

**THE HIGH COURT
FAMILY LAW**

[2021] IEHC 378
[2020 No. 289 MCA]

**IN THE MATTER OF AN APPLICATION BY THE ADOPTION AUTHORITY OF IRELAND
UNDER SECTION 30(5) OF THE ADOPTION ACTS 2010 - 2017 (AS AMENDED)**

AND

**IN THE MATTER OF A PROPOSED ADOPTION OF IBO
(A MINOR, BORN [REDACTED])**

EX-TEMORE JUDGMENT of Mr. Justice Jordan delivered electronically on 2nd February 2021

1. This is an application by the Adoption Authority for; -
 - (1) an Order, pursuant to s.30(3) of the Adoption Acts 2010-2017 granting approval to the applicant to make an Adoption Order in respect of the child, IBO without consulting the child's father, in circumstances where the applicant is satisfied that it would be inappropriate for it to consult the father in respect of the adoption of the child;
 - (2) in the alternative, an order pursuant to s.30(5) of the Adoption Acts 2010-2017 granting approval to the applicant to make an Adoption Order in respect of the child, IBO, without consulting the child's father, in circumstances where the mother is unable and/or unwilling to reveal the identity of the father of the child;
 - (3) such further and other relief that the court shall deem fit.
2. The application is grounded on the affidavit of Mr. Mark Kirwan, the Manager of the Domestic Adoption Unit of the Adoption Authority which affidavit was sworn on the 8th December 2020.
3. The child's date of birth is [REDACTED] 2003.
4. The averments in the affidavit grounding the application and the exhibits accompanying it deal in a comprehensive manner with the background circumstances.
5. Insofar as the background to the application is concerned, the following is the position: -
 - (a) On the 12th August 2017, the mother of the child married an Irish citizen, X, the applicant for the Adoption Order.
 - (b) The declaration of eligibility and suitability in respect of the applicant was issued and is dated the 30th October 2019.
 - (c) The biological father of the child does know of the child's birth and is registered on the child's birth certificate.
 - (d) The mother does not know whether the father is married or in a civil partnership.

- (e) The relationship between the mother and the father lasted for nine years. They were in a romantic relationship and lived together as partners. The relationship continued for a period of five months after the child's birth and the mother, father and child lived together for that period of five months.
- (f) The father may not know of the proposed adoption. However, there was extensive communication with close relatives of his advising of the proposed adoption and the consequent need to get in touch with the father. It seems most improbable that news of the proposed adoption did not reach him.
- (g) The father has not been appointed a guardian of the child pursuant to a court order or otherwise.
- (h) There was an informal access agreement in respect of the child up until 2015.
- (i) The father and the child do not have an ongoing relationship. He last saw the child in 2009 in [REDACTED].
- (j) The mother has provided the father's name, his date of birth and what she described as his [REDACTED] PPS number along with his last known address and his last known work address. The evidence proves that she does appear to have co-operated fully in the efforts to reach the father and ascertain his views.
- (k) The mother was born on [REDACTED] 1978. She and the applicant for the Adoption Order have been in a relationship since 2006 and were married in 2017. The mother and the applicant for the Adoption Order have a daughter of their marriage who is now eight years of age.
- (l) The father was involved in parenting the child for the first five months of her life, together with her mother. Following their separation, the father had access with the child every second weekend, but contact became more sporadic as time progressed. In 2006, the mother began a relationship with her current partner (the applicant for adoption) and both she and the child relocated to Ireland with the father's consent in 2007.
- (m) Once the mother and child relocated to Ireland the mother says that there was very little contact between the father and the child. The mother contacted the father once per month to facilitate the child speaking to him on the telephone.
- (n) Between 2008 and 2013 the father reportedly had telephone contact at Christmas and on the child's birthday. It appears that contact took place in 2014 on her birthday and that was when the father last spoke with the child. The had previously met with him on two occasions in [REDACTED] in 2008 and 2009.
- (o) Between 2013 and 2015 the mother says that she attempted to contact the father with a view to getting him to sign an application for an Irish passport. She failed

ultimately and she applied to the District Court in Dublin in 2015 to dispense with his consent and obtained the necessary order.

- (p) The father has been identified by name but efforts made to locate him in order to consult with him have failed. The social worker attempted to telephone and email the father on the 16th July 2018 using the contact details which had been provided by the mother. The email did not deliver and the telephone number that had been provided was not in use.
 - (q) The social worker contacted International Social Services and the Embassy of [REDACTED] with a view to making contact with the father. In addition, a person acquainted with the birth mother informed the father's mother (the child's grandmother) of the situation and it appears that the grandmother did not wish to become involved in the matter.
 - (r) The mother contacted the father's brother on social media but did not receive a response.
 - (s) The social worker contacted the [REDACTED] Tax Agency on the 14th August 2018. However, the efforts made to trace the father by this route failed. The last known address that the agency had recorded in respect of the father dated back to 2015. They did however have addresses for the paternal grandmother and paternal grandfather. The social workers sent correspondence to the father's mother and his father respectively. The letter to the paternal grandmother was returned marked "insufficient address/refused". The letter to the paternal grandfather was delivered but no response was received.
 - (t) The child is obviously aware of her father's existence and her mother has told her about their relationship.
 - (u) The social worker has met with the child who has stated that she is not curious to obtain more information about her father and she does not wish to have a relationship with him at this time. She believes that she can rely on her mother to communicate information in respect of her father to her in the future – should she wish to obtain further details.
 - (v) It is clear from the evidence that the child is in favour of the proposed adoption and considers the applicant to be her "dad" in circumstances where he has cared for her since 2007.
6. It is clear from the evidence that the child wishes the adoption to proceed and it is also clear from the evidence that it is in the best interests of her welfare that the adoption is allowed to proceed.
7. Amongst the documentation exhibited are: -

- (a) An email from the social worker dated the 14th of August 2018 and addressed to the [REDACTED] Tax Agency seeking information in relation to the father, and the response to that email.
 - (b) A letter dated the 7th September 2018 (together with proof of postage of same), addressed to the father's mother (the child's grandmother) seeking information in respect of her son and informing her of the proposed adoption.
 - (c) A letter dated the 7th September 2018 (together with proof of postage of same), addressed to the father's father (the child's grandfather) seeking information in respect of his son and informing him of the proposed adoption.
 - (d) An Order of Judge Marie Quirke of the Dublin Metropolitan District Court dispensing with the father's consent to issue a passport for the child.
8. The mother has given a full, free and informed consent to the making of the order and wishes the Adoption Order to be made.
9. The Authority treated the application in this case as one in which family life within the meaning of Article 8 of the European Convention on Human Rights is engaged. It is the practice of the Authority to designate applications where there is evidence of an active relationship beyond the fact of paternity as applications involving 'family life' in this sense.
10. Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 provides as follows: -
 - '1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
 2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'*
11. This practice is applied in recognition of the Authority's obligations under s.3(1) of the European Convention on Human Rights Act 2003, that it perform its functions in a manner compatible with the obligations imposed by the Convention, including the provisions of Article 8. The Authority makes a point that it is particularly conscious, in this context, that the European Court of Human Rights ruled in *Keegan v Ireland* 18 EHRR 342 1994 that the adoption of a child without the knowledge of a father with whom the child has had a relationship in the period after birth was a violation of Article 8.
12. The Authority's general approach in this regard is also cognisant of the provisions of s.6(b) of the Guardianship of Infants Act 1964, as amended by s.49 of the Children and Family Relationship Act 2005, which extends automatic guardianship for an unmarried

father where he has cohabited with the mother for a period of twelve months not less than three consecutive months of which involved cohabitation with the child.

13. In dealing with this matter, the Board has been concerned to ensure that information derived from conversations held with the birth mother are not the only source of evidence. Indeed, much of the narrative relies on information she has provided which is untested. Against that, there is no reason to doubt the narrative and the independent enquiries and documentary evidence is consistent with the mother's narrative.
14. In the Child and Family Agency's report dated the 13th February 2020, it is stated that the birth mother informed the social worker that a friend of hers had spoken to the paternal grandmother who indicated that she did not want to get involved. It was also stated in the report that the birth mother had sent a Facebook message to the birth father's brother. However, no verifying documentation in this regard was provided by the Child and Family Agency – and no further information was given regarding whether the social worker had been provided with the birth father's brother's contact details or had contacted him. The Authority was conscious of the High Court decision in *S (W) v Adoption Board* [2009] IEHC 429, [2010] 2 IR 530 in which it was held that the Authority's predecessor was not entitled to simply accept the uncorroborated or unsupported statements of the birth mother regarding consultation with the birth father.
15. As far as the Authority was concerned, several issues also arose from material provided regarding correspondence with the Department of Foreign Affairs. For example, in a response to a query by the Child and Family Agency to the Department of Foreign Affairs, it was indicated to the Department in January 2020 that the birth father was on Facebook and that details regarding his sister and brother were also available there. As the Board considered that this was up-to-date information regarding the birth father and family members, including some who had not previously been referred to, it considered it was appropriate and necessary that efforts would be made to pursue these lines of inquiry because of s.30(2) of the Adoption Acts 2010-2017. At the Board meeting of the 10th March 2020, it was decided to request the Child and Family Agency to seek to obtain contact details for such relatives, whether from the birth mother or by other means. An email was received from the Child and Family Agency by the Authority on the 26th May 2020 indicating that the social worker had contacted the birth mother and that the birth mother had informed her that she was only aware of a brother and the mother. It was stated that a message was sent to the brother and mother by the social worker and no response was received. It will be noted however that the information provided by the [REDACTED] tax authorities had also provided an address for the paternal grandfather – but that correspondence to that address yielded no reply.
16. At its meeting on the 7th July 2020, the Authority decided to request the Child and Family Agency to make efforts to effect personal service on the birth father by whatever means appropriate prior to the Board's next meeting. The Child and Family Agency indicated prior to the meeting in September 2020 that it was unable to effect personal service.

This is hardly surprising as all efforts had failed to ascertain the whereabouts of the birth father.

17. The birth mother became aware that the birth father was living in [REDACTED] in 2013 and she contacted him via Facebook on the 18th October 2014 regarding a passport application for [REDACTED]. He responded and advised that he would support the new passport application but he was subsequently not contactable. He did not contact his daughter for her birthday or Christmas in 2014. The birth mother subsequently made an application to the District Court on the 17th April 2015 to dispense with his consent for [REDACTED] passport application and it was granted by the court. The birth mother has had no contact with the birth father since the 18th October 2014. He has not contacted her since and her phone number has not changed.
18. The birth mother contacted or endeavoured to contact the birth father in August 2017 via Facebook as his daughter wanted contact with him – but she received no response.
19. The birth mother subsequently endeavoured to contact the birth father on the 5th May 2018 via Facebook stating that she needed to talk to him as she wanted to advise him of the proposed adoption. She did not receive a response to this message. She added his mother on Facebook on the 21st May 2018 and sent a message to her stating that she needed to contact the birth father and requested his contact details – but she did not receive a response to this message.
20. A friend of the birth mother informed the paternal grandmother of the proposed adoption and advised the paternal grandmother that the birth mother was seeking to contact the father. The paternal grandmother advised that she did not want to get involved.
21. The birth mother also sent a Facebook message to the brother of the birth father requesting the birth father's contact details – but she received no response to this message.
22. In 2019 the birth mother applied for and obtained an updated birth certificate in respect of the child. She was aware that the new birth certificate from the [REDACTED] authorities would be automatically updated to state if the named birth father was registered as deceased. The updated birth certificate stated that the birth father was categorised as 'emigrated'.
23. The Child and Family Agency corresponded with the [REDACTED] Probation Service [in another country] in November of 2019 to establish if the birth father was in prison at that time. A response was received on the 19th November 2019 indicating that there was no such person in a [REDACTED] prison. A similar inquiry of the [REDACTED] probation authorities [in yet another country] in November 2019 received no reply.
24. The Child and Family Agency also made inquiries of the [REDACTED] police/[REDACTED] police in early 2020 and of the Irish Embassy in [REDACTED] – but nothing useful came of these inquiries.

25. Under s.19 of the Adoption Act 2010, in any matter, application or proceedings under this Act the court must regard the best interests of the child as the paramount consideration in the resolution of the application. In this case the Court has ample evidence that it is in the child's best interest that the adoption proceed.
26. It is noteworthy that s. 30 does not afford any discretion to the Authority. This can be contrasted with s.18 of the Adoption Act 2010 which provides: -
- (1) *If an accredited body is unable to consult a relevant non-guardian of a child for the purposes of section 17(2) , the accredited body shall in a form and manner approved by the Authority, notify the Authority to that effect.*
 - (2) *The Authority may, if satisfied that the accredited body has taken such steps as are reasonably practicable to consult any relevant non-guardian, authorise the accredited body to place the child for adoption.*
27. In *W.S.*, quoted above, the decision of O'Neill J. can be distinguished on its facts. In this case, the evidence satisfies the Court as a matter of probability that: -
- (a) The father has in effect made himself non-contactable.
 - (b) The mother has been forthcoming and cooperative in providing all the information available to her to enable contact to be made with the birth father.
 - (c) The background circumstances prove that it is the father who has ceased contact with his daughter and her mother.
 - (d) It is apparent that the Authority, the Child and Family Agency and the birth mother have taken all the steps that are reasonably practicable to enable consultation with the birth father concerning the proposed adoption to take place.
 - (e) Efforts of the Child and Family Agency and of the Adoption Authority to make contact with the birth father – as detailed in this judgment – have occurred independently of the birth mother and have been unsuccessful. The Authority has taken all the steps that are reasonably practicable to try to locate with and consult with the father.
28. This Court is satisfied that a purposive approach is required in the interpretation of s.30. A child centred approach is appropriate to the interpretation of the section in circumstances where the welfare of the child is the first and paramount consideration.
29. Non-notification of a birth father can create a risk as identified by O'Neill J. in *W.S.*, that the process may be flawed or kiltered by the sole reliance on one-sided information that may turn out to be inaccurate or otherwise unreliable. This can cause a grave risk of a very serious breach of the natural father's constitutional right to fair procedures and natural justice and his rights under the Convention, resulting in a very serious injustice being done to the natural father and, by extension, the child, if the natural father is

excluded from the process on the basis of reliance solely on information supplied by the mother. However, those concerns do not arise in the circumstances of this case. The fact of the matter here is that every effort has been made to involve the birth father but those efforts have failed because he cannot be found. He has not been excluded but has rather excluded himself. The Court is alert to the possibility that he might be unable to make contact. However, there is no evidence to support or to suggest that this is so and the Court considers it a remote possibility given all of the evidence.

30. The position in relation to the child's father is that he cannot be located and he has had no involvement in the child's life for several years. The last contact was in 2014 and the father has since absented himself from the lives of the mother and child.
31. It is the position that the mother has been able to provide the name and a body of information concerning the father which, in the ordinary course of events, ought to be regarded as sufficient identification of the father. However, the practical reality is that the information provided falls short of information sufficient to identify him in the sense of pointing to him as an individual who can be located with the benefit of the information available with a view to ascertaining his views in relation to the proposed adoption. A name and address or phone number will usually adequately identify a person as they can be located with that information and thus be *found* as an individual. Such information may however prove to be inadequate to *locate or find* the person who will thus remain unidentified if there is nobody found to match the name and details. Yet, a person may be adequately identified without a name or an address.
32. For example, I may provide an adequate and viable identification of an individual by saying – "*he is the tall young red haired man who drives the white D reg jeep, with the blue kayak always on the roof, and who pulls up between 2 and 3 pm outside house Number 21 across the road each Saturday afternoon*". This identifies the individual because, if correct, he will be there and located then - as the person I spoke of. Of course, visual identification of a person I know well is usually best. After that, DNA tests and the like bring identification to another level. But in the context of Section 30 the identification spoken of is about providing the name and actual whereabouts, or means to locate the whereabouts, of the person with whom consultation is to take place.
33. If one adopts a purposive approach to s.30 one must have regard to the actual purpose of the section which is to ensure that the authority takes such steps as are reasonably practical to ensure that every relevant non-guardian of the child is consulted in relation to the adoption. It is in this context that the section speaks of the Authority (in sub. 5), after first obtaining the approval of the High Court, making the Adoption Order without consulting the father if, -
 - (a) the mother or guardian of the child either refuses to reveal the identity of the father of the child, or provides the Authority with a statutory declaration that he or she is unable to identify that father, and

- (b) the Authority has no other practical means of ascertaining the identity of that father.
34. In the circumstances here the mother is in a position to provide a name and pertinent details concerning the father but is unable to identify him in practical terms with a view to permitting the consultation mentioned in the section to proceed. This Court has pointed to this issue and apparent omission in the Act. Section 30(5)(a) should probably read *"...a statutory declaration that he or she is unable to identify and locate the father and is unable to provide sufficient information to allow the identification and location of that father to be ascertained ..."*.
35. Section 30(2) provides: -
- '(2) Subject to this section, on the receipt of an application for an adoption order, the Authority shall take such steps as are reasonably practicable to ensure that every relevant non-guardian of the child is consulted in relation to the adoption.*
36. Section 30(3) provides: -
- (3) Where the Authority is satisfied that, having regard to —*
- (a) the nature of the relationship between the relevant non-guardian of a child and the mother or guardian of the child, or*
- (b) other than in a case where the relevant non-guardian of the child is a person referred to in paragraph (b), (c) or (d) of the definition of " relevant non-guardian " , the circumstances of the conception of the child, it would be inappropriate for the Authority to consult the relevant non-guardian in respect of the adoption of that child, the Authority may, after first obtaining the approval of the High Court, make the adoption order without consulting the relevant non-guardian concerned.*
37. The position is that the section requires consultation with every relevant non-guardian in relation to the adoption and obliges the Authority to *take such steps as are reasonably practicable to ensure* that this is done. On the face of it, it seems quite clear that the Authority has taken all such steps as are reasonably practicable to ensure that the father of the child is consulted in relation to the adoption. Despite exhaustive efforts it has not been possible to open a line of communication with the father although considerable information and detail is available in relation to who he is. It is not known where he is. It might in these circumstances be argued that this application is unnecessary. However, the section does not afford a discretion to the Authority in the way s. 18 does and the Authority is correct to proceed with an abundance of caution given all of the circumstances.
38. The Authority is entitled to take the view that it is in this case inappropriate for it to consult the relevant non-guardian in respect of the adoption of the child because it has proved to date impossible to get in contact with him. Although further exhaustive efforts

might be successful in tracing him and ascertaining his opinion in relation to the proposed adoption it is likely that further forensic work in this regard would take many months or years and might or might not prove successful. The Court cannot ignore the fact that the father has removed himself from the life of the mother and daughter for many years. He has had no contact since 2014 and has not bothered to keep open any line of communication. His disappearance from the life of mother and child for many years is perhaps indicative of him attaching little importance to his relationship with his child. If he valued the relationship surely he would maintain contact and would have done so over the years.

39. As the child is reaching the age of majority at the beginning of [REDACTED] there is no time to spare and the Authority is correct in forming the view that it would be inappropriate for the Authority to consult the father in respect of the adoption having regard to the relationship between the father and the mother - and put simply because he has made himself non-contactable. The relationship between he and the mother ended many years ago. Both have moved apart to the point that the mother knows his name and who he is but simply cannot find him. The family that they once formed came to an end by mutual agreement over 17 years ago. Contact with the child after the separation did take place in the early years but was limited after the mother relocated to Ireland with the fathers agreement in 2007 - and the last contact was in 2014.
40. The Court has considered granting the approval under Section 30(5) but to do so would ignore the mothers naming of and provision of details concerning the father and would be to ignore that she has not sworn the statutory declaration mentioned in that sub-section. She is entitled to take the view that she cannot swear a statutory declaration in the terms of the sub-section. The Court considers it necessary to consider the purpose of Section 30 and weigh the competing rights involved. Doing so permits the granting of the approval under Section 30(3) as the Court is satisfied that the father has for many years not been, and is not, interested in maintaining a relationship with his daughter - much less in being available to be consulted about her proposed adoption.
41. In the circumstances this Court will make the order sought pursuant to s.30(3) of the Act approving the making of the Adoption Order without consulting the father of the child.