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Neutral Citation [2022] EWHC 2794 (Fam)

Case No: OX21C00081

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
SITTING AT CHELMSFORD FAMILY COURT

Priory Place
New London Road
Chelmsford
CM2 0PP

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Before:

THE HONOURABLE MR JUSTICE NEWTON

Between:

OXFORDSHIRE COUNTY COUNCIL

Applicant

- and -

(1) JN

Respondents

(2) THE CHILD

(Through His Children's Guardian)

MR HOWARD & MRS BANCROFT (instructed by **Oxfordshire CC**) appeared for the
Applicant

MISS SUEZANNE KING (of **SMQ Legal Services**) appeared for the **First Respondent**

MR LEONG (instructed by **Reed Solicitors**) appeared for the **Children's Guardian**

Approved Judgment

Please note transcript produced from poor quality audio recording

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MR JUSTICE NEWTON:

1. On 15 and 20 May 2021 seven children arrived on two flights from Uganda. The visa applications were made by JN. They claimed to be family, being reunited with MS, JM wife, the mother to I and D, who were full siblings, and his step-children. Various other close sibling relationships asserted in relation to the other children.
2. In the application I was said to have been born on 21 April 2010, and therefore would now be 12 years old. He arrived in the second tranche of children, and travelled with D and R, and his mother. As became quickly evident, DNA testing showed that the visa applications were fraudulent, and that the mother's account of her relationship with the cohort of children was untrue. The court is aware (because I am dealing with a number of linked cases from different authorities), that there is a vast wealth of other evidence which plainly demonstrates that the mother's accounts were all false, and not just in relation to the application.
3. The Home Office, who have been actively and helpfully involved in these investigations, and which continue, take the view that the applications are genuine but fraudulently obtained. They hold a similar view, I think, in relation to the passports, which again are thought to have been genuinely obtained but contain false details.
4. The reason behind the children's entry into this jurisdiction remains at large, and there are differing views from differing authorities in relation to particular children as to how it was and why it is that they are here. Whilst it is not necessary to decide here, there is evidence applying the Modern Slavery and Trafficking Act 2002, that the children have been trafficked. But given the DNA evidence, the other evidence in the case, given the mother's statements which are filed, and the fact that she failed to give any information when interviewed in October last year, almost everything is uncertain, untrue, and at large.
5. Having had judicial oversight of the proceedings for a significant period of time, it is evident that the evidence in relation to the other children -- and it is believed that nearly all or most of them are neither the ages nor indeed the identities of whom they claim to be. A question arose within these proceedings as to whether the birth certificate giving I's date of birth is in fact a genuine document.
6. That should be viewed in conjunction with the fact that I also questions his age, having regard to his size in comparison to his peers. So, the question arose as to how that issue might be dealt with within these proceedings. I determined that the applications made by the Local Authority should be supported by expert evidence in respect of I's age, and that this was an appropriate, if unusual, way forward. That proposed expert evidence would rely on MRI images of areas of his body, the skeleton in particular.
7. The Local Authority had decided to approach the determination of I's age in that way because of the circumstances and because the usual approach, the "Merton Assessment" could not assist, particularly because I stuck rigidly to his story, and his birth, and, as I have said, it is clear that the documentation in his possession, the Local Authority, the Immigration Services, and the Home Office, and other documents which I have seen in relation to the proceedings at large, all demonstrate that it is entirely likely that nothing can be taken for granted, taken as read.

8. The expert evidence has been filed. Dr Wilson estimates I's skeletal age to be 14 years plus or minus a year. Professor Hackman states that I is under 18, but most likely between 14 and 16, and closer to the lower end of that bracket. The two experts concur.

The Law

9. The court of course has jurisdiction within these proceedings, as in any other proceedings, to make a declaration as to the age of a child. It is a complex matter. Generally, the court would look at the history, the physical appearance, and the young person's behaviour. I have regard to *Wiltshire County Council* [2013] EWHC 2747. I have regard to *E v The London Borough of X* [2005] EWHC 2811, and the *London Borough of Lambeth v TK*, EWCA Civ 103.
10. Any assessment generally would be based on an assessment by a social worker for the Local Authority without any medical evidence. It is not always a straightforward matter, it is for the worker to assess a number of different factors in coming to a conclusion about a young person's age; these might include looking at the background, looking at the circumstances and the history, their educational attainment and development, their activities. Credibility is often an important matter. It is recognised that trying to assess the age of a young person between 15 and 18 can sometimes be especially difficult, and those principles and others arise from (an asylum case), *R v Merton London Borough Council* [2003] EHC 1689.
11. So, that case set the principles that the court might adopt, and almost always does in circumstances analogous to this. Of course, in I's case the decision is somewhat different, in that the central evidence to support the declaration put before the court arises from expert evidence, a course which was expressly disapproved of in the *Merton* case.
12. This issue arose in the course of the proceedings. The age assessment was commissioned in the care proceedings which have been listed. The court is being asked to determine the matter as original jurisdiction, and determining I's age is an integral part of the care proceedings, and of course directly related to care planning and the outcome of those applications.

Discussion

13. The court has to look at the whole canvas, what evidence is available. I have the expert evidence from different disciplines but reaching similar conclusions. The central evidence in support of the declaration arises from those reports. Professor Hackman is a forensic anthropologist, and she has produced a number of peer reviewed reports supporting her assessment in age and skeletal maturation. Both the experts have had regard to the limit of their expertise, and precision, that is possible in age determination. Both have garnered support from peer reviewed research.
14. Dr Wilson similarly, a musculoskeletal radiologist, in his report sets out his findings, using the MRI approach of the knee, the wrist, the trabecular bone, growth plates, metacarpals, and the radial and ulnar styloids. His conclusion, on the balance of probabilities, is that I has the skeletal age of 14 years plus or minus one year.

15. Professor Hackman has also considered the MRI images of the right hand, wrist and right knee, and she explains that the age estimate from the knee images involves the assessment of timing of the ossification centres, changing the size and shape of the ossification, and timing of fusion between those ossification centres. Having done so, and setting out the research which is appropriate in this case, she reaches her conclusions, a similar process undertaken both in relation to the hand and wrist, as well as the other aspects of his skeleton.
16. Looking at the parameters of her conclusions, she concludes that it is possible, though not probable that he is 12 years old, "since it lies at the lowest extreme of the age ranges suggested by the maturational changes observed". She says, "Given the maturational changes seen, both the knee and the hand and the wrist, it can be confirmed that I is under 18, and is likely to be at the lower end of the 14 to 16 year age, and most likely closer to 14 years of age than to 16 years of age". As I have indicated, Dr Wilson concurs with Professor Hackman's approach.
17. The expert evidence is solidly founded on peer reviewed research, both are independent experts in their own rights, from different disciplines. The methodology is unimpeachable, and their reports demonstrate that they have approached the matter in line with established research, in order to reach their conclusions.
18. It is important to put this evidence in the wider context. I himself questions his age. He recognises that he is physically "older" than his 12-year-old peers. He is unable to confirm his age or his date of birth, perhaps, probably, because he is sticking to a false narrative, but he has acknowledged that to him 14.5 feels about right, and he would be happy with that. I cannot even say when his birthday is, but he would like it to be late October or early November. It has always struck me as a curious thing for him to say, but it might be consistent with I in fact knowing that his date of birth is in that short period, and wishing for there to be continuation of his birthday, but not feeling able to diverge from the false narrative.
19. I should say that in relation to all these children there are grave reservations about the narratives from each of them, even to the extent as to whether they are children, only one child has diverged from the original given since their arrival in the United Kingdom.
20. Of course, I am conscious that this assessment does not conform with the *Merton* decision. The social worker here has spent a lot of time with I, for rising a year, and considers that having regard to his maturity and understanding, that he is about 14 years old. I do not look at that, and it is not submitted that I should, as anything other than confirmatory evidence that the approach of the medical experts seems appropriate and accurate.
21. The mother's position. The mother, perhaps unsurprisingly, has always maintained that the documents and the date of birth are accurate, even though that palpably obviously is untrue. Ms King is without instructions. The mother has failed to comply with any of the court orders. She has had no contact with I since March. She has failed to attend most of the court hearings, and in fact as of yesterday Ms King put a letter before the court indicating that she would have to withdraw from the case, for lack of instructions. Unexpectedly, the mother tried to join the video link this morning, but is now apparently at work. I determined that this matter should go ahead.

22. As a result of the mother's steadfast lack of engagement, I previously made a "an unless order", that the mother filed a statement by 21 June, no such paperwork was filed.
23. The mother is aware of the hearing, she briefly joined this morning, and then left again. Her solicitors are in a difficult position in relation to the conduct of the case. More generally I will give the mother a final chance to contribute to the proceedings.

Conclusions

24. Bringing all those matters together, the expert evidence is compelling. The background confirmatory evidence supports what they say. The Local Authority invites me to say that I is 14 years and 8 months old. That would give a date of birth somewhere in the region of late October or early November of 2007, which would be consistent not just with the experts, but also with I himself, and what he has said. That is the declaration I make. It is a straightforward issue. It has been an unusual way of dealing with the issue, but in fact it has been quite a convenient way of dealing with it, the experts, notwithstanding the exhortations and the difficulties of identifying the age of young people in this age bracket, conclusions were clear. Bringing all those strands together, I make the declaration as sought by the Local Authority.

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(This judgment has been approved by the Judge.)