laughed, and not in any dismissive way, rather as his acknowledgement that this was not an option as far as he could see it....It was his view and opinion that Guardianship did not offer him any value to realise his ambition for a long term legal relationship with [the proposed adoptive father]....

I asked [whether] if he could have had a longer Guardianship relationship with [the proposed adoptive father, he saw this]...as being an option...Y observed again with humour that he 'may as well go the whole way'....[He added] that if he had known about Guardianship previously he would always have wanted adoption, irrespective of age or length or time."

III

Conclusion

13. The various factors to which the court is required to have regard, under s.19, when assessing the best interests of the child, have been comprehensively addressed in the affidavit evidence of the Authority and the Túsla report. The court accepts that evidence, and, having considered same and the entirety of the pleadings, is satisfied, in all the

circumstances presenting and for the reasons stated herein, to accede to the application made and make the order sought.

14. The court respectfully wishes Y and his family the best as they embark on the next stage of their journey as a family.