

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

ADOPTION NO. SLUHAP2004/0023

IN THE MATTER of an application for an Adoption
Order to be made in respect of an infant

and

IN THE MATTER of the Adoption Ordinance
Volume 1 Chapter 19 Revised Laws of Saint Lucia
1957 as amended by No. 8 of 1989.

BETWEEN:

- (1) CUTHBERT PERCIVAL MASEFIELD HALL
- (2) SANDREA A. HALL ALSO CALLED SANDRA A. HALL
residing at 116 Fingerboard, Staten Island, New York 10305

Applicants

and

JEREMIAH KELLY ARTHUR JAMES, ordinarily resident at the Morne, in
Castries, acting herein and represented by his grandmother and Tutor
THERESA HALL residing at the Morne in Castries.

Respondent

APPEARANCES:

Mr. Oswald Wilkinson Larcher of Counsel for the Applicants
Mr. Raulston Glasgow Tutor Ad Hoc for and on behalf of the Infant

2005: January 09

DECISION

- [1] **SHANKS J.:** This is an unusual application for adoption in that the "infant" (Jeremiah) reaches his majority tomorrow (Monday 10 January 2005). In the unusual circumstances I held a hearing at my residence at 6: 30 p.m. on Friday 7 January which was attended by

Jeremiah, his grandmother, the applicants, their Counsel Mr. Larcher and Mr. Glasgow for the tutor ad hoc. I also spoke to Mr. Larcher by telephone over the weekend to clarify some technical issues which arose.

- [2] Jeremiah lives with his paternal grandmother and an aunt in St Lucia and is a lower sixth student here. His grandmother appeared fit and I have no reason to think that that the current arrangements are unsatisfactory in the short term. He has no on-going relationship with either parent (they have both moved to the USA) though his mother lived with him and his grandmother and maintained him until he was 15. The parents consent to the application for adoption.
- [3] The applicants are his uncle (the brother of his natural father) and his aunt by marriage. They were both born in St. Lucia. They are now US citizens and live in New York. They are 51 and 46 respectively; they have four grown up children of their own; they are devout Catholics; he has a good career as an accountant and is employed as senior accountant at a university in New York. There is no question in my mind as to their suitability as adoptive parents.
- [4] There is no doubt that the male applicant has taken an interest in his nephew's development and has contributed to his upkeep and education since 1998 and has made a point of seeing him on his periodic visits to St. Lucia. I accept that he has been much more of a father to him than his natural father. I also accept that it is the applicants' intention to move him to New York to live with them and to carry on his education at university level in the USA in due course and that this is a desirable scheme.
- [5] The making of an adoption order if recognized by the US authorities would obviously facilitate his immigration to the USA; it would also have the highly desirable effect of allowing him to benefit from the family benefits, which his uncle enjoys as an employee of the university, which includes free education for his children. The opinion of the Deputy Consul General who interviewed the uncle was that these were the main reasons for the application being made at this stage (see his letter of 6 January 200 5) and I agree with

that assessment although I also accept the submission of Mr. Larcher that it would be desirable for the infant to have a father figure in his life generally and that he remains somewhat immature (although he has obvious potential) so that this would also be particularly desirable in the short term.

[6] I am satisfied that all the technical requirements of the Adoption Ordinance (as amended by the Adoption Ordinance (Amendment) Act 1989) have been complied with (and in particular that notwithstanding their US citizenship the applicants remain citizens of St. Lucia and are therefore eligible to adopt under section 3 (1) of the Ordinance) and I am satisfied that if I make the order it would benefit Jeremiah in the future (so that in a sense section 7 (1) (b) is satisfied). However, the making of an adoption order is still a matter of discretion and it must be made for a proper purpose. The fact that this application is made so late in the day (it being accepted that the court would have no jurisdiction to entertain it on Tuesday) raises the question whether the court is being asked to act for a purpose within the contemplation of the legislation or for some other purpose (notwithstanding that that purpose may well be, as I indicated a number of times in the hearing, obviously desirable).

[7] It seems to me that the main legal purpose of the adoption legislation is to deal with the "custody maintenance and education" of an "infant" (i.e. someone under 18) and to give the adoptive parents legal rights and obligations in relation to those matters: this much is clear from section 11 of the Ordinance and from the nature of the investigations which the tutor ad hoc is required to make about applicants (see rule 9 of the Rules made under the Ordinance and Part I of the Second Schedule thereto.) Once the child ceases to be an infant on reaching the age of 18 the legal rights and duties of the adoptive parents cease just as those of the natural parents do in any other case. Thus, if I were to make an adoption order today its main legal purpose would be spent tomorrow, a course which I think is most unlikely to have been within the contemplation of the legislation. Further, it seems on the face of it unlikely that the legislation contemplated an application made within a few days or even months of a child reaching majority: that would be inconsistent with the provision at Section 8 for a two year probationary order in certain circumstances.

[8] It is true that an adoption order also has potential legal effects after the child reaches the age of 18: Section 13 of the Ordinance provides that an adoptive child is treated as a natural child for the purposes of an intestate succession or any will or inter vivos instrument of transfer; but such effects are always subject to any contrary intention expressed by a testator or inter vivos transferor and it is always open to the proposed adoptive parent to give whatever assets he wishes to the child without an adoption order. It is also true that an adoption order is formally registered and that its making will have some psychological consequences for the parties which may be desirable; but these are not strictly legal consequences and there is nothing to stop individuals living together and/or treating each other as having a parent/child relationship without a court order for adoption. It cannot possibly be right for the court to make an adoption order simply to secure the financial and immigration benefits which I have already referred to if there is not other proper purpose in doing so.

[9] In the light of these considerations I do not think it would be right for the court to make an adoption order in this case. This is basically because an adoption order is designed to secure the welfare of an infant and not a young man of 18 and it does not seem to me that making an order one day before majority (or two months for that matter) would achieve the purposes contemplated by the legislation: a court cannot act for extraneous purposes however desirable.

[10] I therefore refuse the application. I naturally regret that I am unable to assist in what is obviously a desirable scheme and I wish the young man concerned all the best for the future.

MURRAY SHANKS
(Acting, High Court Judge)