

THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 119 J.R.]

BETWEEN

D. N. AND N. N.

(A MINOR SUING BY HER MOTHER AND NEXT FRIEND,

D. N.)

APPLICANTS

AND

MINISTER FOR FOREIGN AFFAIRS AND

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of Ms. Justice O'Regan delivered on the 23rd day of February, 2017

1. The applicants are seeking leave by way of *ex parte* docket of 8th February, 2017, to apply for an order for mandamus compelling the first named respondent to issue an Irish passport to the second named applicant or in the alternative, a declaration that one or both of the respondents have unlawfully delayed the issuing of an Irish passport to the second named applicant.
2. The statement of grounds is also dated 8th February, 2017 and in para. 5 thereof it is asserted that the grounds upon which the relief is sought is, to the effect, that the first named applicant was granted permission to reside in the State allegedly on the basis of her parentage of an Irish citizen child on 19th May, 2016, and, therefore, the delay and/or refusal of the first named respondent to issue a passport to the second named applicant is unlawful and/or unreasonable and are in breach of fair procedure. Complaint is also made that requiring clarification of the second named applicant's citizenship status was an error in law because of the pre-existing right of residence of the second named applicant's mother.
3. The basis for the assertion that the second named applicant is an Irish citizen is because she was born in the State on 9th February, 2013, and her father, who does not appear on her birth certificate was a lawful resident within the State at the date of her birth and by that date had sufficient reckonable residence within the meaning of the Irish Citizenship and Nationality Acts 1956 to 2004, to enable the second named applicant assert her citizenship.
4. It appears from the grounding affidavit of the first named applicant of 7th February, 2017 that shortly after the birth of the second named applicant, the first named applicant and the punitive father parted company. The first named applicant subsequently applied to the District Court for an order for maintenance and secured such an order on 7th April, 2015, against the punitive father in the sum of €50 per week. It is asserted that this order was appealed by the punitive father and by way of Circuit Court Order of 10th November, 2015, that maintenance was reduced to €40 per week.
5. Prior to any application for a passport for the second named applicant, the first named applicant processed an application for permission to remain in the State on the basis of her parentage of an Irish citizen child. In this regard, she received several letters including 26th November, 2015; 22nd December, 2015; and 7th January, 2016, to the effect, that it would be the Passport Office who would determine whether or not the second named applicant would be entitled to a passport.
6. On 19th May, 2016, permission to the first named applicant to reside in the State for a one year period "as an exceptional measure" was afforded to the first named applicant following her request for permission to remain in the State based on her parentage of an Irish citizen child or children.
7. Given the communications aforesaid to the first named applicant as to the fact that it would be the Passport Office which would determine the entitlement of the second named applicant to a passport, I cannot agree that the letter of permission on an exceptional basis furnished to the first named applicant of 19th May, 2016, based upon her request for permission to remain on the basis of her parentage of an Irish citizen child is sufficient evidence to establish that the second named applicant is, in fact, an Irish citizen and entitled to a passport.
8. There are three substantial difficulties with regard to identifying the punitive father as giving rise to the right of citizenship of the second named applicant, namely:-
 - (a) In a letter of 20th September, 2016, the re-registration of the birth certificate of the second named applicant was sought and I believe that this was a reasonable requirement having regard to s. 7 of the Passport Act 2008. No effort has been made to re-register the birth or secure declaration of parentage via the courts under the Status of Children legislation.
 - (b) It is asserted that the punitive father was lawfully resident in the State at the date of birth of the second named applicant. However, the asserted evidence in this regard is a letter from An Garda Síochána of 9th February, 2016, which identifies, in fact, that the Stamp 4 permission given to the punitive father, expired on 2nd March, 2013 - one week before the birth of the second named applicant.
 - (c) In addition, insofar as it is asserted that a District Court Order was made against the punitive father and he has complied with the terms thereof for the purposes of establishing that he is, in fact, the father of the second named applicant, I cannot agree. As aforesaid, the District Court Order was made on 7th April, 2015, and yet only three postal orders without identifying the source, respectively dated 24th April, 2015; 30th April, 2015; and 14th May, 2015, have been furnished. Significantly, each of the three postal orders tendered were for the sum of €22.12. This does not

comprise evidence of compliance with the District Court Order of 7th April, 2015.

9. The fact that the punitive father did not assert in the District Court (assuming he was present) or in the Circuit Court appeal that he was not the father of the second named applicant does not, in my view, amount to sufficient evidence to comply with s. 7 (1) (a) of the Passport Act 2008, such as to give rise to a potential order of *mandamus*.

10. In the event, the application for leave is refused.