

NMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 0343/2003

BETWEEN	SANDRA ROSE	1 ST CLAIMANT
AND	ENID WALKER	2 ND CLAIMANT
AND	MURIEL SPENCER	DEFENDANT

Mr. Debayo A. Adedipe for Claimants.

Mrs. Lelieth D Lambie-Thomas for Defendant.

Heard 8th and 9th January and 3rd May 2004

Campbell, J.

The Claimant, Sandra Rose, is the natural daughter of the Second Claimant and the adopted daughter of the Defendant, Muriel Spencer.

Muriel Spencer had known Sandra from she was two years old, when her mother came to live with Muriel. Sandra, along with her stepfather was to move in later. That was to be the start of a long relationship between Muriel Spencer and the family of Enid.

Muriel had no children. Enid had lost her mother the same year that she met Muriel. Soon the relationship between the two women was likened to that of mother and daughter. When Muriel changed addresses on several occasions, Enid and her family moved with her, making a small contribution to the payment of the

rent. When Muriel emigrated to the United States, she left Enid and her family in the house she had rented.

She kept in touch with the family whilst in the United States, sending them barrels of foodstuff, clothing, shoes, bed linen and ensuring that items that were difficult to purchase in Jamaica were included. After an initial period of four years, she would visit Jamaica annually, always taking barrels of items for the family with her when she returned. So well stocked would be these barrels that when she returned the following year there would still be items from the last visit. She bought the family a gas stove, a set of encyclopedia and a refrigerator, that Sandra took with her when at age eighteen years she left the household to go on her own. She purchased a home which members of Enid's family occupied, whilst Enid managed the mortgage payments.

Muriel had started a joint bank account with Enid whilst the latter was still living in Jamaica, sending monies to her to be lodged to that account and allowing her to make withdrawals there from. This she testified continued after she adopted Sandra. She gave Sandra a typewriter, which she had requested whilst pursuing studies at Alpha Commercial College. Sandra testified that an earlier request for assistance with the fees to attend Alpha Commercial College did not elicit a response from her adopted mother.

In 1987, Enid migrated to the United States with her husband and four children. They arrived on the doorsteps of the Defendant, Muriel Spencer, unannounced and remained with her for a period of two years, not paying any rental but making a small contribution to the utilities bill.

There is some divergence in the evidence as to how Sandra came to be adopted. Muriel says that on a visit to Jamaica, Sandra's mom invited her to adopt Sandra, as she said Muriel had no one to inherit what she had. Muriel said that Enid made all the necessary arrangements for the adoption. Muriel said that someone at the Adoption Agency had told Enid that Sandra was too old to be adopted under USA rules for filing by a resident of the United States. Muriel said that Enid was not deterred by that information, remarking that Sandra in any event could get what she Muriel has.

Enid on the other hand, claims that the suggestion of adopting Sandra emanated from Muriel who pursued the matter on three separate occasions until she, Enid, finally relented. She testified that Muriel had said she had been working all her life and had no heir, no child. She promised that if Enid allowed her to adopt her daughter, she would take the girl to the United States of America and assist her in getting a college education.

This is the promise that the Claimants allege that Muriel deceived them with and which caused them to consent to the Adoption Order.

On the 25th August 1981, when Muriel Spencer adopted Sandra, the girl was then in her seventeenth year. On the 14th March 2003, some Twenty-one years after the making of the Adoption Order, Sandra and Enid brought a claim asking the Court to revoke the Order because it was obtained as a result of this fraudulent misrepresentation made by Muriel Spencer to the Claimant.

There is no dispute that at the time the Order was made Muriel was then regarded as a part of the family. Sandra testified that she formed the view that Ms. Spencer cared for her, and Enid testified that Spencer and herself lived like mother and daughter. Sandra admits not feeling accepted by her family and therefore welcomed being adopted by Ms. Spencer.

Sandra Rose, in her witness statement, said that she attended the United States Embassy in October 2003 to be interviewed for the purpose of obtaining a resident alien visa and she was told a visa could not be issued to her because she had been adopted and her natural mother (who had filed immigration papers on her behalf) was no longer legally her mother. She further stated that the existence of the Order was “prejudicing my immediate family” prospect and separating us from the other members of my family who live in the United States of America.

The law

The Children (Adoption of) Act makes no provision for revocation, except where the adopted child is legitimated by the marriage of its parents, having been adopted by one of those parents (see S19).

The effects of an Adoption Order are that all rights, duties and obligation of the parent or guardian are extinguished and become vested in the adopter. (See S. 15(1) of the Children (Adoption of) Act. There are no provisions for the revocation of Adoption Orders validly made in the Act except as provided by S19. There is no evidence in this matter of an irregularity of procedure in the adoption hearing. The unique nature of the Adoption Order was alluded to in Re B, (adoption order: jurisdiction to set aside) [1995] 3 All E.R. 333, where Swinton Thomas L.J. said at page 332:

“An Adoption Order has quite a different standing to almost every other order made by the Court: it provides the status of the adopted child and of the adoptive parent. The effect of an adoption order is to extinguish any parental responsibility of the natural parents. Once an adoption order has been made, the adoptive parents stand to one another and the child in precisely the same relationship as if they were his legitimate parents and the child stands in the same relationship to them as to legitimate parents.”

Sandra has testified that she had not gone into Court at the time of the making of the Order. Muriel Spencer testified that Sandra was there, I find on the

evidence that Sandra was in fact present. The Act does not require the consent of the child, although, if she is old enough, as in this case, S. 14(1) (c) requires her wishes must be considered. However where there is a recent report which tells the judge what the child's wishes are, the judge has discretion to accept that report. Having ascertained that the child's wishes remain the same. See Re G (an infant), (1963) 2 Q.B. 73 (C.A.) at page 97.

Sandra's natural mother is not claiming that she did not consent to the Adoption. She is not complaining that she did not understand the nature and the effect of the Adoption Order or that she did not understand that the effect of the Order would be to permanently deprive her of her parental rights (See section 14a). Neither does she contends that the order then made was not for the welfare of the child as prescribed by S14 (b). There is no complaint that Sandra's wishes were not considered by the Court as provided for by S. 14(1) (B).

The evidence of both Claimants of the bonds that existed between Ms. Spencer and the Claimants were such that the Court would have been provided with ample evidence that the application was for the welfare of the child. The Court would have had before it evidence that Sandra was the only child in the household who was not the child of Enid's husband. She did say at this hearing that, at the time, she felt like an outsider and therefore welcomed the opportunity to be adopted by Muriel Spencer. The child's welfare, although very important, is

not the sole consideration. In the Court's views if the adoption was a mere arrangement to facilitate an end, which may be beneficial to the child, but offers no true parent child relationship between the Adopter and child, the Court will decline to make an order. So, for example, in Re A (an infant) where the object of the application was not for the child to become the child of the adopter but was meant to facilitate the child becoming a British citizen, beneficial though that was, the Court refrained from making an Order. See Re A (an infant), (1963) 1 All E. R. 531. There has to be a genuine desire to want the child to become a member of the family. See R (Adoption), (1966) All E.R. 61.

It was open to the Claimants to disclose to the Court at the adoption hearing that they considered as an important condition of the adoption, the ability of Muriel Spencer to facilitate the emigration of Sandra to the United States for the purpose of attending college. Then the Court, if they found that it was just and expedient to do so, could have, pursuant to S14 (2), imposed that as a condition of the Order and could have required Ms. Spencer by bond to make the necessary provision for its implementation. They did not so advise the Court.

Fraudulent Misrepresentation

The promise, even if it was made, and I find that there was no such promise, was not fraudulent. In order to amount to fraud, the statement must be proved to be willfully false or made without any genuine belief that it is true. The Claimants

were unable to assert that Ms. Muriel at the time that the statement was made knew that it was false or without belief in its truthfulness. In fact, both Claimants on cross-examination admitted that Spencer had told them she had been to an emigration lawyer, but was advised that Sandra did not qualify as a result of the age at which she had been adopted. The action of attending on an Attorney-at-Law to facilitate Sandra's emigration, which I find Muriel did, is consistent with her honestly believing that she could have filed for her daughter, and negatives the allegation that the statement was willfully false or made without any genuine belief in its truth.

In Derry v Peek (1886-1890) All E.R Rep 1, the head note reads in part:

"To sustain an action for deceit there must be proof of fraud, and nothing short of that will suffice. Fraud is proved when it is shown that a false representation has been made (I) knowingly, or (II) without belief in its truth, or (III) recklessly, not caring whether it be true or false. To succeed in an action for deceit it is not sufficient to prove that the defendant had no reasonable ground for believing the statement which he made, but at the same time, when a false statement has been made a consideration of the grounds of belief in its truth is an important aid in ascertaining whether the belief was really entertained and whether the author of the statement really believed in the truth of what he stated."

That, to my mind, is sufficient to dispose of this application.

In any event, I have seen no authority for the proposition that the Court has an inherent jurisdiction to set aside an Adoption Order for fraud, where the fraud

does not lead to a breach of the rules of natural justice. Such a situation could arise where a party whose consent is necessary is unaware of the proceedings as a result of a fraudulent misrepresentation.

Because of the fundamental importance of the natural parents' consent, if no notice is given so that the natural parents' consent can be known, then such a breach will be regarded as breach of fundamental proportions that would cause the adoption proceedings to be set aside. It is therefore not a procedural irregularity that has caused the Order to be avoided, but the breach of natural justice resulting from the natural parents being shut out of the proceedings.

In Re B on which Mr. Adedipe relied, Swinton Thomas L.J. at page 338 alludes to this principle and stated that the question whether fraud, where it does not result in a breach of natural justice, can cause the Order to be set aside. The case is therefore not authority for Counsel's submission that Spencer's fraudulent misrepresentation gives the Court an inherent jurisdiction to revoke the Adoption Order.

The Claimants have been aware for many years of the Defendant's inability to sponsor her migration to the United States. In Re B (Supra), the Court distinguished the facts before them from those in Re M (minors) adoption [1991] 1 FLR 458, where the Court found that the consent given by a natural father of the child to have the natural mother and her husband adopt his child was vitiated by

ignorance of his former wife's condition, she being terminally ill with cancer. One of the important reasons why the Court refused to follow Re M was that in Re M the very short period of time that had elapsed between the making of the Adoption Order and the death of the mother, three months only, and the short period between the making of the Order and the application to set it aside, whereas in Re B, the Adoption Order was in July 1959, the application to set it aside was made in 1994.

Simon Brown L.J. said of the period in Re B:

“Had the appellant's mother discovered the nature of the placement and herself appealed within a short time of the order being made, then...it might have succeeded. But today...it is inconceivable that any Court would grant him leave to appeal out of time and discharge the order. Exceptional though this case undoubtedly is and strong though the appellant's grievance more important still is the integrity of the adoption system, its inviolability must be the ultimate imperative.” (Emphasis mine)

The relationship created by the Order has existed for 21 years. They continued to enjoy the benefits that the relationship with the Defendant brought them. It was only when she had her application refused by the United States Embassy, did she seek to have the Order revoke.

They are estopped from so doing.

The application is dismissed. Cost to the Defendant to be agreed or taxed.