[2022] JMSC Civ. 190

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2020CV00864**

**IN THE MATTER of the Children (Guardianship and Custody) Act**

**AND**

**IN THE MATTER of an application by S to be appointed Legal Guardianship and custody of a minor JDR**

**Re: Legal guardianship of JDR**

**IN CHAMBERS**

**Yualande Christopher, instructed by Yualande Christopher and Associates, for the applicant**

**Charles Young, instructed by the Child Protection and Family Services Agency for the Child Protection and Family Services Agency**

**Heard: October 4 and 7, 2022**

**Application for guardianship order – Applicant who is a close blood relative of the relevant child – Applicant resides overseas – Child's biological mother purportedly**

**gives consent to said order – Importance of informed consent – Need for independent assessment of members of applicant's household – Applicant is married and presently has two sons– Applicant has changed her address with no suitable evidence of present living conditions need for independent assessment to be done as regards applicant's present living conditions – Ward of court – Child in respect of whom a guardianship order is sought is a ward of the court as soon as application for guardianship is filed - Court's role in respect of a ward of court - Bond with child and parent – Best interests of the child**

**ANDERSON, K. J**

**BACKGROUND**

**[1]** This matter is a fixed date claim form proceeding wherein the applicant, whom I will interchangeably throughout these reasons, describe as either, '*the applicant'* or as '*S'*, is seeking that this court appoints her as the guardian of the child with initials 'JDR' whom I will describe hereafter, as either, '*JDR'* or, '*the relevant child.'*

**[2]** The fixed date claim form has been supported by several affidavits, included amongst which, is an affidavit that was deponed to, by the relevant child's mother.

**[3]** The relevant child was born on June 14, 2011, which means that she is now eleven (11) years old.

**[4]** The applicant's fixed date claim form was filed on March 6, 2020. The same was served on July 7, 2020 on the Child Protection and Family Services Agency ('*CPFSA'*) pursuant to an order of this court, that same be done.

**Supporting evidence**

**[5]** The relevant child is currently resident in Jamaica, with her paternal grandmother and there is no dispute that her paternal grandmother is very ill, on a constant

basis, due to several medical conditions amongst which are: diabetes, peripheral neuropathy and hypertension.

**[6]** The relevant child's paternal grandmother, has given to this court, sworn evidence, in the form of an affidavit, as to same. In that affidavit, which was sworn. In that affidavit, which was sworn to on April 28, 2022, she has deponed that she was then, 77 years of age. According to her evidence, JDR was, at the date when her affidavit evidence was sworn, then enrolled at Albion Primary School, in the parish of Manchester, but was not doing well there, as she has fallen behind, in both her academics and in her social life. The child's paternal grandmother has testified also, that she struggles to cook for JDR and to do her laundry and to keep her clean, daily, as those activities are strenuous and aggravate her medical condition. In the circumstances, it is her testimony that she has no hesitation in recommending that the applicant, be appointed as the guardian of JDR.

**[7]** The applicant is in fact, related by blood, to the relevant child. She is her sister. The applicant and the relevant child have the same father. The applicant has given evidence that she was, at least up until the time when her affidavit was deponed to, employed as an executive assistant at Facebook's headquarters in California United State of America (USA) and that as at the time of her most recently deponed to, affidavit evidence for the purposes of this claim, was then *'residing at Mount Vernon Street, Lemon Grove, California, USA.'*

**[8]** The relevant child's father is now deceased. The evidence has disclosed that he passed away on October 24, 2018. At present, though to the best of this court's knowledge, the relevant child's mother, is still alive. She, '*the mother'* has explicitly stated in her evidence that she, gives her, '*full and unconditional agreement,*' to the applicant being appointed as JDR's guardian, as the applicant already performs that role and '*from all indications, is the best arrangement for JDR in all the circumstances.'*

**[9]** I must state at this stage though, that there clearly existed, on the part of JDR's mother, at least at the date when she swore to the single affidavit of hers, that being: April 28, 2022, a significant misunderstanding on her part, as regards what is intended to happen with respect to JDR, in the event that this court does in fact, as applied for, appoint the applicant, as the relevant child's guardian. I will address that aspect, in some detail, further on.

**[10]** Before doing so though, I must state that it is clear from the evidence given by the applicant herself, that if the guardianship order is made, in her favour, as regards JDR, it is intended to have JDR live with the applicant and her husband, at their residential address in California, USA. The applicant has specifically so deponed in paragraph 6 of her affidavit which was deponed to, on November 23, 2019 and filed on March 18, 2020. That was reiterated in paragraph 10 of that same affidavit of hers. In the said paragraph 6, of the said affidavit, the applicant went on to describe the home in which she was then living. In that affidavit at the said paragraph 6, she also then deponed that she had been married for 8 years and has two sons. In her first affidavit, her marriage certificate has been exhibited. She also went on, in that paragraph of that affidavit of hers, to describe the area in which she then lived and specified that she was then living in a town home community and that her home has the usual, modern conveniences and that JDR '*would have her own room.*' According to the applicant's evidence, her husband, who I will merely describe as, '*Mr. T'* for the purposes of these reasons, agrees with JDR, '*living with us and is fully supporting this application.'*

**Change of address**

**[11]** It was though, quite rightfully pointed out to me, as the presiding judge of this court, on October 4, 2022 - when this matter came before this court for hearing, that by then, the applicant's residential address had changed. That was pointed out to me by the applicant's counsel. In her second affidavit which was deponed to on May 3, 2022 and filed on May 6, 2022. The address as specified earlier in these reasons, is specified as being the applicant's, '*place of abode*.'

**[12]** Regrettably, there exists no affidavit evidence from the applicant whatsoever, as regards the particular circumstances surrounding her changed place of abode or, in other words, her changed place of residence and there is no evidence at all, as to even a description of the applicant's changed place of residence. That lack of evidence, is to my mind significant and a court placed in that present context, should not disregard same.

**Independent evidence re the applicant's husband**

**[13]** Regrettably also, there is no evidence from any independent person, or agency, of government - whether in Jamaica or in the United States of America, addressing and assessing and perhaps even going as far as to make recommendation to this court, as to the suitability or otherwise, of Mr. T, to frequently be in close contact with JDR and to act in the capacity of a parent of JDR. Undoubtedly, that is what this court will be expecting of him, in a circumstance such as this, if the guardianship order that has been applied for, is made. This court cannot properly and should not make the order as sought, in the absence of such evidence.

**CPFSA's request for an adjournment**

**[14]** The CPFSA has, through one of its attorneys who was present at the last hearing, which was presided over by me, urged me to make an order permitting the CPFSA to communicate with the relevant child, as well as her grandmother with a view to enabling them to make a recommendation to this court, as to whether, after having done that, no doubt considered what may be revealed to that agency, during such communications, within the context of all of the other evidence that already exists in respect of this claim, the guardianship order as sought should, or should not be made and no doubt explaining why that agency has reached that conclusion.

**[15]** I must state that it is regrettable that no such communications were held, or even, it seems, attempted to be held by the CPFSA. The CPFSA did not need to wait on a court order, in order to have attempted to, and if possible, actually engaged in such communications, although I have no doubt that had they requested through

this court, for an order as to same, to have been made, that almost certainly, such an order would have been made. That no doubt was the very reason why Her Ladyship, Y. Brown, J. from as long ago as June 30, 2020, ordered that the fixed date claim form, and all accompanying documents were to be served on the CPFSA. The CPFSA has a statutory mandate to ensure that our nation's children are protected, within the context of careful consideration of children's best interests. In order to properly fulfil that significant role and awesome responsibility, they must act, proactively. I do understand that the said agency has resource limitations. In fact, that was emphasised to me, by counsel for the CPFSA, during the last court hearing of this matter. That is true, I suspect, also, for nearly every government agency, not only in Jamaica, but likely even throughout most of the world. That though, can hardly be a good reason why during the approximately two years between when they were first served with the claim documents and other documents pertaining to this claim, thereafter, such communications were not even, it seems, attempted much less, actually carried out, nor am I aware of there having been, any effort to have this court make an order permitting any of same, to be done. To my mind, that is simply inescapable in any sound way, especially bearing in mind, the CPFSA's statutory mandate.

**[16]** That having been stated though, just as with respect to the other deficiencies in the evidence that exists before this court, at this time and even though this matter last was listed before this court, as an adjourned 1st hearing date for this claim, if I am of the view that an adjournment is necessary in order to best facilitate such evidence, being brought before this court, within a reasonable time thereafter, then I should grant and will grant same, provided that a request for same was made, to be granted.

**[17]** That should not though, be taken as this court giving its approval, either in this case, much less, any other, to there being endless adjournments granted, in order to permit additional evidence to be brought before the court, upon an application such as this, or for example, an application related to the custody of a child. Each

particular case must be considered on its own particular facts and within its own, particular context, in that regard.

**[18]** For reasons which will soon become apparent though, I am of the considered view, that no such adjournment to facilitate the giving of any such, presently lacking evidence, or to permit the making of any recommendation, by any government agency, ought to be granted and therefore, the same will not be granted.

**Character reference**

**[19]** Before going on to address those reasons though, this court must state that, following upon there having been an order of this court, that character references for the applicant be obtained and provided to this court, in respect of this claim and that three of same, were to have been provided, the applicant notably, went further than that which had been required of her by the court, in that regard. She has provided to this court, character references for herself, from four persons. Those references serve to paint nothing other than a glowing picture of the applicant's suitability and eminent capability to be a very willing, competent and suitable guardian of the relevant child. At present, I have no reason to doubt that such is likely so.

**[20]** That though, is not enough for the purposes of an application such as this, in respect of which, it is the applicant that bears the burden and the standard of proof on a balance of probabilities. The court would have needed the additional evidence and the recommendation(s), as referred to earlier. For present purposes though, I would reiterate that I do not believe that any such further evidence or recommendation(s) will be necessary, or actually, useful. That is because of the state of Jamaica's law, surrounding an application such as this, in particular, how the law is to be interpreted and applied by this court. I must therefore address that and will shortly go on to do so.

**Effect of guardianship order**

**[21]** Before doing so though, I will now address what I had earlier described as a misunderstanding, which it is apparent on the evidence that is now before the court that the only parent of JDR, who is now alive, that being JDR's mother, as regards what ought to be accepted by both this court and her, as the relevant child's presently only living parent, as being the effect of any guardianship order that may be made by this court, with respect to JDR and in favour of the applicant, for her to be appointed as the guardian of JDR.

**[22]** It is clear in that regard that if this court makes the guardianship order as sought, the applicant and JDR, along with the applicant's husband and possibly also, her two children will all be expected to be living together on a premises which is situated in California, USA. The applicant is a person who was born in the United States of America. A birth certificate for her has been exhibited as evidence, which discloses that the applicant's place of birth is, according to that birth certificate. '*Springfield MA.'* This court has deduced therefore that the applicant's place of birth is Springfield, Massachusetts, in the United States of America. Accordingly, no doubt she is, it is to be reasonably deduced, based on the proven evidence entitled to live and work in the United States for as long as a period as she may choose, depending also of course on any law that may limit the working age of particular categories of workers. The applicant is not an immigrant of the United States of America, living and working there under specifically prescribed circumstances. For the record, it should also be noted at this stage that, that the applicant's birth certificate has disclosed to this court is that the applicant was born in 1988, on May 29. She is therefore now, thirty-four (34) years of age.

**[23]** Whilst there is no doubt in this court's mind at present that the applicant intends, if successful in obtaining the guardianship order which she has sought, to live with the relevant child at the applicant's current place of abode, in the USA, there is equally no doubt in this court's mind at present, that the relevant child's mother does not presently, at the very least, or certainly did not, at the time when she

deponed to her affidavit evidence in respect of this claim, recognize that the effect of a guardianship order being made as sought, will be that in all likelihood, not long thereafter, JDR will be expected to be living with the applicant and going to school in the USA.

**[24]** Why have I so concluded? This is undoubtedly, an important question that must now be answered and I will therefore do so, by referring specifically to what has be deponed to, by the child's mother, particularly in paragraphs 4 and 5 of her affidavit. For the purposes of this ruling, I will replace reference in those paragraphs to the first name of the child who would be the primary subject of any guardianship order made in respect of her, with that child's initials: JDR. I must also state that the reference to 'her' in those paragraphs, have been understood by this court, as being references to JDR. The references to S are references to the relevant child's sister. I have only used the first letter of her first name so as to maintain her privacy and the privacy of the relevant child. I will highlight in bold only for emphasis, the most significant portion which is in fact, set out in paragraph 5 of that affidavit of hers, which makes the apparent misunderstanding of JDR's mother, apparent. Those paragraphs are set out immediately below:

> *'4. Both S and JDR's grandmother Daphne have been acting as her guardian for a number of years, while I have been absent. I am told and verily believe that they arrange for her attendance at school and are responsible for her day-to-day care. S, who lives overseas, maintains her and pays for all her reasonable needs and wants and my grandmother and other relatives help with the day-to-day care, as she lives with her**. I understand that if S is appointed guardian JDR will visit her in her home country - The United States of America and I have no issue with that. (Highlighted for emphasis)***
>
> *5. Despite my wish for it to be otherwise, I am unable to care for JDR, as I do not have the income, the means, to keep and care for her. I am generally not around to be involved in her life and cannot be at this time.'*

**Informed consent**

**[25]** Whilst the reasons proffered to this court by the relevant child's mother, as to why she wishes for the guardianship order which has been applied for, to be made, are perfectly understandable and even reasonable within the context of her life either now or at the time she deponed to that affidavit evidence of hers, which was April

28, 2022, it is nonetheless apparent to this court, that her consent to the proposed guardianship order is, at least in significant part, based upon a significant misunderstanding, which is that she believes that if the guardianship order is made, JDR will only visit the applicant in the USA. That though, is not and has never been, as far as this court has been able to discern from the proven facts, what has ever been intended for JDR to do, in the event that this application for guardianship is successful. In turn therefore, that must serve to cast doubt as to whether JDR's mother can properly be taken by this court as having consented to the making of the particular order of this court which is now being earnestly sought by the applicant. If one does not have a full understanding of that which is being suggested as something which one has agreed to, can it properly be said that one has agreed to same, this moreover in a context such as the present one, wherein there is no evidence presented to this court, which is even remotely capable of suggesting that JDR's mother, ever obtained independent legal advice about that which she was purportedly agreeing to, before she purportedly agreed to same? I think not and I do not think that the citation of any case law as regards that conclusion of mine, is necessary, since to my mind, the ultimate logic of it, is inescapable and it is not merely a novel, inexplicable conclusion on my part.

**Interaction with other children**

**[26]** There is one other important aspect of this present claim/application which must be addressed before moving on to address the state of Jamaica's law as regards an application such as this one, in its present context. It is that the applicant has disclosed that she has two children, who are it seems, her biological children. She has described them in her first affidavit, which was deponed to, on November 23, 2019. According to her evidence in this respect, which this court has accepted as being true and accurate, those sons of hers were then respectively, aged seven (7) and three (3) years old.

**[27]** There is no evidence though, as to whether any of those sons of hers, has ever even so much as met JDR at any prior time and if so, what was then the state of

how they interacted towards her, either individually, or collectively. If they have never met her, then this court will need to know, even more so how they would feel about JDR coming to the USA, to live with them in their house where they are expected to be living. Quite frankly, whether the said children had ever met JDR, or not, at any time, prior to now, this would not have only wanted but in all likelihood, needed to know how they would likely react, if JDR were to hereafter go to the USA and begin to live with them, there. That should have been assessed by an independent agency and a recommendation made to this court.

**[28]** Children's views and perspectives matter and as a general rule at least, provided that those children are sufficiently old enough to be able to express those views and/or perspectives, the same not only can but should be taken into account by a court, with respect to an application such as the present. To my mind, in the present context, that is even more important, bearing in mind the lack of other important evidence, as earlier referred to. It must be borne in mind that if those sons of the applicant who are now approximately aged six and ten years old respectively are not comfortable with JDR and/or may not be reasonably able to properly interact with her, given JDR's possible social dysfunctionalities to which reference has been made in affidavit evidence that has been placed before this court, then it may very well not be in JDR's best interest, to have her placed, particular as now seems to be likely, if the guardianship order as sought is made, for a long term, time period, to live at a place where those boys who are sons of the applicant will also then, it seems, as a matter of reasonable inference, likely, also then be living.

**[29]** That is why I am of the considered opinion that for the purposes of an application such as this, it is necessary to have an independent assessment done, by a suitably experienced and trained person, who is independent from the applicant and who is employed by a government agency, this as distinct from a person whose services in that regard are hired, and to be paid for by the applicant and whose services are to be carried out solely in accordance with the applicant's instructions. That latter-mentioned scenario would not have been acceptable or

useful for present purposes, whereas the former-mentioned scenario, had it occurred, would have been particularly useful in enabling this court to decide on this very important adjudication, upon this application/ claim which I will shortly announce. The absence of that evidence therefore, is of necessity, also damaging to the applicant's prospect of success, as regards this claim/application.

**The state of the law in Jamaica as regards an application such as this one**

**[30]** The relevant law for present purposes has to my mind, lucidly been set out and expounded upon, by the Court of Appeal of Jamaica, in the case of **B and C v The Children's Advocate [2016] JMCA Civ 48.** Brooks JA (as he then was) wrote that judgment and the other members of the Court of Appeal's three-member, judicial panel namely: Sinclair-Haynes JA and P. Williams JA (Ag.) agreed completely with that written judgment.

**[31]** That particular judgment has been utilized by justices of this court, in two cases, namely: **R and M v The Children's Advaovate [2019] JMSC Civ 156** and **In the matter of an application by 'S' for an appointment of guardianship for a minor 'F' [2016] JMSC Civ 193.**

**The Children (Guardianship and Custody) Act**

**[32]** In the Court of Appeal's judgment, it has been made clear firstly, that the relevant legal provisions for present purposes, have been set out in **the Children (Guardianship and Custody) Act.** The present claim, it should be noted, is filed, pursuant to the provisions of that Act. Specific references will be made herein. At paragraph 19 of the Court of Appeal's judgment in that case though, it was made clear that the Supreme Court actually has an inherent jurisdiction to appoint and remove guardians for children. At paragraph 30 of that judgment, the following has been stated, in reference to that inherent jurisdiction and the presently existing statutory one, which arise under the provision of the **Children (Guardianship and Custody) Act**, (hereinafter referred to as, **'the *CGCA'*)**

> *'[30] Against the background of that jurisdiction, inherited from the Court of Chancery, Parliament introduced, in 1957, legislation which specifically treated with the guardianship and custody of children. That legislation, the Children (Guardianship and Custody) Act (hereinafter referred to as "the CGCA"), expressly allows, in section 4, biological parents to appoint a testamentary guardian. Sections 3 and 4(4) of the Act also allow the court, where one of the biological parents has died, to appoint a guardian to act along with, or in place of, the surviving biological parent.'*

**[33]** The applicant is therefore relying in particular, on **sections 3 and 4(4) of the CGCA,** in support of this claim, in that one of JDR's parents has died and it is sought to have S be appointed as the sole guardian of JDR, in place of her surviving biological parent, who is JDR's mother. The power of the court to remove even an appointed guardian of a child, from that appointed role is, it should be noted, set out in **section 8 of the CGCA.**

**[34]** The **CGCA** as Brooks JA (as he then was) helpfully stated in that judgment, does not affect the inherent jurisdiction of the Supreme Court as regards the appointment and removal of guardians for children. The wording of **section 20 the CGCA** makes that clear. That section reads as follows:

> *'Nothing in this Act contained shall restrict or affect the jurisdiction of the Supreme Court to appoint or remove guardians.'*

**[35]** At paragraph 33 of the Court of Appeal's judgment, the following has been stated:

> *'[33] It is apparent, from the above analysis, that the inherent jurisdiction of the court is relevant in a case where a child has living biological parents, but there is a need, for whatever reason, to appoint a guardian for that child. The Supreme Court, in exercising either its inherent or statutory jurisdiction, is entitled to make a decision concerning the person who is best able to take care of the child. It is to be noted that section 18 of the CGCA stipulates that, in contemplating that decision, it is the welfare of the child that should be paramount.'*

**[36]** After having carefully analysed various cases in England, that address this area of the law, which will serve to guide Jamaica's courts as to how to do same, the Court of Appeal stated in that judgment as follows at paragraph 41:

> *'[41] Based on that learning, it is permissible for the court, even during the lifetime of the biological parents, to award guardianship of a child to a person who is not a biological parent of that child. It seems, however, that it is only in extreme circumstances that the court will exercise that discretion.'*

**[37]** The dominant matter for the consideration of this court in respect of a claim such as this, is the welfare of the child. Such though, cannot be measured only either by physical comfort or money, or a combination of those two factors. As was specified by Lindley LJ in **Re McGrath (Infants) (1893) 1 Ch 143 at 148:**

> *'The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded.'*

**Bond with parent and child**

**[38]** There are several decided cases which stress the court's recognition of the bond between the parent and child and the reluctance to interfere with that bond. That bond has often been considered to be an important factor in securing the best interests of the child. See: **Ex parte Mountfort (1809) 33 ER 822; and De Manneville v De Manneville (1804) 32 ER 762.**

**[39]** In the present case though, this court has recognized that, based upon the evidence of the mother of JDR, no such bond exists, as between herself and JDR. Effectively she has left all aspects of the custody, care and control and financial and emotional support of JDR, to either JDR's paternal grandmother, or to the applicant, or to both of them, acting jointly.

**[40]** Accordingly, this court does not consider the factor of the customary bond as between child and biological parent in particular, as being a factor which can negatively impinge upon the applicant's chances for success, with respect to this claim, and has therefore not considered same as being a factor which impinges negatively upon the applicant's claim.

**Ward of court – Application for guardianship**

**[41]** Upon the moment of the filing of a claim such as this, it is important to note that the relevant child becomes, '*a ward of the court.*' That means that a person under the care of a guardian appointed by the court, if the term 'ward of court' is being used in its proper sense. For present purposes though and in a context such as

this, as was explained by the Lord Chancellor in **Johnstone v Beattie [1843] 8 ER 657:**

> *'The moment the bill is filed, the Court becomes guardian of the infant, before any inquiry; and the Master, to whom the Court refers the inquiries, is the deputy of the Court. No one can in the meantime take the, infant out of the jurisdiction without leave of the Court.'*

**[42]** In the text: **A Treatise on the Law and Practice 4th ed. (1926)** at page 165 the following is stated:

> *'The term "Ward of Court" properly means a person under the care of a guardian appointed by the Court, but the term has been extended to infants who are brought under the authority of the Court by an application to it on their behalf, though no guardian is appointed by the Court. As a general rule, the Court considers it for the benefit of the infant to be made a ward of Court.'*

**[43]** At paragraph 61 of the Court of Appeal's judgment, the following is stated:

> *'[61] Based on the above analysis, the principle to be extracted from those authorities, for these purposes, is that the filing of an application for a grant of an order for guardianship, whether it be by claim form or fixed date claim form, in this jurisdiction will result in the child being made a ward of court. The court may, if it decides to refuse the application, release the child from its jurisdiction as its ward. The appointment of a guardian, would mean that the child remains a ward of court until the child either attains majority, or until further order of the court. The guardian, upon appointment as such, becomes an officer of the court, for the purposes set out in the appointment.'*

**[44]** Two aspects of the result of the status of wardship, have been mentioned in the case - **In re N (Infants) [1967] 1 Ch 512 at 530,** per Stamp J, wherein it is reported that he stated that:

> *'… the effect of the infant becoming a ward of court was that he or she could not be taken out of the jurisdiction without the leave of the court and could not marry without the leave of the court…'*

**[45]** That now brings these reasons to a point where, I can now readily explain why it is, that as a matter of law, the present application to my mind, is utterly, precluded from succeeding. That is so, to my mind, because it is intended, if the relevant guardianship order is granted, for JDR to permanently reside overseas, rather than to merely go overseas, and return to Jamaica, without much delay, after having left Jamaica. A ward of this court, which is a court that is, of course, not only, based

in Jamaica, but which does not have extra-territorial jurisdiction, or in other words, jurisdiction outside of Jamaica's territorial land and sea boundaries, must always remain in a position where that ward's general welfare can be effectively supervised by the court and furthermore, if this court makes any subsequent order regarding its ward, it should readily be in a position wherein it can effectively, not only, monitor, in order to help ensure that there is compliance with that order, but also, in the circumstances wherein there may have been or there is deemed to have been any non-compliance with that order, that court must then be in a position to readily be able to invoke its jurisdiction, in order not to only determine whether there has been non-compliance with its order(s), regarding the ward of the court, but also, if it is determined that there has been such non-compliance and it is appropriate legally to do so, this court should then be able to bring the relevant child's appointed guardian who is an officer of the court, before it and commit him or her to prison, for contempt, or alternatively, impose a fine on that guardian/officer of the court, arising from the said contempt of court.

**[46]** This court will not be able to take any of those steps or implement any of those measures which are part and parcel of its jurisdiction in Jamaica, in respect of a United States national, who is expected to remain a permanent resident, overseas. Even if that guardianship expressly informed the court whether under oath or otherwise, that he or she is willing to permit this court to exercise such jurisdiction, that will not at all be sufficient to invest this court with such jurisdiction. In addition, this court will have no satisfactory capability to constantly monitor the expected carrying out by the guardian of his or her functions, as an officer of the court, in respect of the ward of court.

**[47]** As has been stated in **Johnstone v Beattie [1843] 8 ER 657 at 674** by the Lord Chancellor:

> *'… upon the institution of a suit of this description, the plaintiff, the infant, became a ward of the Court, became such ward by the very fact of the institution of the suit; and being a ward of the Court, it was the duty of the Court to provide for the care and protection of the infant; and as the Court cannot itself personally superintend the infant, it appoints a guardian, who is an officer of the Court, for the purpose of*

*doing that on behalf of the Court, and as the representative of the Court, which the Court cannot do itself personally…'*

**[48]** In the matter at hand if the application is granted, both the ward of the court being JDR and the applicant will be permanently resident, at least for the foreseeable future, in California, USA. Even therefore, if this court were to make an order thereafter, which impinges upon the guardianship order which it then would have earlier made and that order is served on the applicant, how can the applicant be compelled to comply with same? In such a circumstance, this court's order could not serve to compel the applicant to do so, or not to do anything, because that order has no effect outside of Jamaica.

**[49]** In the circumstances the application is denied and this court's orders which will be set out below, will reflect that. In addition, therefore this court will declare that JDR is no longer to be considered a ward of this court.

**The way forward**

**[50]** A way forward for the applicant with respect to JDR does to my mind, in fact exist and it is not one which necessitates that the present state of affairs between them and the relevant child's paternal grandmother, should remain for longer than another year.

**[51]** It was the submission of the counsel for the CPFSA that the applicant should have applied for adoption of the relevant child, in which event, as he has pointed out, to this court, the relevant child having already been identified, that process enabling adoption of JDR by the applicant, can be expected to take effect, in less than a year. Of course though, in that regard, it should be noted that all of the existing evidence along with more, which has been referred to in these reasons, but which is not now before this court, will to my mind, likely be considered by any judge of this court, as being necessary as to enable this court, to best decide as to whether the applicant should or should not be permitted to adopt the relevant child.

**[52]** This court does not typically make law. Rather, it is though, expected to apply the law, whilst concomitantly, appropriately exercising any judicial discretion that it may possess, in any particular circumstance.

**[53]** In the circumstances, the result of the present application is one which, accords with the rule of law, even though that result at least, at first glance and at least viscerally, also, appears to be unfair to both the applicant and of course, the person is who most significant in all of this- that being the applicant. It is though, quite the contrary. It is in fact, a result which accords with the best interests of the relevant child's welfare.

**DISPOSITION**

**[54]** In light of the court's reasons above, the orders are as follows:

(1) The reliefs as sought in this fixed fate claim form are denied.

(2) It is declared that JDR is no longer a ward of this court.

(3) There is no order as to costs.

(4) The law firm Yualande Christopher and Associates shall file and serve this order and shall serve same on the CPFSA.

*.....*

**Hon. K. Anderson, J**