Re XYZ (an infant)
[2002] SGHC 184

Case Number : Adp P 377/1996, RA 720037/2002

Decision Date : 16 August 2002

Tribunal/Court : High Court

Coram : Woo Bih Li JC

Counsel Name(s) : Halimah bte Abdul Jalil (HA Jalil & Associates) for the appellants; Dyan Zuzarte (State Counsel) for the Attorney General

Parties : —

Family Law – Adoption – Amendment of adoption order – Whether possible to amend infant's name after making and perfecting of order – Whether court has any jurisdiction or is functus officio after adoption order made – Whether court can vary order instead of amending it – Time when infant's change of name occurs – Whether possible to re-apply to re-adopt infant – Whether adoptive parents have any legal recourse – ss 9 & 12 Adoption of Children Act (Cap 4)

Judgment

GROUNDS OF DECISION

Introduction

1. The infant, who was the subject of the appeal before me, was born in the mid-1990s. He is a male Malay.

2. On 21 March 1997, an adoption order was made ('the Adoption Order') in respect of the infant in favour of the Appellants whose names I am also not mentioning because of the sensitive nature of the matter before me. The Appellants are also Malays.

3. At the time the Adoption Order was made, the full name of the infant conferred by the Adoption Order included his original name which in turn referred to the name of his natural father e.g the adopted name was XYZ Bin M, 'M' being the name of his natural father.

4. As a result, the birth certificate of the infant issued on 30 May 1997 reflects the adopted name but save as aforesaid, there is no suggestion therein that the infant is adopted by the Appellants whose names are recorded in the birth certificate as his father and mother.

5. In 2002, the Appellants applied to amend the Adoption Order to delete any reference in the adopted name to the infant's original name and for an order that the Registrar-General of Births and Deaths be directed to re-register the birth and issue a new birth certificate in accordance with the amended Adoption Order.

6. In their supporting affidavit, the Appellants said they had not deleted the original name of the infant from the adopted name at the time when they applied to adopt him because they believed that neither the natural father, his wife or his family would disclose to the infant his true identity after the Adoption Order was made. I should add that the natural father is a brother of the adopting mother.

7. As events turned out, the infant was in contact with his natural siblings.

8. Apparently for the last three months before the application was made, these children, as well as other cousins of the infant, have been telling him that he is not the natural son of the Appellants

but of his natural father. This caused him to be very sad and inquisitive. By then, he was about seven years of age.

9. For better or worse, the Appellants did not respond to his inquisitiveness by telling him the truth. Instead, they told him that he is their son, meaning their natural son. The infant then insisted on seeing his birth certificate thus causing the Appellants to be afraid that he would be 'terribly emotionally affected' when he learns the truth.

10. Hence, the application was made to amend the Adoption Order. The application was heard by District Judge Regina Ow. The Attorney-General who was the guardian ad litem for the infant pending the making of the Adoption Order appeared and objected to the application on the basis that the court had no jurisdiction to amend the Adoption Order as the court was functus officio after the Adoption Order was made.

11. The District Judge dismissed the application on the ground that she had no jurisdiction to amend the Adoption Order. The Appellants then appealed and I heard their appeal. After hearing submissions, I dismissed the appeal. I now give my written reasons.

My reasons

12. Ms Dyan Zuzarte, from the Attorney-General's Chambers, drew my attention to an unreported decision of Michael Hwang JC (as he then was) in Adoption Petition No 143 of 1990 where he held that he had no power to allow amendment of an infant's name to include his Hanyu Pinyin name after the adoption order was made and perfected. However, no written reasons were given.

13. Counsel for the Appellants, Ms Halimah Bte Abdul Jalil argued that that decision was wrong.

14. She submitted that the court had jurisdiction to amend the Adoption Order notwithstanding that it had been made and perfected. She relied on s 16 and 17 of the Supreme Court of Judicature Act (Cap 322) but it was quite clear to me that those provisions did not address the question whether the court had jurisdiction to amend an order after it was made and perfected. Moreover, the initial application of the Appellants for amendment was made to the District Court and not to the High Court (which is part of the Supreme Court).

15. Counsel for the Appellants then submitted that para 14 of the First Schedule to the Supreme Court of Judicature Act (Amendment) Act 1993 provides that the court has 'powers to grant all reliefs and remedies at law and in equity' but again, for the same reasons I have mentioned, this provision did not help.

16. Counsel for the Appellants also relied on O 92 r 4 of the Rules of Court which states:

> '4 For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.'

She then cited *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 4 SLR 25.

17. However the facts in the case she cited were different and did not involve the question of amending an order that had been made and perfected.

18. Furthermore, as far as I was aware, O 92 r 4 has never been used by a court or any party to

amend an order already made and perfected. Rather it is used to persuade a court to make an order before the court makes its order.

19. I was of the view that the District Judge was correct in concluding that the court had no jurisdiction to amend the Adoption Order after it had been made and perfected, unless the amendment was being sought under what is known as the slip-rule. This was not the case before me.

20. I also considered whether a court could vary the Adoption Order, as opposed to amending it, on the basis of a change of circumstances akin to a variation of maintenance for a woman and/or a child under the Women's Charter Act (Cap 353). However, that variation is allowed under specific provisions of the Women's Charter and, even then, such a variation does not relate back to the date of the original maintenance order.

21. Having considered the scheme under the Act and in particular s 12 thereof, I was of the view that the change of name for an adopted infant arises only when an adoption order is made.

22. The material parts of s 12 state:

> '12.(1) Where an adoption order has been made, the Registrar of the court by which the adoption order was made shall forthwith send to the Registrar-General of Births and Deaths a notice in the form set out in the Schedule, setting out the following particulars so far as they are known to the court:
>
> (a) the full name of the child before the making of the adoption order;
>
> (b) the full name of the child conferred by the adoption order;
>
> [the other sub-provisions are not material.]
>
> (2) ….
>
> (3) Upon receipt of the form referred to in subsection (1), the Registrar-General shall if the birth of the adopted child has been registered in Singapore cause the entry in the relevant registrar of births to be marked with the word "Adopted". Particulars as to the birth of the child shall then be registered separately substituting the name conferred by the adoption for the name of the child prior to adoption, and recording the name, address and description of each adopting parent in substitution for the particulars as to the natural or last adopting parents.
>
> (4) ….
>
> (5) Where a copy of the entry as to the birth of any child to which this section relates is required for any purpose, the Registrar-General, subject to any regulations as to payment of fees as are prescribed, shall supply a copy of the last entry made pursuant to subsection (3) omitting in the copy of the word "Adopted" that appears in the original or former entry.'
>
> [Emphasis added.]

23. If an adopted infant or his adopting parents are not happy with the name chosen at the time the adoption order is made, then the change of name has to be effected by a deed poll but this will not alter the name in the birth certificate.

24. My attention was also drawn to a decision by Chan Sek Keong J (as he then was) in *Re ABZ*

(An infant) [1992] 2 SLR 445. In that case, the infant was a Chinese and his natural parents were Chinese. However the natural father had died and the mother married a man, Mr Z, of Japanese origin. They adopted the infant with Mr Z's surname. Subsequently, Mr and Mrs Z were divorced and the mother had custody of the infant and had no intention of settling in Japan. The infant went to school in Singapore and, according to the mother, was humiliated by other students because of the Japanese surname. The mother then applied to set aside the adoption order and Mr Z had no objection to the application.

25. Justice Chan decided this could not be done. He went on to say that the infant's surname could be changed by a deed poll, but added, at p 445 A/B:

> '… However, I note that the Act makes no provision for a birth certificate issued pursuant to s 12 to be changed to reflect a change of name.'

I agreed.

26. I should add that Justice Chan was also of the view that the mother in the case before him was not without recourse as she could invoke s 9 of the Act to re-adopt the infant under the intended new name.

27. Section 9 states:

> '9. An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order, and, upon any application for such further adoption order, the adopter or adopters under the adoption order last previously made shall, if living, be deemed to be the parent or parents of the infant for all the purposes of this Act.'
>
> [Emphasis added.]

28. I was of the view that on the facts before me, it was not possible for both the Appellants to apply to re-adopt the infant under s 9 because s 9 envisages re-adoption by different adopting parents. It is not necessary for me to express a view whether one of the Appellants can apply to re-adopt the infant since such an application will create other problems for the infant as the name of one of the Appellants will then drop out from the birth certificate to be issued.

29. There is also one more point which I would wish to make. Although the Appellants might have good intentions, they were in effect asking the court to assist them to continue to bluff the infant. I had serious reservations as to whether the court should be an accomplice in this endeavour even if it had the jurisdiction and power to do so.

30. Ultimately, the Appellants have no legal recourse. However, it is precisely because there may be no recourse that adopting parents must take great care in the choice of the adopted name.

Sgd:

WOO BIH LI

JUDICIAL COMMISSIONER

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