

OSA 355/2014

Grounds of Decision

Before delivering my decision, allow me to state the key roots of the same in order to facilitate better understanding by all parties concerned. I shall expand on these grounds of decision should there be a need to at a later time.

The human desire of adults, whether in the context of marriage or otherwise, to embrace children as part of one's family unit, is as old as time itself. The decision to adopt a child comes almost without exception, after much reflection. To bring hope, security and love to a child are most often the motives behind any adoption application and to raise a child, one of the most meaningful of human experiences.

Facts

1. The case before me is no different from most other adoption cases from the standpoint of the intentions of the applicant. He loves children and together with his partner, expressed a basic human need to love a child of his own and be loved by that child. As he is in a same gender relationship with his partner of 13 years, the couple explored the prospect of adopting a child. They approached the Ministry of Social and Family Development (MSFD) and were advised that the Ministry was unlikely to recommend adoption of children by a party or parties who were in a homosexual relationship. The Ministry also shared with the couple that marriages between persons of the same gender has not, to date, been legalised in Singapore. The couple are not in fact married but the position that was then expressed was that any child a couple of the same gender sought to adopt would also not be approved by the Ministry for policy reasons. Counsel for the applicant argued that the Ministry was acting outside the scope of their duty as Guardian-In-Adoption by their reference to policy in adoption proceedings. The applicant, a Singaporean doctor, was aware that in Singapore, assisted reproduction services can only be provided to a married woman with the consent of her spouse and

further, that there are no services available to enable surrogacy in Singapore.

2. The couple then travelled to the U.S. with the intention of exploring avenues to further their desire to have a child. The sperm of the applicant was used to fertilise the egg of an anonymous donor through in vitro fertilisation procedures and the embryo was implanted in the womb of another lady who offered herself as a surrogate mother. The gestational surrogacy agreement was produced in court. A sum of US\$200 000 was paid to the surrogate mother by the applicant. From this, a young son – the subject of this adoption application - was born. The child is approximately 4 years old today. The applicant brought the child back to Singapore after his birth and took up adoption proceedings “to legitimise his relationship” with the child and in so doing hoped to secure Singapore citizenship for the child and thereby to stay on in Singapore (see paragraph 63(b) of the applicant’s counsel’s first set of submissions).

Platform of the Decision

3. It must be noted that if the child were of the female gender, no application would be granted by the Singapore Courts on account of the provisions of the Adoption of Children Act which only allow male applicants to adopt male children. Here, the subject is a male child.
4. The entire tenor of the Adoption of Children Act (Cap 4) is to place children in safe and good homes if one or both biological parents are not able to provide for their own child. When the Adoption of Children Act was enacted, it did not envisage the specific situation this case presents. With advances in assisted reproductive technologies, the Status of Children Act (Assisted Reproduction Technology) Act (Cap 317A) was enacted to address the various complexities such advances have given rise to. The Status of Children Act does not however move away from the recognition of the traditional family unit where couples who seek to have children must be in a marriage. The exceptions in the Act do not address the factual matrix of this case.

5. Section 5(a) of Adoption of Children Act mandates that every person whose consent is necessary under this Act and whose consent is not dispensed with has consented and understands the nature and effect of the adoption order. In this case, egg donation and surrogacy was provided by two different consenting female adults.

Section 5(b) stipulates that any adoption order if made, will be for the welfare of the child. I shall elaborate on this requirement shortly.

Section 5(c) states that no monetary reward should have been paid to or by the applicant or any person in consideration of the adoption. Pursuant to a gestational surrogacy agreement entered into between the applicant and his partner on one hand and the surrogate mother and her spouse on the other, a sum of US\$200 000 was paid by the applicant to the latter. Counsel for the applicant submitted that much like egg donors, surrogate mothers engage in surrogacy out of a benevolent desire to help people like the applicant know the joy of being a parent. This Court is not able to come to such a conclusion in this case especially in light of the fact that an amount of US\$200 000 is not a small amount of money and the commercial complexion of the transaction cannot be ignored. In any event, the Court need only focus on whether the adoption itself was enabled by influencing or enticing a person into releasing his or her biological child for adoption. There was no suggestion of that in this case although it could certainly be said that the very idea of a biological father seeking to adopt a child after paying a surrogate mother a sum of US\$200 000 to carry his child to term reflects the very thing the Adoption Act seeks to prevent - the use of money to encourage the movement of life from one hand to another.

6. It is no place of this Court to dictate to the applicant what a family unit ought to be or look like nor acceptable patterns of behaviour in order to obtain that unit. Indeed there is much research which support proponents of same gender relationships having children. Today is not the day nor is

this the case to enter into that debate. In fact it is the applicant's position that he is not seeking to adopt a child so as to form a lawfully recognised family unit with his partner (page 19 para 63(b) of applicant's first set of submissions).

7. This Court is obligated to interpret the law and not make it. The law mirrors the morality and wishes of the majority of Singaporeans. It bears repeating that while the policy concerns of the Ministry are noted, this case has very little to do with the propriety and/or effectiveness of same gender parenting. To argue this case on that basis alone would be to minimise the issue and to ignore the real concerns which surround the application.
8. In this case, the applicant and his partner knew that the laws of Singapore allow the use of assisted reproductive technologies by married couples only. There are no services which promote surrogacy in Singapore. They chose to enable the birth of this child by undertaking in vitro and surrogate procedures in the U.S. Having so chosen, the applicant seeks to have the courts of Singapore allow the adoption of the child by pointing to the principle of the "welfare of the child".
9. This application is in reality an attempt to obtain a desired result – that is, formalising the parent-child relationship in order to obtain certain benefits such as citizenship rights, by walking through the back door of the system when the front door was firmly shut.
10. This Court would still be willing – indeed I have a duty - to consider unlocking the back door if the welfare of the child demands it. It is clear to me however, that it does not. The child will continue to be given a roof over his head, food on his table, a good education and a support system – with or without an adoption order. The applicant is the only parent he knows. The child will continue to be in his care. Rather more poignant is that his right to know his mother has been denied by virtue of the decision of the applicant (and his partner) to embrace anonymous egg donation by

one woman and surrogacy by another as means to having a child of his own. The only fact supporting the welfare of the child is that he may obtain Singapore Citizenship by virtue of the adoption. There has been no evidence however, that he in fact will obtain citizenship. The Immigration Authorities act independently and will issue its own decision on the matter. Even if Singapore Citizenship was facilitated by an adoption order, this Court does not accept that it, in itself, satisfies the welfare principle in adoption proceedings.

11. The applicant, a medical doctor himself, was acutely aware that the medical procedures undertaken to have a child of his own would not have been possible in Singapore. He cannot then come to the Courts of the very same jurisdiction to have the acts condoned. Unilateral decision-making by the applicant with a clear understanding of the effects of the same has brought about some difficult consequences for the child. It would clearly however be inappropriate for the Court to assist in undoing the knots. This Court cannot by an adoption order undo the facts of this case. It would be up to the applicant to explain to his child the circumstances of his birth if there is to come a time when these matters can or need to be discussed with him. This court has seen time and again how children seek their parents not because they do not love, respect and care for the person(s) who raised them but because of an almost abstruse desire to seek the face of their biological parents and through that, to understand themselves. An adoption order is also not necessary to address concerns about providing the child financially. The applicant has the means to maintain the child. Counsel for the applicant suggested that matters relating to inheritance would be affected if the parent-child relationship is not legitimised. Clearly if this is a concern, the applicant can address the same by the execution of a will.

12. More relevant would be that this Court cannot by an adoption order enable Singapore citizenship. The child is not stateless. He is an American citizen. To argue that in the event he is not granted Singapore citizenship, the applicant may have to move his work as a doctor overseas is not a sufficient reason to allow this application. There is no evidence that the applicant and child would have to move. Even if that became a reality, parents often take uncomfortable and even painful personal steps for

their children. I accept that the applicant should not have to move his work overseas as he is a Singapore Citizen who has and continues to offer his best to the country. We must not move too far away however, from the facts of this case. The reason for the birth of the child in the U.S. was precisely because it was not possible in Singapore. Regardless, the applicant still desired it. Regardless, he chose to proceed with ways to meet that desire. An adoption order in this particular case serves no other purpose than to ensure that the interests of the adult are not compromised. It does not further the interests of a 4 year old child. A 4 year old will thrive anywhere if in the hands of loving people.

13. The applicant retains rights to the child as the biological father in the absence of any challenge from the surrogate mother and I am sure he will continue to give his best to this child. I cannot however, endorse this adoption request. The court must not be used to sanction a *fait accompli*. The courts must not be looked to for approval of an application which was necessitated by acts which were clearly not allowed in the very jurisdiction in which this Court sits. Even then, this Court recognises that the overriding principle remains the best interests of the child. The child is no more vulnerable today however, than he was at his birth. An adoption order will not reduce that vulnerability nor promote his welfare. In the eyes of this Court, the innocence of this child legitimises him and I wish the applicant and the child the very best in their journey forward, together.

14. The application for the adoption of the infant is dismissed.

Shobha Nair, DJ

26 December 2017