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IN THE FAMILY COURT  
Sitting at the Royal Courts of Justice  
[2022] EWFC 180



No. FD21F00085

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Tuesday, 25 January 2022

**IN THE MATTER OF THE FAMILY LAW ACT 1986, S.55A**

Before:

MRS JUSTICE THEIS

**(In Private)**

IN THE MATTER OF:

E

Applicant

\_\_\_\_\_  
MR A POWELL (instructed by NGA Law) appeared on behalf of the Applicant.

**J U D G M E N T**

**( v i a M i c r o s o f t T e a m s )**

MRS JUSTICE THEIS:

### **Introduction**

1 The court is concerned with an application for a declaration of parentage pursuant to s.55A of the Family Law Act 1986. The application is made by E who seeks a declaration that D is her birth father. E has attended this remote hearing with her son. There are no other parties to this application and for reasons that I will explain in a moment, I have concluded that I should accede to the request on behalf of E to determine this application today.

### **Relevant background**

2 The relevant background is set out in E's statement dated 11 December 2021. It provides a very powerful account of the journey E has embarked on to be able to complete the circle in relation to her own identity.

3 She was born in 1945. Within a matter of days she was placed with adoptive parents, B and C, who subsequently adopted her in the latter part of that year. They were, on the information the court has, enlightened adoptive parents because, from an early age, they informed E she was adopted and that as her birth parents were each married to somebody else, it was not possible for her to remain with them. Their enlightened approach gave further information as E grew older about the circumstances of her birth and the information they had which they could share. Her adoptive parents gave her a photograph of her birth father, which undoubtedly was a possession treasured by E.

4 She grew up, left her adoptive parents' home, married herself, and had her own children. Each of her own children have had their own children and the applicant describes in her statement her very great pride in not only being a mother, but also a grandmother.

5 Following her separation from her husband, she began to reflect on her own particular background and decided to embark on finding out more about her particular circumstances and the circumstances of her birth. Prior to the internet facilities, that are so readily available now, she went to the town where she was born, and sought to make some enquiries herself there on the ground, but gained limited additional information. Her adoptive parents died.

6 In 2016, her son offered to help her look for her birth family and whether there was any wider family. On securing her birth certificate, it gave the name of her birth mother, but did not give any details in relation to her birth father's name. Through the assistance of her son, enquiries discovered that her birth mother had emigrated to Australia after the war and through various routes they were able to track down members of her family there. Through those enquiries, she learned that her birth mother had died and attached to her statement is the front cover of the order of service from her funeral. At that time, she learned her birth mother had an older child and she and her husband apparently went on to have eight more children together. So, there was an enormous maternal birth family to engage with.

7 In her statement E describes her joy at being able to be put in touch with them, which was reciprocated by the various members of the family she contacted and how welcome she was made when she made her trip to Australia to meet them all. One resulting in a newspaper article in the local newspaper.

8 The applicant E remained keen to learn about her birth father's circumstances. She had the photograph and also a nickname that he was known by, but little more than that. At her son's suggestion, she joined one of the genealogical websites and provided her DNA. Through the second website she registered with, there was an immediate match with what turned out to be a third cousin who put the applicant in touch with other relatives from her birth father's family, who identified the birth father as D. Further enquiries revealed that he died and his two siblings had also died. One of the relatives the applicant was put in touch with recognised him as her uncle from the photograph and her mother was his sister.

9 As a consequence of these enquiries, the applicant was able to put together the family tree set out in the papers. The applicant requested whether her birth father's niece and nephew would agree to DNA testing to be able to determine the position in relation to the biological link. They agreed and DNA testing was undertaken through an organisation called Anglia DNA, which is one of the recognised DNA providers the court is well used to seeing reports from. The two test results that were undertaken, not only as between the cousins but also between one of them and the applicant, were reported back in October 2020 and confirmed the biological connection. During this hearing, I raised the issue that the documents in the bundle were not altogether clear as to precisely what the strength of the DNA connection is. More information was provided about what they relied upon which has been helpfully provided during this hearing. The important part of the information that came back from the DNA test is the following:

“The DNA profiles of individual 1 and individual 2 were compared and statistical analysis was performed. Based on this analysis, the results were fifty-eight times more likely if individual 1 E and individual 2 are related as cousins rather than if they are unrelated. Therefore, the probability of relationship is 98.32 per cent.”

So, on any view, a very strong indicator of the biological connection.

10 The applicant discovered that her birth father had four other children, two she discovered had died and she was unable to make contact with one of them. It appears from the information obtained during the hearing that appeared to be as a result of her not wanting her information to be shared. She did make contact with the other child who she had contact with but has since been reported as not being willing to have further communication with her.

11 This journey, as described in the statement, has been a great joy for the applicant. What it has done is brought the various pieces of information she had to be joined up to complete the picture in relation to the circumstances of her birth. She describes in her statement the regular contact that she has with a number of members of the birth paternal family and although they are in regular weekly contact, they have had limited opportunity to be able to meet in person because of the various Covid restrictions that have applied but their plan is to be able to in due course meet in person.

12 The applicant made this application in circumstances where she had sadly experienced serious illness, which fortunately has been treated successfully. However, she felt it was important in relation to her own identity and that of her family to establish her own background which included the recognition of her birth father being recorded on her birth certificate. It was in these circumstances that she made the application before the court today.

## Relevant legal framework

13 The legal framework has been characteristically dealt with in some details in the skeleton argument submitted on behalf of the applicant by Ms Gamble and Mr Powell. At paragraphs 5 - 8, it sets out the statutory provisions in relation to eligibility to apply for this declaration under s.55A of the Family Law Act 1986. It is quite clear from that the applicant meets the gateway requirements to make such an application. She comes within the definition of somebody who can make the application and the jurisdiction of the court is founded on either domicile or habitual residence. The applicant was born in this jurisdiction, this is her domicile of origin, and so it is quite clear that that requirement as well as the habitual residence requirements are met.

14 The next matter that the court has to consider is whether the evidence that has been relied upon by the applicant establishes that D is her birth father and if it is, the requirement under s.58 of the Family Law Act 1986 needs to be considered, which provides:

“Where on an application to a court for a declaration under this Part the truth of the proposition to be declared is proved to the satisfaction of the court, the court shall make that declaration unless to do so would manifestly be contrary to public policy.”

It is submitted on behalf of the applicant that there is nothing and no features in this case that would indicate that making the declaration sought is contrary to public policy.

15 One of the matters the court has had to grapple with is the procedural requirement set out in the Family Procedure Rules 2010 (FPR 2010) r.8.18 - 8.22. In essence, the provision provides that in an application for a declaration of parentage, r.8.20(1) provides that:

“(i) The person whose parentage is in issue except where that person is a child; and

(ii) any person who is or is alleged to be the parent of the person whose parentage is in issue...”

16 The applicant’s birth parents have died, the evidence demonstrates that. The applicant is the person whose parentage is in issue. The question that I have raised with Mr Powell is whether there should be any notice given of this application to either the nieces and nephews, the cousins, or to the adults who are D’s surviving children.

17 Mr Powell makes the point that the requirements of this application are to make a declaration. The purpose of a declaration is to declare what is an existing factual situation. The framework is that providing the applicant meets the gateway requirements to be able to make the application and if the evidence establishes that D is her birth father, then subject to any public policy considerations raised by s.58, the court is required to grant the application.

18 Also, the FPR 2010 provide in relation to the Attorney General that under r.8.21(1):

“The applicant must, except in the case of an application for a declaration of parentage, send a copy of the application and all accompanying documents to the Attorney General...”

- 19 So, the Rules specifically exclude the need to be able to give the Attorney General notice of the application prior to it being issued and even though under r.8.20(4) the court needs to consider whether the Attorney General should be given notice of the application, it is only necessary for the court to consider that and to exercise its discretion one way or the other depending on the particular circumstances of this case.
- 20 In my judgment, having considered these provisions, the relevant legal framework and the information the court has, I do not see any useful purpose will be served in giving notice to any of the individuals I have identified because, essentially, the declaration is to declare a factual situation if established by the evidence. The purpose of serving them would only cause delay. It is not necessary in light of the evidence the court has for them to be able to be joined to the proceedings or be given notice to enable the court to determine the application that is before it. So, for those reasons, I do not consider that there needs to be any further steps taken in the particular facts and circumstances of this case for any other person to be given notice of this application, I include in that the Attorney General.
- 21 Mr Powell and Ms Gamble have been able to track down a previous case that has dealt with a similar situation to this. It is the decision of Hogg J in the case of *M v W (Declaration of Parentage)* [2007] 2 FLR 270. Factually, it has a number of similarities to the situation that the court is dealing with in in this case. The applicant in that case was placed for adoption soon after birth. The birth certificate carried the mother's maiden name only and not the birth father's name. The birth father had returned to Australia, where he remained. The mother signed a declaration of acknowledgement of parentage in which she named the Australian as the father and in the following year the applicant was granted Australian citizenship. There had been communication between the wider family in Australia and the applicant sought a declaration of natural parentage as a matter of great importance to his self-perception and sense of identity.
- 22 The respondents to that application included the various members of the birth father's family that still lived in Australia, who all supported the application, and the Attorney General, who also supported the application. That case was decided prior to the changes in the FPR 2010 which provides the framework within which the court is considering this application.
- 23 The issue in relation to declarations of parentage in the context of adoption was more recently considered by MacDonald J in the case *H v An Adoption Agency (Declaration of Parentage Following Adoption)* [2020] EWFC 74. That was in an entirely different context, where the birth father of a child who had been adopted was seeking a declaration that he was the birth father. There was evidence to suggest that the purpose behind that application was to cause complications in relation to his birth child who had been adopted.

### **Discussion and decision**

- 24 Having considered the evidence the court has and the information set out so clearly in the skeleton argument, I have reached the conclusion that each step the applicant has taken is supported by the documents she attaches to her statement, in particular, the DNA testing outlined above, and I am satisfied that she has established, on the balance of probabilities, that D is her birth father. Having reached that conclusion, I am required by s.58 to consider whether to make the declaration, which I must do unless it would be manifestly contrary to public policy.
- 25 Making this declaration will acknowledge the applicant's natural father. It would not affect her legal parentage or status. It does not alter or affect the validity of the adoption order that

was made in 1945. So I am satisfied, on the information that the court has, that there is nothing that would prevent this court making the declaration because there are no issues that are manifestly contrary to public policy.

- 26 It is quite clear this application and declaration is of enormous personal and emotional significance for the applicant. It will give her a sense of completion in respect of her identity and her own particular life story. I have no doubt that the declaration will be of assistance to her children and grandchildren. Her Art.8 rights are engaged, which include her Art.8 rights that her *de facto* relationships are recognised and protected by the law.
- 27 In this case, as I have said, the adoptive parents were enlightened. The applicant knew from an early age she was adopted and, over time, the circumstances were explained to her. It is increasingly recognised and more so now that that approach meets the welfare need of the particular child. It was acknowledged by Hogg J in 2006, but certainly as time has gone on since then, the importance for an adopted child to be able to be confident as to his or her own status and to know as much about his or her own background as possible is widely recognised. That applies also to the children and grandchildren of somebody who has been adopted.
- 28 Having been satisfied as to the truth of the factual basis of this application and there are no public policy considerations that I have to take into account, I am entirely satisfied that the court can make the declarations that are sought, namely that D is the birth father of E.
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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge