This Judgment was delivered in private, but the Judge hereby gives leave for it to be published.
The Judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the Judgment itself) may be identified by name or location and in particular the anonymity of the children and the adult members of their family must be strictly preserved.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION

FAM 196 of 2021

IN THE MATTER OF THE ADOPTION OF CHILDREN ACT (2021 REVISION)
AND IN THE MATTER OF AN APPLICATION FOR AN ORDER TO ADOPT A CHILD, YM

IN CHAMBERS

Before:	**The Hon. Mrs. Justice Margaret Ramsay-Hale**
Appearances:	**Mrs. Rosie Whittaker-Myles, Attorney for the Applicants** **Adoption Board not represented by Counsel**
Present:	**Mrs. Sheridan Brooks-Hurst QC, Chairman of the Adoption Board (present on 29 September, 29 October and part of 12 November 2021)**
Heard:	**9 and 29 September, 29 October, 12 and 16 November 2021**
Date of Decision:	**16 November 2021**
Reasons for Decision Delivered:	**3 December 2021**

HEADNOTE

Family Law - adoption - jurisdiction of Grand Court over children habitually resident in the Cayman Islands -Hague Convention on inter-country adoption inapplicable where child not habitually resident in country from which she has been or will be removed for the purposes of adoption - de facto adoption of child by stepfather married to biological mother - role of Adoption Board in de facto adoptions - section 6 applicable only where Board arranges adoption - Adoption Order not to be refused merely because child almost 18 - welfare of the child at the heart of adoptions - benefits enuring to the child after majority to be taken into account

REASONS FOR DECISION

Introduction

1. SB, who I shall hereinafter refer to as mother, is a Filipino national who, at age 20 had a child, YM (the "Child") who was born on the 17 November 2003. Mother registered the child in her maiden name. The father's name then, as now, is unknown. Like so many mothers, she was anxious to improve her personal and financial circumstances so that she could better meet the

Child's needs. She sought and found employment in the Cayman Islands and, in 2006, she left the Child behind in the Philippines in the care of her sisters.

2. In 2009, she met MB, a Caymanian, who I shall refer to as the stepfather. In March 2013, the two got married. Together they continued to meet all of the Child's financial needs in the Philippines. They remained in daily contact with her through telephone calls, Facebook and video-chats. In 2015, they travelled together to the Philippines and the Child was finally able to meet her stepfather, who she already called "Dad," in person.

3. It was always their intention that the Child would join them in the Cayman Islands and when, later in that year, mother discovered she was expecting, they made immediate plans for the Child to come to Islands in time for the arrival of her baby sister. In November 2015, mother travelled to the Philippines and returned with the Child in December 2015 who has remained here ever since as a part of what is a close and loving family. The Child is currently in the sixth form at a private high school in the Islands where she is performing well academically and socially and is fully integrated into the Caymanian community.

4. Mother and stepfather (together "the Applicants") made several earlier efforts to complete an application to adopt the Child to make her legally the Child of her stepfather. Those early efforts were derailed for divers reasons but in August of this year, the Applicants made an application to this Court for an Adoption Order.

5. The Child, who had never had a father until her *de facto* adoption by her stepfather in 2015, expressed her wish to become his child in law and have the same last name as everyone else in their small family. On the 16 November 2021, the day before the Child turned 18, the Court made an adoption order for reasons which I now put in writing, as well as my reasons for an interlocutory ruling on the issue of the jurisdiction of this Court to make an adoption order for a Filipino national.

The Law

6. The statutory framework for adoption of children is not complex. The primary provisions that fall for consideration in these proceedings are as set out below.

7. The power of the Court to make Adoption Orders is set out in Section 9 of the **Adoption of Children Act (2021 Revision)** ("the Act") which states:

Power to make adoption orders

> *9. (1) Subject to this Act, the Court may, upon an application made in the prescribed manner by a person domiciled in the Islands, make an order authorising the applicant to adopt a child.*
>
> *(2) An adoption order may be made on the joint application of two spouses or civil partners who, at the date of the application, have been married or party to a civil partnership and living together for no less than three years.*
>
> *(3) An adoption order may be made authorising the adoption of a child by the mother or father of the child, either alone or jointly.*

8. Section 14 of the Act sets out the functions of the Court making an adoption order:

> *14. (1) The Court, before making an adoption order, shall be satisfied —*
>
> *(a) that every person whose consent is necessary not dispensed with, has consented to and understands the nature and effect of the order for which application is made, and in particular in the case of any parent, understands that the effect of the adoption order will be permanently to deprive that parent of their parental rights;*
>
> *(b) that the order if made will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child, having regard to its age and understanding; and*
>
> *(c) that the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the Court may sanction.*

9. Section 5 provides that the duty to arrange adoptions rests with the Adoption Board (the "Board") and for that purpose the Board must to receive applications from parents, guardians and adopters, as defined in section 2. It also provides for the Board to carry out all necessary inquiries and prepare reports for the consideration of the Court.

10. The procedure of the Board is regulated by the **Adoption of Children Regulations (2021 Revision)** ('the Regulations").

11. Regulation 3 provides for the application to be in Form A accompanied by Form B which is medical certificate as to the physical and mental health of the applicant(s). Once the Board has received the application it must furnish the parent or guardian of the child with Form C which

advises them of the consequences of a legal adoption which is to transfer their parental rights and duties with regard to the child will permanently to the adopter. Regulation 4 states that the Board must not proceed further with any negotiations or arrangements for the adoption of the child unless the parent or guardian has signed and delivered to the Board a certificate in Form D to the effect that that parent or guardian has read and understood the memorandum and agrees to its terms. These Forms are all set out in the First Appendix to the Regulations,

12. Despite the mandatory language in Regulation 4, the Grand Court has held in *In re R and R* (at para 18 (c)) and in *In re the Adoption Board* (at para 12) that, whether or not the Board has received Form D, it is required to comply with Regulation 5 which states as follows:

> *"5. The Board shall make enquiries and obtain reports on the matters set out in the Second Appendix hereto and generally on all matters appertaining to the welfare of the child, and the report on the health of the child shall be signed by a registered medical practitioner. The case shall be considered by a case committee appointed by the Board for the purpose and consisting of not less than three members of the Board."*

13. Unlike the application to the Board which may be made by parents, guardians or adopters, the application to the Court is made by the adopters only. The application to the Court is governed by the **Adoption of Children Rules (2021) Revision** ("the Rules"). Rule 3 (1) provides that the application must be made by Summons and accompanied by Form A which is set out in the Appendix to the Rules and is a written statement made by the applicants, Form B which contains particulars of the applicants and, except where the applicant is the mother or father of the child, the written consent of the parents in Form D.

14. Rule 3(3) requires the Board to lodge Form C with the Court which document is a certificate of identity for the child.

15. A report containing the sum of the investigations and enquiries carried out by the Department of Children and family Services ("DCFS") on behalf of the Board pursuant to Regulation 5 is also placed before the Court to assist it in the exercise of its discretion to make an adoption order.

Background

16. The history of this matter is unusual. Mother attended at the Department of Children and Family Services ("DCFS") in June 2021, to submit her application for an adoption order as prescribed by the *Adoption of Children Act (2021 Revision)* which contained all the requisite matters set out in the *Adoption of Children Regulations (2021 Revision).*

17. The social worker to whom Mother submitted the application returned the application to Mother with the advice that the Adoption Board ("the Board") **required 18 months** to deal with applications for adoption by which time the Child would already have turned 18 and could no longer be made subject of an adoption order. She therefore suggested that the Applicants retain an attorney-at-law to assist them in making a direct application to the Court for an Adoption Order. [emphasis mine]

18. The Applicants, acting on that advice, filed a Summons with supporting affidavits on 6 August 2021, seeking an Order for Adoption for the Child. Mother exhibited to her affidavit the application made to the Adoption Board in Form A accompanied by Form B as required by the Regulations as well as a number of other supporting documents.

19. The Summons also sought directions for a Report as to Child's welfare be provided to the Court whether by the Adoption Board or by DCFS, a timetable for the filing of any additional documents or reports and a date be fixed for the hearing of the application for an Adoption Order.

20. On 11 August 2021, Mrs. Whittaker-Myles wrote a letter to the Board, enclosing an unsealed copy of the summons with the supporting affidavits with exhibits, advising the Board in terms that,

> *"due to time restrictions(the child will be 18 years old on 17 November 2021) my clients were informed they should seek an Attorney to commence proceedings on their behalf"*

and inquiring of the Board whether a representative of the Board would be available to attend a directions hearing.

21. It appears from the email of 26 August 2021, sent by the present Chairman of the Board, Mrs. Brooks-Hurst, to Mrs. Whittaker- Myles that, on receipt by the Board of the unsealed summons and affidavits, the secretary to the Board was instructed to place the application on the Agenda for the Board's August meeting. That meeting was, however, cancelled due to the passage of TS Grace.

22. On 23 August 2021, the Adoption Board was formally served with the summons which had a return date of 2 September 2021.

23. By email of the same date, Mrs. Brooks-Hurst QC advised Mrs. Whittaker-Myles that no member of the Board was available to attend and asked that the matter be taken out of the list and set

down for the last week in September, after the *" Board would have hopefully met to consider this new application."*

24. Given that the Child's 18th birthday was fast approaching, Mrs. Whittaker-Myles felt constrained to press ahead and invited the Board to instruct someone from the Attorney-General's Chambers to attend on its behalf. The matter was relisted for 9 September 2021 in an attempt to accommodate the Board.

25. On 2 September 2021, Mrs. Brooks-Hurst in an email to the Listing Officer which was copied to Mrs. Whittaker-Myles, she advised that she had reviewed the application and had formed the view that, because the Child and her biological parents are Filipino nationals, the application was governed by the laws of the Philippines. She opined that the application would have to be made through the Adoption Authority of the Philippines and proceed through their Inter-Country Adoption Board, unless the Philippine Authority relinquished jurisdiction. In support of this proposition and in support of her view that neither the Board nor the Court had jurisdiction over the Child, Mrs. Brooks-Hurst referred to an adoption application filed as FAM 151/2021.

26. Mrs. Brooks-Hurst also indicated that neither she nor any other member of the Board was available to attend the hearing on 9 September 2021.

27. Given that Mrs. Brooks-Hurst had set out the jurisdictional point in detail, I advised that I did not require her or any other member of the Board to attend, that I would hear Mrs. Whittaker-Myles, in response, on the question of jurisdiction, and either adjourn the matter generally, if satisfied the Court had no jurisdiction, or give Directions for the progression of the matter.

Ruling on Jurisdiction

28. At the hearing, Mrs. Whittaker-Myles submitted that FAM151/2021, on which Mrs. Brooks-Hurst had relied, could be readily distinguished from the case at Bar. Mrs. Whittaker-Myles recalled that in FAM151/2021, the husband and wife applicants had made an application in the Philippines in 2007 to adopt a child who was the cousin of the wife applicant. The child was, at the time of the application, living in the Philippines. The adoption was approved in the Philippines on the condition that the applicants reside in the Philippines for 6 months, the reasonable inference being that this was for the purpose conducting a home study of the child in the adoptive household.

29. The applicants did not pursue that adoption, but instead made an application for the child's adoption to the Board here, 8 years later in 2015. The Child had remained in the Philippines throughout the intervening years. When the child was removed from the country for the purposes of being adopted here, the Philippine Adoption Authority intervened on the ground

that it was an inter-country adoption governed by the 1993 **Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption** ("the Hague Adoption Convention"). As Cayman is not a signatory to the Convention, the Philippine Authority sought to make an inter-country agreement with the Cayman Islands which would govern the adoption so that the adoption could proceed. The initiative failed, no agreement was reached and it was at that point that the adoption application before the Grand Court was stayed.

30. This application, on the other hand, is made by a mother and stepfather in respect of a child who has been resident in the Cayman Islands and living with the prospective adopters since 2015. Mrs. Whittaker-Myles submitted it was not an inter-country adoption as contended in FAM 151/2021 and this Court had jurisdiction.

31. Having considered Mrs. Whittaker-Myles' submissions, I held that, in the circumstances where the Child had been habitually resident in the jurisdiction since 2015, there were grounds for concluding that the Grand Court had jurisdiction.

32. I did not make a concluded determination given that the Board or its legal advisers might have wished to make further submissions on the point, but having formed the *prima facie* view that the Court had jurisdiction over the Child, I gave directions for the Home Study that the Board would have ordinarily have requested once it received an application. This was done with a view to expediting the process set out in the Regulations given the Child's impending 18th birthday.

33. I also ordered the Applicants to serve a number of documents on the Board to complete their application to the Board and to address certain matters raised by Mrs. Brooks-Hurst in correspondence with Mrs. Whittaker-Myles. These documents included a letter from the Director of the Workforce Opportunities and Residency Cayman ("WORC") which confirmed that mother had the right to remain and work in the Islands in any occupation without the need to possess a work permit beyond 2022 and that the Child had the right to remain in Cayman as an allowed dependent up until age 24 years, if she remained in education.

34. When the adjourned summons came back on for hearing on 29 September 2021, the question of jurisdiction was again considered, the Court hearing from both Mrs. Brooks-Hurst, who made certain submissions as a friend of the Court, and from Mrs. Whittaker-Myles.

35. The Court reaffirmed its view that the Grand Court had jurisdiction. Article 2 of the Hague Adoption Convention made it clear that what was proposed was not an inter-country adoption to which the Convention applied. Article 2 states that it only applies where a child habitually resident in one Contracting State, has been moved to another Contracting State for the purpose of adoption in the receiving State. At the time this application was made by the Applicants, the child was no longer habitually resident in the Philippines but was habitually resident within the

jurisdiction of this Court, and had been for the last 6 years. She had not been brought here from the Philippines *"for the purpose of adoption"* and for that reason the Convention simply could not apply.

36. The open source *"Guide to Good Practice"* produced by the Hague Conference on Private International Law, on which Mrs. Whittaker-Myles also relied, states at Section 8.6.5 clause 519 that:

> *"Step-child adoptions are a category of family adoptions but they are not straightforward cases. If one parent already has custody of the child, and the child is living with the parent and the new partner, it should be a national adoption in the country of residence."*

37. It distinguishes that sort of case from the case where the parent has custody - as Mother does here - but the child lives in the Philippines, for example, and says this

> *"if one parent already has custody but the child is in another country, and the step-parent adoption is necessary to allow the child to come and reside in the second country, this falls within the scope of the Convention (Art.2)"*

38. Further, and in any event, the Grand Court has hitherto now exercised its jurisdiction to make orders for the adoption of Filipino children who were habitually resident in the Cayman Islands: see *In the matter of R and R.*

39. The fact is that the Child has lived here with her only known parent and her stepfather for the last 6 years with the settled intention to remain here with her immediate family, having been raised by relatives in the Philippines until her mother was in a position to care for her here. She is thoroughly integrated into the Cayman Islands not just through her family but in her school and church life as well. In the result, this Court has jurisdiction to make orders for her welfare, including an adoption order.

40. I am constrained to observe that the Board, in taking the stance that neither the Board nor this Court had jurisdiction over this Child, has misunderstood the scope of Article 2 of the Convention and, consequently, failed to appreciate that this Court has jurisdiction over children who are habitually resident in the Cayman Islands.

Attempts to Engage the Board

41. As noted above, the Court, having made a preliminary determination on 9 September 2021 that it had jurisdiction, ordered DCFS to carry out a Home Study and prepare a report for the Board -

as per the Board's own procedures under Regulation 5 - in order to expedite the Board's consideration of the application, as the Child's 18th birthday was swiftly approaching.

42. The summons had been adjourned to 29 September 2021, a date after the next scheduled meeting of the Board, in the hope that the Board might give its consideration to the application and the Home Study report which the Court had ordered DCFS to prepare.

43. At the resumed hearing on 29 September 2021, the Court was advised by Mrs. Brooks-Hurst that the application had not been considered by the Board because, notwithstanding the Board had notice of the application having been served with the unsealed summons on 11 August 2021, with the duly completed application form exhibited thereto, and with the sealed Summons on the 26 August 2021, with the duly completed application exhibited thereto, the application had not been formally made to the Board and had not been assigned a case number.

44. Mrs. Whittaker-Myles advised the Court in turn that the Home Study had not been done because the Secretary to the Board had taken the view, which she conveyed to Mother, that because the Applicants for adoption were the Child's natural mother and her stepfather with whom the Child had been living for the past 6 years, a Home Study was not required.

45. The Court gave further directions to progress the matter: the Applicants were directed to make a formal application to the Board forthwith and DCFS was ordered to prepare a Home Study report. The Court indicated to Mrs. Brooks-Hurst that it was making the Order to expedite a report that might otherwise take many months for the Board to request or receive and that it was doing so in order to facilitate the Board's consideration of the application.

46. The matter was set for 29 October 2021, a date after the Board's next scheduled meeting. This was done in the expectation that the Board would consider the application, and the hopefully concluded Home Study, and consider next steps. The next step, once an application is in order, and the Home Study report suggests that the adoption be approved, is for the Board to request a Report for the Court which it would lodge with the Court along with Form C (in the Appendix to the Rules) as required by Rule 3(3).

47. The Home Study report was prepared on the 13 October 2021 and it unequivocally recommended the adoption of the Child:

> **"Social Workers Assessment**
> *"This writer unhesitatingly recommends that [the Child] is granted approval as she had been with the family about five years and has bonded in the family system. In addition, she is registered in school and is excelling academically, and she is also connected socially to the community through Church involvement and*

> *playing community volleyball. [The Child] stands to gain from reunification with her biological mother, and to continue having the support of her maternal aunt who helped raise her. [The Child] also has her younger sister who she loves and cares for and [the stepfather] who has made himself available to provide a fatherly role in her life."*

48. When the matter returned to Court on the 29 October 2021, Mrs. Brooks-Hurst indicated that the Board had not reviewed the application on 26 October 2021 because *"it started out wrong"* in that the applicants came directly to the Court because their application was late, instead of first applying to the Board. She advised the Court that the Board had a great number of applications being made on the eve of the children's majority. She expressed the Board's concern that its processes were being compromised and its procedure circumvented by the Court in this case, in the absence of any exceptional circumstances.

49. Mrs. Brooks-Hurst referred the Court to the judgment of Williams J in **R and R** in which, the learned Judge set out the procedure to be adopted by the Board. She asserted that Williams J had held that the application to the Court should be made no earlier than 3 months after the application to the Board and only be made by the adopters if the Board was dilatory. Mrs. Brooks-Hurst also referred to the decision of Kellock J which she contended set a timeline of at least 90 days for the Board to conduct its inquires, even in the case of a *de facto* adoption.

50. Mrs. Brooks-Hurst noted further that the Home Study was usually requested by the Board after it had considered the application and any further information it had requested. She stated that the Report before the Court was incomplete, there was no medical for the Child and there were inconsistencies in some of the information provided. She made the point that it was a mandatory provision in the Act that the reports required by the Regulation 5 be considered by a case committee. She advised that there had not been sufficient time for a case committee to be formed to consider the Report.

51. Mrs. Brooks-Hurst also advised the Court that given the number of late applications for adoption of children who were nearing 18 years of age, the Board would not wish a precedent to be set but rather that applicants be reminded that they should make their applications in a timely fashion. She also noted that the older the child, the less benefit of an adoption and that the Board was concerned too that these late applications were attempts to use the adoption process to circumvent the Immigration law, as highlighted by Williams J in *R and R.*

52. Mrs. Whittaker-Myles submitted, correctly in my view, that neither of the cases to which Mrs. Brooks-Hurst set any fixed timelines for the Board's procedure. Williams J in *R and R* did no more than suggest what might be appropriate timelines for things to be done by the Board in

the ordinary case. In *In re the Adoption Board,* [1]a case where the Board had refused to carry out its statutory functions, Kellock J had simply directed the Board to complete its Regulation 5 inquiries and reports within 90 days.

53. In any event, the Board has the power to regulate its own procedure. Notwithstanding the fact that the summons preceded the application to the Board - had *"started out wrong"* - there was no procedural bar to a case committee being formed by the Board to consider the case for the Child's adoption.

54. In an exchange with Mrs. Brooks-Hurst, the Court suggested that there was still time to form a case committee given the urgency of this matter and emphasized that the Court had ordered the Home Study be done and a report prepared for the case committee's consideration, not to circumvent, but to facilitate the Board's process. It had been done in the interests of time, to ensure this Child was not denied the opportunity of being adopted by the delay which would have been inherent in invoking the Board's "usual process".

55. I considered that such an approach would be in the best interest of the Child whose welfare is, as Mrs. Whittaker-Myles said, at the heart of every adoption application and consistent with the Board's duty to make arrangements for the adoption of children.

56. At the conclusion of the hearing, the Court therefore invited the Board to form a Case Committee to consider the Home Study report which recommended the adoption. It was hoped that the Board would, thereafter, lodge the Form C statement of identity for the Child with the Court, pursuant to Rule 3(3).

57. In the circumstances where Mother had submitted an affidavit swearing to the circumstances in which the Child was conceived and her efforts to discover the identity of the father which remains unknown, the Court also ordered that, for the purposes of Form C and Form D of the Rules, the consent of the father be dispensed with, pursuant to section 11(1) of the Act.

58. Anticipating that the case committee would be formed as requested, the Court ordered DCFS to prepare the final Report which would normally be requested by the Board for the Court's attention once the case committee had met and considered the application.

The Adoption Order

59. On 4 November 2021, Mrs. Whittaker-Myles wrote the Board urging them to convene the case committee despite the applicants' delay in making the application.

[1] Facts set out *infra* at para 69

60. The application returned to the Court on 12 November 2021, the Child's 18th birthday now 5 days away. Mrs. Brooks-Hurst attended and advised that the Board had been unable to convene a case committee within the time allowed.

61. Mrs. Whittaker-Myles asked the Court to hear and decide the application for the Adoption Order. Counsel noted that although the case committee had not been formed, the Applicants had nonetheless been able to obtain and file the Form C certificate of identity for the Child duly executed by a Member of the Board which was the final document they needed to complete the application to the Court.

62. Mrs. Whittaker-Myles submitted that section 9 gave the Court the power to make the order sought and that the Court was not constrained from hearing the application by the Board's failure to convene a case committee to consider the Home Study report. In support of that submission, she relied on the decision of Kellock J in ***In Re Adoption Board*** who noted although Regulation 5 required the Board to carry out investigations and convene a case committee, nothing is said in the Regulations as to what the case committee is to do after it has considered the case; see para 12 and went on to hold that in the case of *de facto* adoptions.no decision of the Board was required and the Court did not have to consider the Board's views.

63. Mrs. Brooks-Hurst requested permission to withdraw. She explained she had not anticipated that the matter would move to a full hearing and she had other commitments and could not remain. She also advised that the Board had not had time to instruct Counsel to appear on the Board's behalf and confirmed that her attendance was solely as a member of the Board and as friend of the Court and not in the capacity of legal representative.

64. The matter proceeded thereafter in her absence.

65. In concluding her submissions, Mrs. Whittaker-Myles asked the Court to note that, even though the case committee had not been convened, the Board had reviewed the Home Study report to the extent that Mrs. Brooks-Hurst was able to raise certain issues at Court on 29 October 2021, including the fact that the child's medical (lab and x-ray reports) was outstanding and the police clearances were outdated, matters which were immediately addressed by the Applicants. Mrs. Whittaker-Myles asked the Court to find that this review by the full Board more than met the requirement that the case for the Child's adoption be considered by a committee of the Board.

66. In inviting the Court to make the Order, Mrs. Whittaker-Myles submitted that all the investigations required to be carried out by Regulation 5 had been completed by DCFS, including the Home Study during which interviews with the Child, the adopters and other family members were conducted. The Home Study Report and the Adoption Court Report, which would have

been submitted to the Court through the Board in the event the case committee had been convened, were also before the Court.

67. Counsel drew the Court's attention to the fact that an Amended Form A had been filed on 11 November 2021 with Form C as well as the Form D[2] consent required by Rule 3(1). The application had been amended to add the case number assigned by the Board and to add the statement that this was a *de facto* adoption. The supporting affidavit, filed with the Amended Form A by Mother, exhibited the completed application to the Board which included all the particulars required by the Second Appendix to the Regulations.

68. Mrs. Whittaker-Myles referred to the Report by DCFS which recommended the adoption and invited the Court to consider that, although the Child was nearly 18, there were many post-majority benefits of the adoption that should weigh with the Court in the exercise of its discretion.

Discussion

69. In *In re the Adoption Board,* Kellock J was seized of an appeal against the refusal of the Board to accept an application to adopt a child who was already living with the applicants and who had been adopted by the wife applicant in her sole name under Jamaican law. The Board refused to accept the application on the ground that the child was already the subject of an adoption order, having failed to advert to section 19 of the Act which specifically allows for a further adoption order to be made for an adopted child. The applicants filed a notice of appeal and the court requested the Board to provide copies of the relevant statutory documentation.

70. The learned Judge, in his ruling on what was a summons for directions for the conduct of the appeal, undertook an extensive review of the statutory provisions and made the following instructive observations. He noted that two forms of adoption were contemplated by the ***Adoption of Children Law (1996 Revision), the Regulations and the Rules*** the material provisions of which are in the same terms as the ***2021 Revision.***

71. The first is where a prospective adopter is seeking a child to adopt and the Adoption Board acts as the arranger and places the child with the adopter pursuant of section 6 of the Law in which case the Board has a decision to make. The learned Judge said,

> *"In such a case, under s.6:*

[2] In his decision in *In the Adoption Board*, Kellock J suggests at para 12 that the Form D required by Rule 3(1) to be filed with the Summons is the Regulation 4 Form D but this appears to have been an error, as the learned Judge notes later in paragraph 16: *"As stated, the Rules require that an adoption application to the court be made by summons and must have with it a Form A statement, particulars in Form B and Form D consents. (**Note: These forms are appended to the Rules not the Regulations.)"***

> *". . . [A]n application to the Court for an adoption order [only the court can make an adoption order] in respect of the child shall not be made until the expiration of a period of three months from the date on which the child is delivered . . . pursuant to the arrangements . . ."*
>
> *"No one else can lawfully make such arrangements (see s.4 of the Law). Under s.6, during that three-month period, the adopter may decide not to adopt or the Board may decide "not to allow the child to remain in the care and possession of the adopter . . ."*

72. The other form of adoption is the *de facto* adoption, where the prospective adopter already has the child in his or her care. Kellock J held that, where the child was not placed with the family by the Board pursuant to section 6, the law made no provision for the Court to act on the Board's advice or take its views into account.

73. He held, therefore, that the Board's role in such cases was limited to (i) receiving the applications per Regulation 3, (ii) providing the parents with Form C of the Regulations advising them of the consequences of adoption, and (iii) carrying out its Regulation 5 inquiries, whether or not the parents or either of them has returned Form D of the Regulations indicating that he or she has read Form C and agrees with it.

74. The case committee, once convened, must consider the proposed adoption and request an Adoption Court Report[3] for the Court's consideration. When the application to the Court is made, the Board is required to lodge the Form C certificate of identity and the Form D consents pursuant to the **Rules** for the attention of the Court, along with the Report(s).

75. In *R and R*, which concerned a *de facto* adoption, Williams J set out the procedure of the Board. The tenor of the learned Judge's judgment suggest that, in the case of a *de facto* adoption, the Board has a decision to make about the child's placement since it is delivering the children into the care and possession of the adopters pursuant to section 6: see paras 18(d)(e)(f) and (g).

76. If that is what my learned colleague intended to suggest, then I respectfully disagree. I consider the better view to be that expressed by Kellock J, which is that section 6 is not engaged in *de facto* adoptions as the Board has neither arranged the adoption nor delivered the child into the care of the adopters. The Board, therefore, has no decision to make and the Court need not consider its views.

[3] Also known to the Board as a Supervision Report

77. Over the course of this matter, Mrs. Brooks-Hurst suggested that the Court did not have "original jurisdiction" by which I understood her to mean that, unless an application had first been made to the Board, no application could be made to the Court. I can find no merit in that position. Section 9 of the Act gives the Court the power to make adoption orders and the Rules state the application must be made by summons. That the Regulations provide that the application should first be made to the Board cannot deprive the Court of jurisdiction.

78. The point was made quite forcefully by Kellock J in *In re the Adoption Board* who directed the adopters to file a summons for an adoption order after the Board refused their application and was prepared to hear the application on its merits if the Board did not comply with its Regulation 5 obligations.

79. Being satisfied that the Court had the jurisdiction to hear and determine the application, notwithstanding a case committee had not considered the Child's case, I moved to consider the exercise of my discretion. The application was in order. There were no section 10 restrictions on the making of the Order as one of the applicants was the mother of the Child, the Child was lawfully in the Islands and the Applicants and the Child all ordinarily resident in the Islands. The father's consent was dispensed with for the reasons already set out above. All requisite investigations and inquiries were carried out and the information put before the Court, including the requisite medical certificates, evidence of the adopters' good character, evidence of their employment as well as such formal documents as copy birth certificates, passports, marriage certificates and mother's RERC.

80. The Home Study Report and the Adoption Court Report both showed that the Child was well settled and thriving in the care of her mother and stepfather. Both Reports recommended the adoption order be made. In the Adoption Court Report prepared by Ms. Genevieve Tomlinson, the Social Worker with the Foster Care and Adoption Team. She writes in response to the various matters on which she is required to comment that:

> *"The child has been living with her biological mother and step-father since 2015 as a complete family. The adoptive parents have been providing and caring for her prior to the adoptee relocating to the Cayman Islands."*
>
> *"Based on the report from the family and the school, ….[an] adoption order would be in* [the Child's] *best long term interest. She is settled in the family routine, school involvement and community interest."*
>
> *"*[Mother and stepfather] *are committed to caring for [the Child] should any issues arise they will deal with it as a family…adoption would be in the child's best long term interest …"*

> *"During an interview and discussion with the family and the adoptees, it would appear that granting of an adoption order stands to solidify the family and stabilise the adoptee."*
>
> *"The adoptee has been residing with the family from 2015 and is already integrated in the home setting, extended family and the wider community*."

81. Ms Tomlinson concludes,

> *"This writer would be in support of an adoption order to be granted (sic) based on the adoptee's expressed desire to be with her family, especially her mother and sister and to gain from having a father's love. Further, she is also integrated in the wider community of the Cayman Islands.* [The Child] *is [thriving] academically and socially and this should be encouraged instead of stifled if she is to return to the Philippines."*
> *"In discussion with* [the Child] *[she] expressed the need to have the same name as her family [which] suggests the innate desire of a child to feel a sense of belonging."*

82. Accordingly, I was satisfied, as required by section 14 (b) that the order, if made, would be for the welfare of the child. I gave due consideration to the Child's expressed desire to have the same last name as the rest of her family and to be legally the child of her stepfather who has been in her life before his marriage to her mother and who she calls "Dad".

83. No section 14(c) issue arose as to whether the mother of the Child had accepted any payment or reward, as mother was not giving her child up for adoption but adopting her own child with her husband to make the Child fully a part of what the Reports show is a stable and loving family unit.

84. One of the concerns with this late application that seemingly weighed with the Board, and which I therefore considered, was whether the adoption would be too late have much benefit to the Child who was approaching her majority and was perhaps intended to circumvent the Immigration law. Mrs. Brooks-Hurst drew my attention to **R and R** where Williams J stated *obiter* at para 31,

> *"However, being the judge who deals with the majority of adoption applications, it would be remiss of me to fail to note a growing concern arising in [adoption] cases. I see a trend in the jurisdiction for prospective adopters to make applications to adopt children…increasingly as they are reaching the end of their*

> *minority , often it appears primarily to secure for the child the benefit that derive from acquiring immigration status in the Cayman Islands. These applications are being made by the Caymanian spouse of a biological parent. They are also being made, which is of more concern, in some circumstances by better financially positioned relatives of the child who have Caymanian status even though loving biological parents are in good health but less [financially secure]."*

85. The concerns expressed by Williams J and how they affect the exercise of the Court's jurisdiction to make adoption orders in such cases may be illustrated by two cases which were considered by the English Court of Appeal which the learned Judge cited. The first is In ***Re A (An Infant)*** [1963] 1 WLR 231, which was an unsuccessful application by an English married couple to adopt a French child, where the hearing took place a month before the child's majority. The only object of the adoption was to secure for the child the benefits of British nationality. The application was refused even though the judge accepted that,

> *"the benefit to the person adopted need not consist in the statutory transfer of parental rights and duties, but may consist solely in what I may call some collateral consequence of the making of the order.'*

86. In ***Re R (Adoption)*** **[1967]** 1 WLR 34, a decision of Buckley J, the child to be adopted was aged about 20 - the age of majority being then 21 - and a refugee from a totalitarian country. The acquisition of British nationality was undoubtedly one object of the proposed adoption. The adoption was granted. The essential difference in ***Re R*** was that the applicants (unlike those ***in Re A***) were *"fully in loco parentis to R",* since he had lived with them as an integral part of their family since his arrival in this country. Buckley J said (at p. 41):

> *"The benefit which adoption, if permitted, would confer upon R would not be confined to the acquisition of British nationality; it will give R the social and psychological benefits of truly belonging to a family, as a member of it, with the attendant legal status and rights."*

87. Plainly there are substantial benefits to an adoption even close to the age of the Child's majority.

88. With respect to the observations about adoptions for immigration purposes made by Williams J, I think it is important, though it should be unnecessary, to point out that the learned Judge's comments were not directed at the Board. Whether or not an adoption order should be made is a matter for the Court exercising its discretion. The observations made by Williams J simply go to show that the Courts are alive to the possibility that a late application may be made solely to

evade the Immigration law and obtain the legal rights and benefits of Caymanian status for a child, with no other benefit to the statutory transfer of parental rights and duties.

89. The Board is not entitled to consider whether an application has been made for such a purpose and whether, for that reason, it should decline to treat a late application with the urgency that might be required. The case of ***R and R*** vividly illustrates the impact on a child's welfare that might be occasioned by any delay on the part of the Board. Indeed, the perceived detriment to the older child in ***R and R,*** who had already passed 16 years of age when the application was made to the Court, prompted a change in the law, not only to bring it in line with the English adoption law where the age of majority is 18 but also to permit the adoption of that child so that she was not deprived of the benefits of adoption as a result of the Board's delay. The lateness of an application only speaks to the urgency with which the Board must approach it, as Williams J stated in ***R and R.***

90. In any event, it should have been clear to the Board that this case bore none of the hallmarks of a cynical adoption by the Caymanian spouse of a biological parent to secure Immigration benefits for a child. This application was made in respect of *"a child of a family"* as described in the **Children Act,** who has lived with the Applicants and her little sister in the Cayman Islands since 2015. There was no reason to doubt that this application was a genuine expression of stepfather's desire to formalise his *de facto* adoption of his step-daughter by making her legally his child, so that she should be as much a part of his family as her younger sister.

91. The important post-majority benefits for the Child including the *'attendant legal status and rights'* and the '*social and psychological benefits of truly belonging to a family'* per Buckley J in ***Re A*** were particularly acute in the context of this adoption, given that the Child has lived here for the past 6 years, is part of a household which includes her biological mother and her half-sister, has become totally immersed in the Cayman community, has expressed her strong desire to truly belong to the family, to have the same name and to enjoy the same rights and status as her mother and sister and to legally be the child of the only father she has ever known.

92. The benefit to her was clear in that she would be completely - and I emphasise *completely* - integrated within the family once the order was made and I made the order accordingly.

DATED 3 DECEMBER 2021

Ramsay-Hale J