

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE THE ADOPTION OF N.I.L.S.,
Minor Child,

and

IN RE THE ADOPTION OF D.D.V. AND A.D.V.,
Minor Children.

Consolidated Cases

SUPREME COURT NOS. CV-06-0012-GA & CV-06-0023-GA
SUPERIOR COURT NOS. 05-0586 & 06-0147

Cite as: 2007 MP 31

Decided December 21, 2007

Stephen J. Nutting, Saipan, Northern Mariana Islands, for Appellants.
Melissa Simms, Assistant Attorney General, Commonwealth Attorney General's Office, for
Appellee.

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; and JOHN A. MANGLONA, Associate Justice

PER CURIAM:

¶ 1 This appeal consolidates two denied adoption petitions, involving three children, that the trial court found were not in the children’s best interest. The trial court also found that the adoptions were circumventing immigration law. Ernest Jackson Strange and Thelma Villamor Strange (collectively “Stranges”), who are attempting to adopt A.D.V. and D.D.V., and Jesus D. Ibarra and Divinia S. Ibarra (collectively “Ibarras”), who are trying to adopt N.I.L.S., appeal the trial court’s adoption denials. The Stranges and the Ibarras maintain that the trial court failed to take into account evidence that the adoptions were in the children’s best interest. Because it improperly relied on evidence not entered into the record, the trial court clearly erred in denying the adoptions. We REVERSE and REMAND to the trial court for further consideration of the factual circumstances surrounding the adoption petitions.

I

The Stranges’ Adoption

¶ 2 The first appeal concerns the Stranges, a married couple, who are United States citizens residing in the Commonwealth. The Stranges petitioned to adopt their niece and nephew, D.D.V. and A.D.V., who came as tourists from the Philippines to the Commonwealth in December 2004. On March 29, 2006, the children’s natural parents, who reside in the Commonwealth, consented to the adoption. Both children currently live with the Stranges in their eight-bedroom house. Ernest Strange testified that the children are treated as members of the immediate family, bonded with the Stranges’ other children, attend school, and receive medical and dental care. As a result, on April 10, 2006, the Attorney General’s Office did not object to the adoption. *See* 8 CMC § 1410(b) (“The Attorney General shall have the right to intervene in any adoption . . .”).

¶ 3 During the adoption hearing, the natural mother testified that she believed her children would have a better future if the Stranges adopted them. The natural mother also expressed concern over the children’s living conditions in the Philippines, although neither she nor the Stranges presented any evidence to demonstrate those conditions. At the adoption hearing, the trial court stated it would not grant the adoption when the natural parents already reside in the Commonwealth because it appeared the children were being adopted solely for an immigration benefit. That is, to be reunited with their natural parents. Consequently, the trial court denied the adoption on the grounds that it was not in the children’s best interest and that adoption law was being used to circumvent immigration law.

The Ibarras’ Adoption

¶ 4 The second appeal concerns the Ibarra, a married couple residing in the Commonwealth. Jesus Ibarra is a Filipino citizen, and Divinia Ibarra is a United States citizen. The Ibarra petitioned to adopt their niece, N.I.L.S., who came from the Philippines to the Commonwealth on a tourist visa in December 2004. N.I.L.S. is living with the Ibarra as a member of their family, and the natural parents in the Philippines consented to the adoption. During the adoption hearing, Divinia Ibarra told the trial court that the child would receive a good education in Saipan. Nevertheless, the trial court rejected the adoption, stating it was not in the child’s best interest to use an adoption to circumvent immigration law. The trial court stated Commonwealth law was not intended for adoptive parents to bring a child into the Commonwealth as a tourist with the intent to raise the child for a year to meet the residency requirement for adoption. The trial court concluded that the Ibarra presented no clear evidence to demonstrate that the adoption was in the child’s best interest. The trial court also examined the applicable law concerning immigration fraud, and ruled that an immigration benefit was the child’s only benefit.

II

¶ 5 The trial court denied the adoptions not only on the best interest of the child standard, but also because it believed the adoptions were circumventing immigration law. The Stranges and the Ibarra contend that the trial court did not properly consider the best interest of the child standard in denying the adoptions. We review the trial court’s denial of an adoption petition on the grounds that an adoption is not in the child’s best interest “under the clearly erroneous standard by determining whether there is any competent evidence in the record to support them.” *In re Marcus S.*, 916 A.2d 225, 227 (Me. 2007); see *In re Sours*, 459 Mich. 624, 633 (1999) (applying the clearly erroneous standard); *Burns v. Burns*, 737 N.W.2d 243, 251 (N.D. 2007) (using the clearly erroneous standard of review).

¶ 6 The Commonwealth Code requires that the trial court determine that an adoption is in the child’s best interest before granting the adoption, but it does not provide a definition of “best interest of the child.” 8 CMC §§ 1401, 1411(c). In determining what is in the child’s best interest, the trial court may consider a variety of factors, including: (1) the fundamental relationship of the child and the natural parents; (2) the interests of the adoptive parents; (3) the child’s age; (4) the extent of the bond or potential bond between each natural parent to the child; (5) the fitness or unfitness of either natural parent, taking into account whether the child was abandoned, neglected, or physically or mentally abused; (6) whether either parent is a habitual user of alcohol or drugs; (7) whether either parent is a convicted felon where the nature of the crime is inconsistent with being a fit parent; (8) the extent of the bond, or potential bond, between the adoptive parents and the child; and (9) the ability of the natural parents and the ability of the

adoptive parents to provide adequate and proper love, care, attention, and guidance to the child. *In re Adoption of Olopai*, 2 NMI 91, 103-04 (1991). “The term ‘best interest of the child’ is sufficiently broad to include all the foregoing considerations.” *Id.* at 104.

¶ 7 However, the Commonwealth Code also places an enormous amount of discretion on the trial court to determine that an adoption is not for the purpose of circumventing Commonwealth law. 8 CMC § 1402. Immigration fraud occurs when a person “adopts another or intentionally induces a person to adopt another for the purpose [of] gaining immigration benefits by either the person to be adopted or the person to adopt, under either Commonwealth or United States law.” *Id.* § 1420(c). Under 8 CMC § 1402, any resident under eighteen years old may be adopted if the trial court is satisfied that the adoption is not for the purpose of circumventing the laws of the Commonwealth or the laws of the United States. “Resident” means any individual who is physically present and living in the Commonwealth for at least one year prior to the filing of the adoption petition. *Id.* § 1401(i). The trial court heard testimony that all three children arrived in the Commonwealth in 2004 as tourists. Thus, the children are considered residents and meet the Commonwealth’s basic adoption requirements.

¶ 8 The trial court explained that all three children gained entry into the Commonwealth on tourist visas in order to use the adoption process as a way to circumvent immigration law through a process called a “sham” adoption. The trial court outlined the typical sham adoption and immigration fraud that occur in the Commonwealth. A minor arrives in the Commonwealth as a tourist with the intent to file an adoption petition a year later. A relative, who is a United States citizen, married to a United States citizen, or is a long-term resident, then petitions to adopt the minor. During the year, the minor’s parents usually obtain work in the Commonwealth and continue living with their “visiting” children. The record before us, however, does not contain evidence of the trial court’s outlined description of the sham adoption process. The trial court may be correct in its assumption that sham adoptions are taking place in the instant case. Nevertheless, it was under this assumption that the trial court based its ruling rather than the evidence presented under *Olopai*.

¶ 9 Yet, that is not to say there is no evidence that the families tried to evade immigration law. The Stranges seek to adopt children who arrived in the Commonwealth as tourists in 2004. Both children live with the Stranges, but the children’s natural parents either live in the same household as the Stranges or live nearby. It is unclear from the record where the natural parents live. Based on the record, we do not know whether the natural parents would, in actuality, give up any rights to their children, or if the Stranges would, in fact, be adopting the children. As for the Ibarra, they seek to adopt a child who entered the Commonwealth as a tourist in 2004. A

troubling exchange took place between the trial court and Divinia Ibarra. The court asked Divinia Ibarra:

Q: May I ask you Mrs. Ibarra, [N.I.L.S.] came over here in December 2004?

A: Yes.

Q: Okay. And when she entered the [Commonwealth], she entered as a tourist?

A: Yes.

. . . .

Q: [W]as the main purpose to bring [N.I.L.S.] here so she could stay here and you [could] adopt her? Was that your reason for bringing her over here?

A: Yes, so I could have a daughter and I could adopt her.

Appellants' Excerpts of Record ("ER"), Ex. B at 6.

¶ 10 Based on this evidence, it appears the trial court's assumption about evading immigration law might have some basis in both cases. A cautious view toward relative adoptions is needed, especially if the natural parents continue to reside in the same household with the child after adoption. We must also proceed tentatively in granting adoption petitions of children who enter the Commonwealth as tourists and remain for the sole purpose of being adopted. Depending on how long the children were permitted to remain in the Commonwealth pursuant to their tourist visas, the children should not be able to gain the benefit of an adoption when they violated immigration law in remaining past their visa's expiration. The trial court must develop the record and determine the children's immigration status before ruling that adoption is not in the children's best interest. Children entering and remaining in the Commonwealth on tourist visas, and then being adopted in order to avoid immigration law, cannot be permitted to occur under the Commonwealth's adoption law.

¶ 11 The trial court has guidelines in place to distinguish between legitimate and illegitimate adoptions. Under the Commonwealth Code, the trial court may continue the "hearing from time to time to permit further observation, investigation, or consideration of any facts or circumstances affecting the granting of the petition." 8 CMC § 1411(b). The trial court has the authority to order an appropriate investigation under 8 CMC § 1410(d). Further, the trial court may order the Department of Youth Services to perform a home study, or to order any other person or agency to conduct an investigation.¹ *Id.* § 1410(c). The trial court may also grant an interlocutory adoption

¹ The Stranges and the Ibarras correctly note that the petitioners must pay for such home studies or investigations under 8 CMC § 1410(f).

for “further observation, investigation and further report on the adoptive home during the interlocutory period” for up to an additional year. *Id.* § 1411(c)(2).

¶ 12 Commonwealth law, therefore, provides the trial court with a number of methods to ensure that adoptions are legitimate and not used to circumvent immigration law. In any event, the trial court did not make use of these methods. Instead, in denying the adoptions, the trial court held that they were both illegitimate and not in the children’s best interest, but failed to mention any facts in the record that supported such a conclusion. We determine that the prudent course of action, based on the record presented, is to remand to the trial court for further consideration of the circumstances surrounding the adoptions. After making a proper inquiry under *Olopai*,² if the trial court continues to question the legitimacy of the adoptions, the trial court should utilize the methods prescribed by law noted above.³

III

¶ 13 For the foregoing reasons we REVERSE the trial court and REMAND for further proceedings consistent with this opinion.⁴

Concurring:

Demapan, C.J., Castro, J., Manglona, J.

² We note that, unlike *Olopai*, no one is fighting over who should be the children’s legal parents because the natural parents consent to the adoptions. There is, therefore, no need to prove that the natural parents are unfit under *Olopai*.

³ Of particular importance to the integrity of justice in the Commonwealth are the trial court’s comments during the adoption hearings. A trial court may not make judicial determinations based solely on race, alienage, nationality, ethnicity, or place of origin. *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 24. While a passing reference to a defendant’s nationality is not improper, if there is a sufficient risk that a reasonable observer might infer bias from the trial court, then those remarks do not satisfy the “appearance of justice.” *Id.* (citation omitted). Here, the trial court stated that, it was not going to “approve adoptions with nieces and nephews because there[] [are] millions of them all over in the Philippines who can get a better education here. . . . [T]his has been a giant loophole to bring over as many kids from the Philippines as possible with their parents being here” ER, Ex. A at 15. The trial court continued, “picture all the Filipinos here, every single one of them has got [sic] five nieces and nephews, back in the Philippines, who would quote ‘be better off here.’ So all you have to do [is], get married to an Americano, beg him, and he’ll adopt them.” *Id.* at 15. The trial court’s language does not meet the reasonable observer’s appearance of justice. We are confident that the trial court will satisfy the appearance of justice on remand.

⁴ Pursuant to 8 CMC § 1410(b), the “Attorney General shall have the right to intervene in any adoption; such intervention right shall be for the sole purpose of ensuring that the proceeding will not be used to circumvent or evade the immigration laws of the Commonwealth.” Although the Attorney General was made aware of the adoptions at issue, and initially issued letters withholding any objections, upon further review, the Attorney General chose to become a party to this action. While it is within Commonwealth law to afford the Attorney General the opportunity to review pending adoptions to preclude possible immigration fraud, it is the trial court’s duty to review the evidence and ultimately make the decision based on the law and facts. The Court is concerned that the Attorney General is blankly granting adoptions without giving them proper review, which appears to have initially occurred here.