

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **FAMILY DIVISION**

3
4 **CAUSE NO. FAM 192 of 2014**

5
6 **IN THE MATTER OF AR and NR**
7

8 **Appearances:** Mrs. Karin Thompson for the adopters
9 Mrs. Rosie Whittaker-Myles for the Adoption Board
10 Ms. Jennifer Catran and Ms. Jenisha Bhoorasingh-Simpson for the
11 Attorney General's Chambers
12

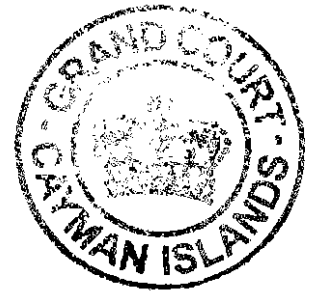
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14 **Before:** Hon. Justice Richard Williams

15
16 **Heard:** 30 September 2014, 8 October 2014
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18 **Ex Tempore Ruling:** 8 October 2014
19

20 **Transcript of Judgment provided:** 10 October 2014
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22

23 **HEADNOTE**
24



25 *Adoption of female siblings by step-father married to biological mother – Definition of*
26 *child in adoption proceedings - Effect of the Adoption of Children Law, 2013 (Definition*
27 *of “Child”) (Commencement) Order 2014 – Referring to Hansard in order to understand*
28 *amendments in legislation - Factors to be taken into account when child is reaching the*
29 *end of minority by the time of the adoption hearing, including benefits that will accrue*
30 *after majority (Re D (A Minor) (Adoption Order: Validity) [1991 2 FLR 66]) – Effect of*
31 *adoption order made in the Cayman Islands on prior orders made in the Family Courts*
32 *in the Philippines- Dispensing with the requirement for a biological parent to attend the*
33 *adoption hearing (Rule 7 Adoption of Children Rules) – The importance of serving the*
34 *Respondents (as defined by Rule 5 (2) Adoption of Children Rules) with the Notice of*
35 *hearing and giving them sufficient time to prepare for and attend the adoption hearing*
36 *- Procedural suggestions to promote efficient case management of applications for*
37 *adoption made to the Adoption Board in order to minimise delay.*
38

1 **EX TEMPORE JUDGMENT**



2
3 **Background**

4 1. This is an ex tempore ruling and will not read like a formal written judgment.
5 Having regard to the issues involved in this case and the urgency for orders, I felt
6 it important to give an immediate decision and to provide the parties with the
7 reasons why I have made that decision. Transcripts of the ruling will be
8 anonymised and provided to the parties.

9
10 2. This matter concerns AR a 16 year old female born on 15 October 1996 and NR a
11 15 year old female born on 6 November 1998.¹ They were both born in Manila,
12 the Philippines and possess Filipino nationality. The children are the children of
13 the marriage of their biological mother AB and their biological father RDR. Their
14 parents separated in 2007 and their marriage was annulled on 3 October 2008 by
15 the Regional Trial Court of Malabon in the Philippines. RDR was awarded sole
16 custody of the children. AB has informed the Court that she was unaware of those
17 proceedings until served with the final orders.

18
19 3. On 6 February 2010 AB married AJB², a Cayman Islands national. She had been
20 living in the Cayman Islands since 2006.³ AB is aged 40 and AJB is aged 37, so
21 both are over 25 and under 65 years of age.⁴ They are both domiciled in the

¹ These dates of birth have been taken from their certified birth certificates.
² This data is verified by the content of the certified copy of their marriage certificate dated 14 January 2013.
³ She had also lived and worked in the Cayman Islands between 2000 and 2002.
⁴ Section 10 (1)(a)(i) of the Adoption of Children Law (2003 Revision) - their age is confirmed by the content of their certified birth certificates.

1 Cayman Islands.⁵ I hope that they do not find me discourteous if, for convenience
2 sake, I now refer to them collectively as the adopters.

3

4 4. On 11 May 2010 the Regional Trial Court in Taguig City, Philippines granted a
5 temporary protection order to AB. On 31 May 2010 AB received a letter from
6 RDR in which he relinquished his rights of custody over the children, transferring
7 the same to AB. When the matter came back before the Court on 5 July 2010 the
8 temporary protection order was made permanent. The Court refused AB's motion,
9 in which she sought custody of the children, on the basis that it did not have the
10 jurisdiction to interfere with the decision of a court of concurrent jurisdiction
11 which had already ordered in 2008 that the custody order be awarded to RDR.
12 Although this technically meant, and still means, that the custody order remains in
13 place, the face of the order also noted that RDR did not object to AB's
14 "continuous care of the minor children." The order also reflected RDR's then
15 objection to AB's intention to bring the children to the Cayman Islands without
16 his consent. If an adoption order is made today, the children being habitually
17 resident in the Cayman Islands, that will supersede the orders made in the
18 Philippines.

19

20 5. AB took the children to the Cayman Islands in August 2010, and ever since they
21 have resided with her and AJB who has cared for them in the role of step-father.
22 On 15 July 2010 AB was granted a Residency and Employment Rights Certificate

⁵ Section 9(1) of the Adoption of Children Law (2003 Revision).



through her marriage and the children were granted residency as her dependents. On 11 September 2014 the Chief Immigration Officer granted written permission for both children to enter and remain in the Islands for the purposes of adoption proceedings.⁶

5

6 6. On 26 February 2013 the adopters, desirous of adopting the girls, submitted their
7 application to the Adoption Board (“the Board”) using Form A.⁷ Following
8 discussions with the Board, an Adoption Inquiry Form dated 22 January 2013 was
9 provided by the adopters. The Application Form A was dated 30 January 2013. It
10 highlighted the urgency to have the matter heard before October 2013 and
11 requested that the requirement for the consent of RDR be dispensed with. The
12 level of the importance of the request for a timely progression of the application
13 has been vividly illustrated by the predicament that this Court and the children
14 found themselves in on day one of this hearing on 30 September 2014.

15

16 7. For the purpose of this hearing I am willing to treat that initial application to the
17 Board as the ongoing application (“the Application”) for adoption for the
18 purposes of the Adoption Law (2003 Revision) (“the Law”). A practice has
19 developed in the jurisdiction to treat it that way, as the Form A application forms
20 have uncommendably, as in this case on 12 September 2014, been filed only
21 shortly before the hearing after all the formalities have been completed.
22 Applicants and the Board should in future carefully review this practice as it is

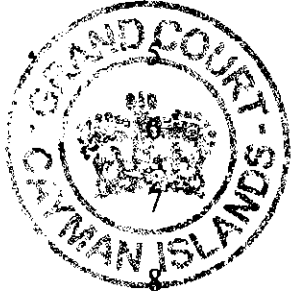
⁶ Section 10 (1)(b)(iii) of the Law.

⁷ Regulation 3 of the Adoption of Children Regulations (2003 Revision).

1 arguable that it may be the Form A Application Form filed at Court that should be
2 regarded as commencing the application.

3

4 8. The adopters had been married for three years prior to making the Application.⁸ I
note that, at the initial stage of the Application, AR was 16 years of age, and NR
was only 14 years old. At this hearing, I am now dealing with the final stage of
what has in this case been a long and drawn out adoption process.



9 9. There has been an unacceptable delay in the Application coming before the Court
10 for hearing. It really would have benefited from some 'hands on' case
11 management. In March 2013 a number of documents and forms were submitted
12 by the adopters to the Board. I note that in April 2013 the Board required the
13 adopters to provide additional information. The Board was concerned about the
14 lack of consent from the father, his apparent stated opposition to the children
15 leaving that jurisdiction with the mother and the status of court orders made in the
16 Philippines. I am told by the parents that they provided the certified copies of the
17 court orders from the Philippines to the Board in late May/early June 2013.
18 However, it appears that on 2 September 2013, following their review on 27
19 August 2013 (one without the benefit of a home study report), the Board
20 communicated their refusal to proceed, in other words to legally "*deliver the*
21 *children into the care and possession of the adopters*" and advised the
22 prospective adopters about their right to appeal. Although I can understand the

⁸ Section 9(2) of the Law.

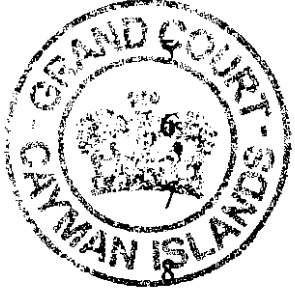
1 Board's concerns, any issues concerning the absence of consent and/or the
2 dispensation of the requirement for it are ultimately matters for the Court and not
3 the Board to determine. With the benefit of hindsight, the Board should have
4 made the decision not to proceed in June 2013. If the adopters had then followed
the appeals process in relation to that decision pursuant to Rules 15 to 20 of the
Adoption of Children Rules (2003 Revision) ("the Rules"), and if the Listing
Office gave a prompt date for the appeal by way of rehearing, there might have
been sufficient time for all the requirements to have been completed before AR
reached her seventeenth birthday.

9

10
11 10. In the end, the prospective adopters did not file a formal appeal, but sent a letter
12 of appeal to the Board on 9 September 2013. On 14 September 2013 the Board
13 considered that letter and still felt unable to proceed with the application. That
14 decision was communicated in a letter to the adopters on or around 26 September
15 2013. No formal appeal under the procedure designated by the Rules was made to
16 the Court by the adopters. This may be because it would have been too late for the
17 October deadline for AR's seventeenth birthday and it was felt appropriate to try
18 and further negotiate to see if there was another way to resolve matters. Further
19 negotiations continued until May 2014.

20

21 11. On 10 May 2014 the Board, after receiving the RDR's notarised consent to the
22 adoption, approved the application for the home study to be undertaken. On 3
23 June 2014, following approval of the home study report, the Board directed that a





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supervision report be undertaken (the Adoption Court Report). On 9 September 2014 Mary Lawrence, a member of the Board, signed the Form C Statements with Respect to the Identity of the Children.⁹ On 12 September 2014 the prospective adopters filed their Form A Application for adoption orders.¹⁰ On the same date they also filed their Particulars Form B.

12. On 16 September 2014 the Notice of an Application for an Adoption Order in respect of the children was issued, showing today's date as the hearing.¹¹ On the same date the Summons filed by the Board on behalf of the prospective adopters was issued. That Summons and Notice must be served on all of the Respondents. I note that on 23 September 2014 RDR was contacted by Ms. Garricks, a social worker with the Department of Children and Family Services, and notified of today's hearing and she requested his address for service of the pleadings. On 24 September he replied to her stating "*I am in agreement with the adoption and I will not be attending the adoption hearing.*"

13. Having read Ms. Garrick's affidavit of service sworn on 29 September 2014 and RDR's email in reply, I am satisfied that he has had sufficient notice of these proceedings (especially as it has been difficult to serve him as it appears from his communications that the Philippines has been hit by a series of typhoons).

⁹ Rule 3(3) of the Rules.
¹⁰ Rule 3(1) of the Rules.
¹¹ Rule 5(3) of the Rules.

1 14. However, I have a general concern from a number of adoption cases which have
2 been before me that service of the Summons and the Form E notices are not being
3 served on Respondents as required under the Rules. It matters not if the
4 Respondent has given his consent, he/she must still be served if at all possible.
5 Unlike in the matter before me, in the past affidavits verifying service on the
6 prospective adopters have ordinarily filed, but they have too often not been
7 provided in relation to the Respondents, upon whom service is required.

8
9 15. I am also concerned that the Notice and Summonses are being issued too close to
10 the hearing date. In the matter before me, service was only effected on 26
11 September 2014. If RDR had wanted to attend, the short notice given to him
12 would have been insufficient and would likely have prevented him being able to
13 attend. I am unclear whether this is a Listing Office issue.

14
15 16. However, in future, when the Applicants and the Board are ready to file an
16 application before the Court, they should obtain a date that gives them sufficient
17 time to comply with their obligations under the Rules. Adoption orders are one of
18 the most important and final orders made by the Courts. Such cases, especially if
19 there are issues in relation to dispensing with consent or concerning the Court's
20 jurisdiction, should be listed in an organised fashion and not simply hurriedly
21 slotted into the court list because a slot becomes available.

22



1 17. Before I leave procedural issues, I would like to offer some hopefully helpful
2 suggestions for the efficient progression of adoption applications. When doing so
3 I understand that the Board is very busy and its resources are stretched. I wish to
4 stress the need for the Board to be able to case manage applications to ensure that
5 delay is kept to the minimum. The Board should try and set time frames for the
6 completion of each stage of the application process. If the adopters are failing to
7 comply with the formalities by a due date, then they should be informed and
8 reminded to do so. If anybody tasked by the Board to carry out a function on
9 behalf of the Board is failing to comply with requirements by the due date, then
10 they should be chased up. If a person who has been tasked by the Board to carry
11 out functions on behalf of the Board is unable to do so by the required deadline,
12 then he should notify the Board explaining why and seeking an extension. I also
13 recommend that the Board consider producing a straightforward written step-by-
14 step guide for distribution to all prospective adopters and parents who may be
15 respondents to such an application to enable them to understand what their
16 obligations and rights are when an adoption application is made. In relation to
17 private law children proceedings, the Court has produced a leaflet entitled
18 "Making an application within the Children and Family Courts" and the Board
19 may wish to produce a similar type of document.

20
21 18. The process for making an adoption order is relatively straightforward:

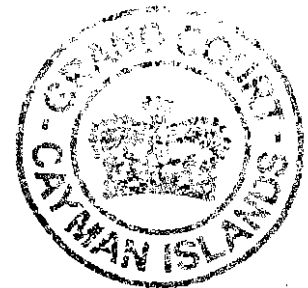


1 (i) It is commenced by the prospective adopter making an application in
2 Form A to which a certificate confirming his physical and mental health is
3 attached.¹²

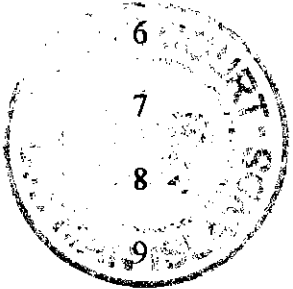
4 (ii) Upon receipt of these documents the Board must provide the parent or
5 guardian proposing to place the child at disposition of the Board with the
6 explanatory Memorandum in Form C. I suggest that this should be done
7 immediately upon the filing of the documents with the Board, failing that
8 within seven days of the Board receiving them.

9 (iii) The parent or guardian proposing to place the child at the disposition of
10 the Board must then sign and deliver a certificate in Form D to the Board,
11 confirming their understanding about the content of Form C. I suggest that
12 the Board require this to be returned within 21 days, failing which they
13 will contact the applicants to establish why there is a delay. I note with
14 interest that Regulation provides that the Board should not proceed further
15 with any negotiations or arrangements for the adoption of the child unless
16 a signed Form D has been delivered to the Board. Despite the content of
17 the Form C, it cannot be right that the Board cannot proceed if a parent
18 who refuses to give his consent to the adoption and who seeks to play no
19 part in the proceedings, or one who cannot be found, fails to sign the Form
20 D.

¹² Regulation 3 Adoption of Children Regulations (2003 Revision).



1 (iv) Regulation 5 provides that the Board shall make enquiries and obtain
2 reports on the matters set out in the Second Appendix and generally on all
3 matters appertaining to the welfare of the child¹³. The Regulation then
4 goes on to provide that the case shall be considered by a Case Committee
5 appointed by the Board. The primary role of the Case Committee is to
6 decide whether the child shall be delivered by the Board into the care and
7 possession of an adopter, for it is only at that stage that the probationary
8 period provided for in Section 6 of the Law can commence. The Case
9 Committee must make an informed decision and Regulation 6 indicates
10 that should be done by it considering the required reports and following
11 the interviewing of the adopter and inspection of any premises in the
12 Islands in which the adopter intends the child to reside. This appears to be
13 what is called the home study report. When reading these two regulations
14 together, it appears that the home study report should be commissioned by
15 the Board before any decision is made about placing the child. Therefore
16 before a decision is made either way, even if there are concerns about the
17 other parent's lack of consent, the Case Committee must carry out an
18 informed balancing exercise with all of the required information before it.
19 I respectfully suggest that the Board set a reasonable time for the home
20 study report to be prepared. The Case Committee should ensure that
21 preparation of the report is allocated to the relevant person within 7 days
22 of the receipt of the Form D and that, in most cases, they should require
23 the report to be submitted to them within two months thereafter.



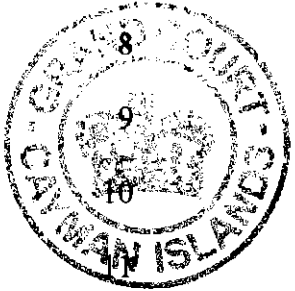
¹³ My emphasis by underlining.

1 (v) If the Board refuses to deliver the child, then when informing the
2 prospective adopters of that decision they should ensure that they are
3 aware of their rights to appeal and about the procedure set out in Rules 15
4 to 20. Having done so, the progression of the matter will be in the hands of
5 the adopters.

6 (vi) If the Board delivers the child then the required probationary period
7 provided for in Section 6 of the Law commences. I suggest that a person is
8 immediately allocated the responsibility of keeping the child under close
9 supervision. That person should be putting themselves in a position to file
10 their adoption court report shortly thereafter, preferably within a month of
11 the end of the probation period. If the reporter fails to provide their report
12 the Board should chase them up.

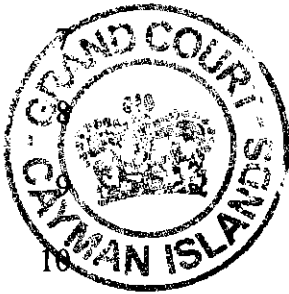
13 (vii) If the Board allows the child to remain in the care and possession of the
14 adopter it should ensure that the adopter promptly files the Application
15 and the forms mentioned at Rule 3(1) with the Court. The Board should
16 ensure that it is in the position to lodge the forms set out in Rules 3(3),
17 preferably at the same time or very shortly thereafter. The Board's
18 decision should be communicated at, or shortly after, the end of the
19 probationary period, it being recommended that the Board seeks ongoing
20 updates during the period of probation for the allocated reporter.

21 (viii) If the Board does not allow the child to remain in the care or possession of
22 the adopter, again it must inform the adopter of its position very shortly



1 after the end of the probationary period if it has not done so already. At the
2 same time the Board must ensure that the adopters are made aware of their
3 rights to appeal and about the procedure set out in Rules 15 to 20.

4 (ix) Upon filing of the Application at Court a date should be obtained for the
5 hearing, preferably within 6-8 weeks. This should be done at the time of
6 filing. Sufficient time should be given to the Board for the service of the
7 Notice containing the hearing date on the respondents, who are defined in
8 Section 5(2) of the Law. Proof of service must be provided to the Court. If
9 any of the parties are of the view that due to complexities of the case a
10 mention hearing is required, then that should be applied for. At such a
11 mention hearing, the Court will give required directions to trial and fix a
12 realistic time estimate.



13 19. I accept that the time limits I have suggested are not in any way binding. They are
14 suggestions designed to assist the Board when putting an efficient system in place
15 to assist consistent case management of such applications. It is important that
16 there are ongoing communications between the Board and the adopters
17 throughout the process. If the adopters are being dilatory in their approach then
18 the Board should tell them so, likewise with persons who the Board has delegated
19 to carry out the required functions.

20
21 20. I now move back to consider the required formalities specific to the current
22 application. AJB's medical examination report dated 3 September 2014 and his

1 certificate of good character from the Royal Cayman Islands Police Service dated
2 3 September 2014 are in order. Both of the children's medical certificates dated 3
3 September 2014 are in order. I am satisfied that the adopters have not received or
4 agreed to receive any payment or other reward in consideration of the adoption.¹⁴
5

6 21. RDR has provided his notarised consent to the making of an adoption order in
7 favour of the prospective adopters in the two completed Form Ds¹⁵ dated 25
8 March 2014. He provided his updated written consent sworn before a Justice of
9 Peace on 27 September 2014. He has also supplied a Form C and Form D both
10 sworn by him before a Justice of the Peace on 27 September 2014. I am satisfied
11 from the content of those forms and the attached narrative addendum that RDR
12 understands what the effect of the orders would be and that his consent is freely
13 given, albeit subject to the one condition that the children are brought up in the
14 Roman Catholic faith.¹⁶ The prospective adopters have indicated that the
15 children's religion will not be changed. By giving his consent, if an adoption
16 order is made, RDR is accepting that the children are now habitually resident in
17 the Cayman Islands and are thereby under the jurisdiction of this Court and that
18 the 2008 custody order made in the Philippines will be superseded by the order
19 made here.
20

21 22. It is evident from Ms. Dacosta's Adoption Court Report and the content of the
22 addendum to the father's consent form, that RDR has given a great deal of

¹⁴ Section 14 (1)(c) of the Law.

¹⁵ Rule 3(1) of the Rules and section 7(3) of the Law.

¹⁶ Section 14(1)(a) of the Law.

1 thought to the consequences flowing from an adoption order. It is clear that it has
2 not been an easy decision for him to make and understandably that making it has
3 to a degree saddened him. It would be remiss of me to fail to commend RDR for
4 the caring decision that he has made, thereby elevating the best long-term
5 interests of the children above his own. I do so, recognising that in the past, he
6 may not have been so sensitive or child-centric when it came to ensuring that the
7 girls had a proper relationship with their mother. I am gratified that all the parties
8 accept that RDR is to remain a significant figure in the children's lives and that
9 they intend it to be an open adoption, with the children keeping in contact with
10 him and with members of the paternal family. Although, I have not had to
11 consider this due to the now selfless position taken by the father, I would have
12 had to have thought long and very hard, having regard to all of the circumstances,
13 before deciding whether or not this was a case in which it would have been
14 appropriate for the Court to have dispensed with the biological father's consent
15 pursuant to Section 11(1) of the Law or whether a closed adoption arrangement
16 would have been in the children's best interests.

17
18 23. Juliette Garricks has provided an affidavit sworn on 12 September 2014
19 exhibiting a number of the required documentation in support of the application. I
20 have carefully reviewed all of that documentation.

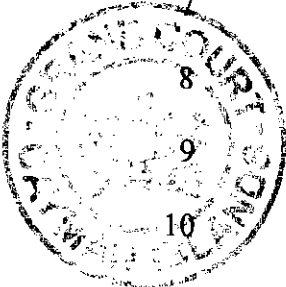
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23 24. Karelle DaCosta, also a social worker with the Department of Children and
24 Family Services, was tasked with the preparation of the Adoption Court Report.

1 During her assessment she has spoken to the prospective adopters, the relevant
2 children and by email with the biological father.

3

4 25. Ms. DaCosta reports that there are no concerns regarding the children's mental,
5 emotional or behavioural development and that they have no special needs or
6 health issues. AR told her that her step-father "*supports us like a dad, supports us
7 through school, loves us, provides for us and so I consider him a father.*" When
8 asked by Ms. DaCosta what she thought about the adoption application NR told
9 her that she "*feels good about it*" and that "*adoption is a good thing for her as she
10 will have more opportunities to do things and she would feel closer as a family
11 and they are all really close so it would be a good thing for them as a family.*"

12 RDR informed Ms. DaCosta that he was "*in agreement with the adoption order
13 being granted*" and that he had "*come to terms with it and that this is best for the
14 children.*" When she spoke to AJB he told her that he wished to adopt the
15 children "*as he would like to feel like a complete family.*" The Reporter felt that
16 the children have "*good interactions*" with AJB and that the children say that they
17 "*feel safe and settled*" in his home. Ms. DaCosta reported that she felt them to be
18 a "*close-knit family.*" It is clear that there is a very supportive wider step- paternal
19 family in Cayman who all wish there to be an adoption order made to re-
20 emphasise the girls' total integration into their family. Ms. DcCosta recommends
21 that an adoption order be made, commenting on the benefits that the children will
22 have now and when they are adults. She notes that it would be an open adoption,
23 with the children remaining in contact with their biological father and his family.



1 26. Having conducted the above review, I reiterate that I am satisfied that AB and
2 AJB are suitable persons to adopt AR and NR. They are both able to look after
3 AR and NR and attend to their welfare. I am satisfied that the children will be
4 well cared for in the home with their biological mother, both physically and
5 emotionally. I am satisfied that the adopters have complied with all of the
6 formalities set out in the Rules and Regulations. I am satisfied, pursuant to
7 Section 7(2) of the Law, that it would be implausible to expect RDR to attend this
8 hearing from the Philippines and therefore I feel it right to waive the requirement
9 under Section 7(1) for him to attend. I am satisfied that if adoption orders were
10 made, giving due regard to the children's wishes and having regard to their age,
11 understanding and maturity, that it would be in their best interests having regard
12 to their welfare.

13
14 27. Accordingly, I make an adoption order in relation to NR, who is aged 15 and
15 whose sixteenth birthday is just over a month away. There is no dispute that she is
16 a child as defined in Section 2 of the Law, whether it be before or after the very
17 recent promulgation of an urgent Commencement Order for the definition of
18 "child" in Section 2 of the Adoption of Children Law 2013.

19
20 28. When I make this order in relation to NR I acknowledge that she is almost 16 and
21 not far off 18, but I take into account all the benefits that will "inure" beyond that
22 age and for the rest of her life. When doing so I have carefully considered the
23 English Court of Appeal decision *Re D (A Minor) (Adoption Order: Validity)*

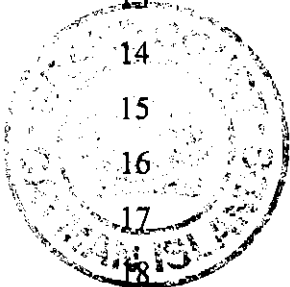
1 [1991 2 FLR 66]. At page 73 Balcombe J. stated, following a review of the case
2 law, that they supported:

3 *“The proposition that a benefit accruing after majority is a*
4 *relevant factor to be taken into account in considering whether to*
5 *make an adoption order, and they do not support the proposition*
6 *that a benefit during minority is a condition precedent to the*
7 *making of such an order.”*

8
9 29. Balcombe J. commented that he agreed with the following extract from Thorpe
10 J.’s judgment delivered in the Court below:

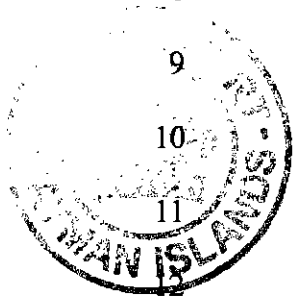
11 *“I am in no doubt at all that the effect of those authorities is to*
12 *show that in an appropriate case the court is entitled to have*
13 *regard to considerations which will inure to the benefit of the child*
14 *beyond minority and for the rest of his or her life. The fact that the*
15 *child may be within a very short time of attaining his or her*
16 *majority is not, in my judgment, to preclude the carrying out of the*
17 *balancing exercise having regard to all the circumstances of the*
18 *case. Obviously, the nearer a child is to attaining majority, then*
19 *the less significance is to be attached to advantages that will*
20 *secure his or her care during minority. But I cannot accept Mr*
21 *Harris’ submission that in the present case this court is without*
22 *jurisdiction to make an order. Manifestly in my judgment, the*
23 *authorities show that there is jurisdiction. The fact that this*
24 *application fortuitously comes to be decided in the last days of the*
25 *child’s minority is only one fact that should operate on the*
26 *discretionary exercise.”*

27
28 30. In the matter before me, having regard to the unique circumstances of this case
29 including RDR’s clearly expressed consent, I have considered the post majority



1 benefits for both children who are arguably reaching the tail end of their
2 childhood as defined in the legislation. I have been assisted by *Re D* and
3 Balcombe J.'s review therein of similar fact case law when doing so.

4
5 31. However, being the Judge who deals with the majority of adoption applications, it
6 would be remiss of me to fail to note a growing concern arising in such cases. I
7 see a trend in the jurisdiction for prospective adopters to make applications to
8 adopt children of all ages, but increasingly as they are reaching the end of their
9 minority, often it appears primarily to secure for the child the benefits that derive
10 from acquiring immigration status in the Cayman Islands. These applications are
11 being made by the Cayamanian spouse of a biological parent. They are also being
12 made, which is of more concern, in some circumstances by better financially
13 positioned relatives of the child who have Cayamanian status, even though the
14 loving biological parent(s) is (are) in good health, yet living less financially stable
15 overseas. Even if the consent of the Chief Immigration Officer has been given to
16 the child to enter and reside in the Cayman Islands for the express purposes of the
17 adoption proceedings, the use for adoption in such circumstances is not
18 necessarily appropriate, as that may not be the purpose of adoption orders or
19 necessarily the circumstances they are meant to address. Parties should be aware
20 that unless it is a case where the child's biological parent(s) is (are) unable to
21 adequately care for the child, or if a residence order would not suffice (especially
22 where the biological parent(s) will continue to play a role in the child's life) then





1 adoption orders may not in some instances be made.¹⁷ The older the child, the less
2 effect such an order will have during his childhood. Although post majority
3 benefits including the “*attendant legal status and rights*”¹⁸ and “*the social and*
4 *psychological benefits of truly belonging to a family*” will be considered by the
5 Court as a part of the whole balancing exercise, when considering the merits of
6 the application “*if only a short period of that childhood remains, then clearly this*
7 *factor carries less weight.*”¹⁹

8
9 32. Still bearing all of the above in mind, I must now turn to consider the position of
10 NR’s older sister, AR. Although I accept that it would be in the best interests of
11 both children for the Court to treat them with parity and make adoption orders, I
12 am unable to conclude my determination as to whether an adoption order should
13 be made in relation to AR without considering the consequences of her already
14 reaching the age of seventeen.

15
16 33. On the first day of this hearing the Court had to consider the effect of Section 2 of
17 the Law, the definition section. This section provides that a child “*means a person*
18 *of the age of 16 years or under.*” The rest of the Law simply refers to the child
19 and the jurisdiction of the Court to make an order authorising the applicant to
20 adopt a child.

21

¹⁷ See *Re A (An Infant)* [1963] 1 WLR 231, *RE W (A Minor) (Adoption: Non-Patril)* [1986] Fam. 54; [1986] 1 FLR 179.
¹⁸ *RE R (Adoption)* [1997] 1 WLR 34 – Buckley J at p.41.
¹⁹ *RE W (A Minor) (Adoption: Non-Patril)* [1986] Fam. 54 at p.62.

1 34. Having regard to the potential constitutional issues raised when interpreting this
2 section, the Attorney General's Chambers were rightly invited to attend the
3 hearing. They have assisted the Court by providing written or oral submissions.
4 For reasons, upon which I will later elaborate, the Court is extremely grateful for
5 the proactive role taken by them in the interim period following the first day of
6 this hearing.

7

8 35. From the outset the Attorney General's Chambers wished to make clear that it
9 quite rightly took a neutral position in relation to the merits of the application.
10 However, Crown Counsel initially submitted that there were reasons why the
11 legislation had restricted the making of adoptions orders to persons aged sixteen
12 and under. She informed the Court that this was as a consequence of a policy
13 decision arising out of the abuse of adoption to circumvent the Immigration Law.
14 As I have already stated in this ruling, this is in certain circumstances a valid
15 concern. It was submitted that the Legislature can pass legislation containing such
16 a provision and that this does not make it incompatible with the Constitution or
17 other child law legislation.

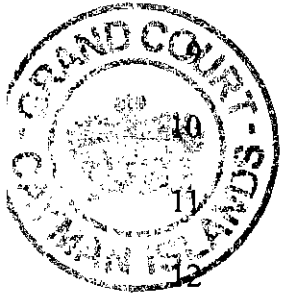
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19 36. On the first day of the hearing I highlighted to the parties that the legislation
20 governing adoption is different to that found in England and Wales. I again note
21 with interest that, under the English Adoption and Children Act 2002, a child is
22 treated as being one under 18 years of age. Section 49 (4) of the Act states that
23 *"an application for an adoption order may only be made if the person to be*

1 *adopted has not attained the age of 18 years on the date of the application.*"

2 ²⁰The time at which that age is attained is the commencement of the child's 18th
3 birthday.

4
5 37. The English adoption legislation goes further, because Section 47 (9) provides
6 *"an adoption order may not be made in relation to a person who has attained the*
7 *age of 19 years."* It is clear what the purpose of the two sections is. They enable
8 the Court to exercise its discretion to make an order if an application is made prior
9 to the child reaching eighteen, but the application fails to come on for hearing
10 before his or her eighteenth birthday. It means that an adoption order may be
11 made in respect to a person who attains the age of eighteen during the currency of
12 the proceedings, although they may not then still be defined as being a child. The
13 provision is designed to ensure that the welfare of children can be protected if
14 there is a reason why the proceedings have not moved on to the final hearing in an
15 efficient manner. The sections are not designed to permit an prospective adopter
16 who fails to diligently progress their application, but does give them protection if
17 due to extraneous circumstances the matter has taken longer than one would have
18 expected to come to hearing. I accept that in the Cayman Islands we do not have
19 the two sections from the English Act in our legislation, but they do appear to be
20 meritorious sections that may be worth some consideration by the draftsman in
21 the Cayman Islands before the new Adoption Law is finally introduced.



²⁰ My emphasis by underlining.

1 38. In the Cayman Islands the Children Law (2012 Revision) (“The Children Law”),
2 which fundamentally changed for the better the approach taken to matters dealing
3 with children and their welfare, came into effect in July 2012. Regrettably, unlike
4 in England and Wales, the legislation governing adoptions has not kept pace and
5 to a degree may be viewed as being inconsistent with the philosophy so well
6 expressed in the Children Law.

7
8 39. The then President of the Court of Appeal stated in *Maricelle Manahan v Her*
9 *Majesty the Queen* [Criminal Appeal No. 19 of 2007, para 8) that the Court may
10 turn to the official Hansard Reports to understand new amendments to legislation.

11 It is evident from the extract of Hansard dated 13 March 2013 concerning the
12 Adoption of Children Bill, 2012 that the Legislature recognised the importance of
13 bringing adoption law “*in line with aspects of the United Nations Convention on*
14 *the Rights of the Child and United Kingdom’s Children Act 2003, the Hague*
15 *Convention and Protection of Children and Cooperation in respect of Inter-*
16 *country Adoption in the Children Law (2012 revision).*” It appears from the
17 extract from Hansard that by March 2013 the Bill had been “*on the Government’s*
18 *agenda for several years*” and had “*already been in the works for at least two*
19 *years, if not three.*” The purpose of the Bill was stated in Hansard to be to
20 “*demonstrate the country’s commitment to promote best practice in adoption and*
21 *ensure the best possible outcome for adopted children, their birth families,*
22 *adoptive families, and everyone affected by adoption.*” Interestingly the then
23 Minister of Family Services indicated that the Bill had been re-evaluated in line



1 with *“recommendations on the Human Rights Commission and ensure that it is*
2 *compliance with the constitutional requirements.”* What is very significant is the
3 words of the Minister when dealing with what he termed *“major amendments to*
4 *the existing law.”* The first example of a major amendment he gave is as follows
5 *“Clause 2 contains the main definitions. Significantly, the word “child” is defined*
6 *to cover persons who have not attained the age of eighteen years. This brings the*
7 *adoption legislation in line with other legislation.”* Another stated purpose of the
8 Bill set out therein was also to make the law *“consistent with The Children Law,*
9 *2003.”*

10

11 40. The Adoption of Children Law, 2013 was passed by the Legislative Assembly on
12 25 March 2013. I am told that the delay for this piece of fundamentally important
13 legislation being enacted is the still absence of supporting rules and regulations. I
14 hope that these overdue Rules and Regulations will soon be forthcoming.

15

16 41. The age of eighteen years is consistent with the definition of a child in the
17 Children Law, which can be found at Section 2(1). Importantly it is also
18 consistent with the Cayman Islands Constitution Order 2009 (“the Constitution”).
19 Section 17 of the Constitution, which affords protection to children, defines
20 children as being under eighteen. Section 9 of the Constitution provides for the
21 obligation to provide appropriate measures for children to ensure that their right to
22 a family life. The Age of Majority Law (1999 Revision) provides that a person
23 attains full age at eighteen. When I set out the above information I do so to show

1 the desired consistency, I wish to make clear that I am not considering any
2 incompatibility with the Constitution.

3

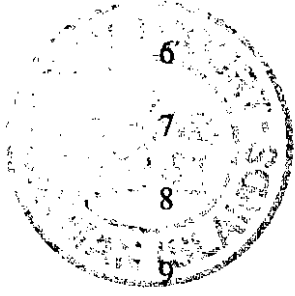
4 42. On the first day of this hearing, when grappling with the age of the child as
5 defined in the Law, it seemed to be sitting on an isolated island different in
6 character to all other islands in the archipelago of Cayman family law. On the first
7 day of the hearing it was clear that the Law was waiting impatiently to be
8 welcomed into the fold with the other pieces of its neighbouring Family Law
9 legislation as regards the definition of a child by means of the long awaited
10 enactment of the Adoption Law,2013.

11

12 43. On the first day of this hearing I cited the legislative examples given above and
13 my concerns. It is clear that the representatives from the Attorney General's
14 Chambers left Court recognising the Court's frustration as it felt that although an
15 adoption order was in the best interests of both of these girls it might not be able
16 to make the order due to the failure to bring the Adoption Law, 2013 into force.
17 They also recognised that the public policy argument for maintaining the age of
18 16 was no longer one that the Legislature was putting forward.

19

20
21 44. It is quite clear that a substantial amount of work has been done by Crown
22 Counsel, and I am informed by the Attorney General himself, to rectify the
23 position in the extremely brief available period of time following the first day of
24 this hearing. I must commend them for their sterling efforts regarding the

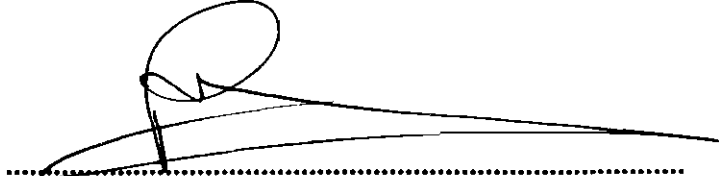


1 promulgation of an urgent 2014 Commencement Order for the definition of child
2 in Section 2 of the Adoption of Children Law, 2013. I have little doubt that the
3 other attorneys and family members who are before me today have also played an
4 instrumental and persuasive role to ensure this desired outcome. Cabinet approved
5 the Adoption of Children Law, 2013 (Definition of "Child") (Commencement)
6 Order, 2014 yesterday and it was Gazetted today. All parties agree that I am now
7 able to make an adoption order for any child under the age of eighteen.

8
9 45. AR is aged seventeen and I now have the jurisdiction to make an order
10 authorising her adoption. When I consider making this order, at a time when the
11 sun is setting on her minority, I have regard to the factors set out in *Re D* (above).

12
13 46. Accordingly, I make an order authorising AJB and AB to adopt AR as well as
14 NR.

15
16
17 Dated this 8th day of October 2014.

18
19
20 



21 **The Honourable Mr. Justice Richard Williams**
22 **JUDGE OF THE GRAND COURT**

23
24 The judgment was delivered in private, but the Judge hereby gives leave for it to be published.
25
26 The judgment in this matter is being distributed on a strict understanding that in any report no person other
27 than the attorneys (and any other person identified by name in the judgment itself) may be identified by
28 name or location and in particular the anonymity of the child and the adult members of their family must be
29 strictly preserved.