
CANADA / JUDGMENT

M.Z. and G.Z. (Re)

2018 BCSC 325

COURT

Supreme Court of British Columbia

DECIDED

5 March 2018

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2018 BCSC 325 M.Z. and G.Z. (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.Z. and G.Z. (Re),

2018 BCSC 325

Date: 20180305

Docket: 17 3382

Registry: Victoria

Between:

M.W.Z. and G.Z.

Petitioners

And

Her Majesty the Queen in Right of the

Province of British Columbia

Respondent

Before: The Honourable Mr. Justice Butler

Reasons for Judgment

Counsel for the Petitioners:

Karen Henry

Place and Date of Trial/Hearing:

Victoria, B.C.

September 28, 2017

Place and Date of Judgment:

Victoria, B.C.

March 5, 2018

Introduction

- [1] On September 28, 2017, I heard a petition filed by the parents of a child who was adopted from Nepal in 2006.
- [2] The petitioners sought an order declaring a different name and birthdate for the child than the name and birthdate on her adoption and immigration documents. In doing so, they asked the Court to rely on its parens patriae jurisdiction.
- [3] I granted the order and indicated I would provide reasons at a later date. These are the reasons.

Background

- [4] The petitioners M.W.Z. and G.Z. have one other child, an adult son. In 2006, the petitioners adopted a child from Nepal, who was given the legal names "Miss B." or "B.B." M.'s adoption was facilitated by CHOICES, an adoption agency in Victoria, British Columbia, and by Manoj Kumar Kandel, a lawyer in Kathmandu, Nepal. The child is known to her family and community as "B.M.Z." In these reasons, I will refer to the child as "M."
- [5] In their affidavit evidence, the petitioners swore that, to the best of their knowledge, M.'s adoption fully complied with the laws of British Columbia, Canada, and Nepal that were in force at that time. However, they say a mistake was made regarding M.'s name during the adoption process in Nepal.
- [6] The petitioners had chosen the name "B.M.Z." for their daughter. However, this name was not used in an adoption letter issued by the Nepali government on July 21, 2006, nor in her Nepali passport, issued July 25, 2006. Both documents state M.'s name as "Miss. B." M.'s Canadian visa issued July 31, 2006, states her name as "B.B."
- [7] The petitioners are not able to change M.'s name under the Name Act, R.S.B.C. 1996, c. 328, because they do not have her original birth certificate from Nepal. They have brought this petition seeking a declaration that the child's name is B.M.Z.

- [8] The petitioners also seek a change of M.'s birthdate to January 10, 2000. During the adoption process in Nepal, M. was given the birthdate of July 15, 2002. According to this birthdate, M. would now be 15 years old. The petitioners believe this date is incorrect and does not approximate M.'s actual or chronological age. Based on medical and dental evidence, information from Nepal, and their own observations of M.'s development, the petitioners believe M. was born in 2000 and is now 17 years old.
- [9] Prior to her adoption, M. resided at the Children Welfare Centre in the municipality of Godawari, in the Lalitpur district of Nepal. According to the petitioners, the Director of the Children Welfare Centre told them M. had been abandoned as a baby, and that there was no information available regarding her birth family, date of birth or place of birth. The Director thought M. was four years old. However, a doctor who examined M. in Kathmandu, as part of the Canadian immigration process, thought M. was likely six or possibly seven years old.
- [10] After parenting M. for several months, the petitioners came to believe that M. was likely six years old at the time of her adoption: she quickly grew taller and gained weight; she was very social and quick to learn English.
- [11] The petitioners consulted with staff at an elementary school regarding M.'s development. Because the school and the petitioners believed that M. was likely born in 2000 and was six years old, M. began attending Grade 1 in September 2006.
- [12] Based on discussions with their family physician and family dentist, the petitioners began using February 26, 2000 as an informal birthdate for M.
- [13] M. has adjusted well to life with her parents and brother in Canada. In June 2017, M. completed Grade 11. She began Grade 12 in September 2017. The affidavit evidence presented by the petitioners suggests that socially and emotionally, M. presents as a 17 year old. Her peers are in Grade 11 and 12, ages 16 to 18. She intends to finish Grade 12 in June 2018, and then to obtain post-secondary training or education. She also wants to learn to drive.
- [14] Two physicians provided medical evidence regarding M.'s likely chronological age. Dr. Suzanne Stock is a pediatric endocrinologist. She determined that M. was born between January 1999 and January 2001, with her likely date of birth close to January 2000. Dr. John Pappel is an orthodontist. He determined that M. was born in 1999 or 2000.
- [15] The petitioners say that a legal birthdate that more accurately reflects M.'s chronological age is important for any activity where children are divided according to age, medical care, obtaining a driving licence, the ability to vote, and college or university entrance.
- [16] I am informed by the petitioners that M. has chosen January 10 as her desired legal month and date of birth, and so they seek a declaration that M. was born on January 10, 2000.

Legal Framework

- [17] *E. (Mrs.) v. Eve*, [1986] 2 S.C.R. 388, is the leading case on the court's *parens patriae* jurisdiction. In reasons written for the Court, La Forest J. articulated the underlying principle of the jurisdiction: to allow the court, where necessary, to act for the protection of those who cannot care for themselves (para. 73).
- [18] The court's *parens patriae* jurisdiction, similar to its inherent jurisdiction, can be exercised if no statute or rule confers jurisdiction: *Senini (Re)*, 2016 BCSC 2299 at para. 31. The scope of the jurisdiction is broad. It is generally exercised in matters involving minors or adults who are mentally incapable of acting in their own interests.
- [19] While the scope is broad, it should be used sparingly and only where necessary: *L.S. v. British Columbia (Director of Child, Family and Community Services)*, 2018 BCSC 255 at para. 30.
- [20] When relying on its *parens patriae* jurisdiction, the court must exercise its discretion in the best interest of the person for whose benefit the jurisdiction is invoked. It must not be invoked for the benefit of others, such as parents or guardians of a protected person: *Eve* at paras. 73, 77.
- [21] The court's jurisdiction over children is often exercised to resolve issues such as custody, protection of property, health problems, religious upbringing and protections against harmful association: *Eve* at para. 74; *J.E.S.D. v. Y.E.P.*, 2017 BCSC 666 at para. 22. However, the jurisdiction is not limited to these categories.

[22] La Forest J. states at para. 42 of *Eve*:

even where there is legislation in the area, the courts will continue to use the *parens patriae* jurisdiction to deal with [uncontemplated] situations where it appears necessary to do so for the protection of those who fall within its ambit; see *Beson v. Director of Child Welfare (Nfld.)*, [1982] 2 S.C.R. 716.

[23] In *Landa-McAuliffe v. Boland*, 2012 BCSC 1354, this Court determined it had authority under its *parens patriae* jurisdiction to assume jurisdiction in the naming of a child. The facts in *Boland* are somewhat different than the facts in this case. (In *Boland*, the parents agreed their child should have a hyphenated surname, but each parent wanted his or her own surname to appear first.) Nevertheless, this case is instructive for the principles a court should consider when assuming jurisdiction in naming a child. *Savage J.* states at para. 17:

In *Wintemute v. O'Sullivan* (1985), 48 R.F.L. (2d) 276 at para 7, Justice Sinclair in naming disputes, articulated such factors as (1) the welfare of the child; (2) the short and long term effects of a change in the child's surname; (3) any embarrassment the child might suffer if the surname is different from that of the custodial parent; (4) the potential for confusion of identity; (5) the effect of change of name on the child; and (6) the effect of frequent or random changes of name.

[24] Counsel for the petitioners did not provide any case in which the court assumed jurisdiction, under its *parens patriae* jurisdiction, for changing a child's birthdate. However, this does not bar me from finding that the Court can assume jurisdiction in the case at hand. As La Forest J. affirmed at para. 74 in *Eve*, the *parens patriae* jurisdiction is not and should not be limited to specific categories.

Analysis

- [25] This is a situation where, because of the circumstances of M.'s early childhood and clerical mistakes in the adoption process in Nepal, M.'s adoption and immigration documents do not state the name by which she is known, and do not state a birthdate that approximates her chronological age.
- [26] There is no statutory avenue that would allow the petitioners to change the legal names or birthdate of M. In my view, this is a situation in which the court can assume its protective role under the *parens patriae* jurisdiction.
- [27] I conclude that it is in the best interests of M. for her legal names to be changed. Many of the factors cited by Savage J. in *Boland* weigh in favour of changing M.'s full legal name to B.M.Z.
- [28] The name change is unlikely to cause confusion, as it would change M.'s full legal name to a name she already uses. Indeed, as M.'s current legal names have the potential to be confusing, the name change would likely reduce potential confusion and embarrassment in the future. It would also allow M. to share a surname with the rest of her family. I am persuaded that the name change would have a positive effect on M.
- [29] I also conclude that it is in the best interests of M. for her legal birthdate to approximate her actual or chronological age. There are many situations in which M. might be disadvantaged if her legal birthdate does not reflect her chronological age. She may not be able to obtain proper medical care and advice or to exercise her right to vote.
- [30] Based on the affidavit evidence of Dr. Stock and Dr. Pappel, I am able to find that M. was likely born early in 2000. Since it is not possible to approximate M.'s actual birthdate with any more specificity, I have also taken into consideration M.'s wish that her birthdate be January 10. I am satisfied it is in the best interests of M. that her legal birthdate be changed to January 10, 2000.

Conclusion

- [31] I declare that the name of the child, B.B. is B.M.Z.
- [32] I also declare that the birthdate of the child, B.M.Z. is January 10, 2000.

"Butler J."

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