NOT TO BE PUBLISHED WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY OF ATLANTIC
DOCKET NO. FA-01-0058-16

IN THE MATTER OF AN ADOPTION
OF W.S. BY S.S.

_____

APPROVED FOR PUBLICATION

February 25, 2022

COMMITTEE ON OPINIONS

Decided: December 21, 2020

Claire Swift, for petitioner S.S. (Swift Law Firm, LLC, attorneys).

Jeffrey DeChristoferro, for petitioner W.S. (Camden Center for Law and Social Justice, attorneys).

MENDEZ, A.J.S.C.

In this matter, the court considers an application by Petitioner, S.S., seeking to amend the final Judgment of Adoption entered by this court on December 21, 2016, to establish that the adoption was in compliance with the Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption (Hague Adoption Convention), May 29, 1993, 32 I.L.M. 1134, an international treaty between convention member countries intended to safeguard intercountry adoptions, codified by the Intercountry Adoption Act of 2000, 42 U.S.C. §§ 14901-14954 and the Federal Immigration and Nationality Act, 8 U.S.C. §§ 1101-1537.

W.S. was born in Mexico on April 28, 2001 and moved to the United States when she was age eight. Petitioner, S.S., is the maternal uncle of W.S. The credible evidence at the adoption hearing disclosed that W.S.'s biological mother suffers from substantial medical issues, rendering her incapable of effectively caring for W.S. On December 24, 2012, S.S. was awarded kinship legal guardianship of W.S. and, thereafter, S.S. filed for adoption. W.S.'s mother consented to the adoption, and the court found that S.S.'s biological father had abandoned her and had never been involved in her life. A Judgment of Adoption was entered on December 21, 2016.

At the adoption hearing, W.S. testified that she had resided in the United States since 2008 and had been in the care of S.S. since 2012. At the time of the adoption hearing, W.S. was age fifteen, and was a New Jersey high school student. She has since graduated high school, is presently age nineteen, and is a student at Stockton University in Galloway, New Jersey. W.S. currently resides in Mexico, taking online classes at Stockton in accordance with the Center for Disease Control (CDC) guidelines related to the COVID-19 pandemic.

Although W.S. was adopted in accordance with New Jersey laws governing the adoption of a child, based on advice from her immigration attorney, W.S. returned to Mexico when she attained age eighteen to avoid

further complication of her immigration status. Under the Hague Adoption Convention, if an adoption does not comply with its procedural requirements, the child's unlawful presence in the United States begins at age eighteen. S.S. applied for an adjustment of W.S.'s immigration status to allow W.S. to return to the United States and, on April 15, 2020, the United States Citizenship and Immigration Services (USCIS) sent him a notice of intent to deny the application on the basis that when the adoption was granted in 2016, it was procedurally deficient for failure to comply with the requirements of the Hague Adoption Convention. Specifically, the notice advised that a child from a signatory country who resides in the United States is generally deemed to be a habitual resident in their country of origin, which is generally considered their country of citizenship. The applicable Code of Federal Regulation, 8 CFR 204.303, entitled "Determination of habitual residence," provides in pertinent part:

> (b) Convention adoptees. A child whose classification is sought as a Convention adoptee is, generally, deemed for purposes of this subpart C to be habitually resident in the country of the child's citizenship. If the child's actual residence is outside the country of the child's citizenship, the child will be deemed habitually resident in that other country, rather than in the country of citizenship, if the Central Authority (or another competent authority of the country in which the child has his or her actual residence) has determined that the child's status in that country is sufficiently stable for that country properly to exercise jurisdiction over the

> child's adoption or custody. This determination must be made by the Central Authority itself, or by another competent authority of the country of the child's habitual residence, but may not be made by a nongovernmental individual or entity authorized by delegation to perform Central Authority functions. The child will not be considered to be habitually resident in any country to which the child travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.
>
> [8 CFR § 204.303 (2022).]

In accordance with that regulation, the petitioner may show that the adoption did not violate the provisions of the Hague Adoption Convention if he can provide: (1) a written statement from the central authority of the child's country of origin indicating that it is aware of the child's presence in the United States and of the proposed or previous adoption, and that it has determined the child is not habitually resident in that country; and (2) an adoption order or amended adoption order incorporating the language of the statement. The April 15, 2020 notice from the USCIS required notice of any such application be provided to Mexico, and a determination by the court as to whether the child was a habitual residence of Mexico at the time of the adoption.

Accordingly, S.S. is requesting that the court amend the Final Judgment of Adoption to reflect that his adoption of W.S. in 2016 was in compliance

with the requirements of the Hague Adoption Convention, which will resolve her immigration status and allow W.S. to return to the United States. Thus, the issues presented to the court for adjudication are: (1) whether proper notice was given to Mexico in accordance with the Hague Adoption Convention; and (2) whether W.S. was a habitual resident of Mexico at the time of her adoption in 2016.

Many countries, including the United States and Mexico, are signatories to the Hague Adoption Convention treaty. The purpose of the Convention is to protect children internationally from the harmful effects of wrongful removal and to establish procedural safeguards to effectuate that purpose.[1] The Convention provides a framework of rules and procedures for the countries to work jointly to ensure certain intercountry adoption procedures. The procedures in New Jersey pertaining to compliance with the Federal Immigration and Nationality Act are set forth in N.J.A.C. 3A:50-1.5(b)(2).

In Monasky v. Taglieri, 140 S. Ct. 719 (2020), the United States Supreme Court addressed the standard for determining a child's "habitual residence" in connection with an international custody dispute involving an application for the return of a child from the United States to Italy under the

[1] See Linda Silberman, Hague Convention on International Child Abduction: A Brief Overview and Case Law Analysis, 28 Fam. L. Q. 9 (1994).

provisions of the Hague Convention on the Civil Aspects of International Child Abduction. 140 S. Ct. at 723. The Supreme Court ruled that the determination of a child's habitual residence requires a fact-sensitive analysis, considering the totality of circumstances specific to each case, stating in pertinent part:

> Because locating a child's home is a fact-driven inquiry, courts must be "sensitive to the unique circumstances of the case and informed by common sense." Redmond [v. Redmond], 724 F.3d [729, 744 (7th Cir. 2013)]. For older children capable of acclimating to their surroundings, courts have long recognized facts indicating acclimatization will be highly relevant. Because children, especially those too young or otherwise unable to acclimate, depend on their parents as caregivers, the intentions and circumstances of caregiving parents are relevant considerations. No single fact, however, is dispositive across all cases. Common sense suggests that some cases will be straightforward: Where a child has lived in one place with her family indefinitely, that place is likely to be her habitual residence. But suppose, for instance, that an infant lived in a country only because a caregiving parent had been coerced into remaining there. Those circumstances should figure in the calculus. See Karkkainen [v. Kovalchuk], 445 F.3d 280[, 291 (3d Cir. 2006)] ("The inquiry into a child's habitual residence is a fact-intensive determination that cannot be reduced to a predetermined formula and necessarily varies with the circumstances of each case.").
>
> [Monasky, 140 S. Ct. at 727.]

To avoid delaying a custody proceeding, the Convention instructs contracting states to use the fastest procedures available to return the child to the habitual residence of that child. Significantly, the Supreme Court's determination of the analysis required to determine habitual residence is consistent with the approach of our courts in determining the habitual residence of a child in an international custody dispute. In Innes v. Carrascosa, 391 N.J. Super. 453, 484 (App. Div. 2007), the court stated:

> "Habitual residence" has been defined as "the child's usual place of residence and primary home immediately before he or she was removed to a foreign country." Roszkowski[v. Roszkowski, 274 N.J. Super. 620, 633 (Ch. Div. 1993)] (citing 51 Fed. Reg. 10,504 (1980)). It is "akin to domicile; it may be looked at as a place that is the focus of the child's life." Ibid. The Third Circuit has held that it "is the place where [the child] has been physically present for an amount of time sufficient for acclimatization and which has 'a degree of settled purpose' from the child's perspective." Feder v. Evans-Feder, 63 F.3d 217, 224 (3d Cir. 1995).

Applying the fact-driven inquiry analysis set forth in Monasky and Innes, the court finds that W.S. was a habitual resident of the United States at the time her adoption was finalized in late 2016 and was not a habitual residence of Mexico. At the time of her adoption, she was age fifteen and had been residing in New Jersey for seven consecutive years, nearly half her lifetime. Additionally, W.S. had lived continuously with S.S., her maternal uncle, since 2012. At the time of her adoption, W.S. was enrolled in school in

New Jersey and had established relationships and friendships with her peers in New Jersey. At the time of her adoption, W.S. had completely acclimated to her life in the United States with her maternal uncle as her father figure. S.S also provided credible testimony that he is a habitual resident of the United States, attaining citizenship here on January 14, 2000. Upon graduation from high school, W.S. enrolled in Stockton College in New Jersey, thereby further establishing her acclimatization and intention to remain in the United States. In contrast, W.S.'s memories of life in Mexico were in the distant past, as she only spent time in that country as a young child.

The undisputed, credible evidence in this matter establishes that W.S. was a habitual resident of the United Stated, not Mexico, when her adoption was finalized in 2016. The Court also finds that notices were provided to Mexico in accordance with the Hague Adoption Convention; the Mexican National System for the Full Development of the Family or Sistema Nacional para el Desarollo Integral de la Familia (DIF), and the Mexican Secretary of Exterior Relations or Secretaria de Relaciones Exteriores (SRE); and the Central Authority of the United States Department of Homeland Security, and none of those agencies have objected to or filed a response to the application of S.S. for entry of an amended Judgment of Adoption.

Accordingly, the court finds that the adoption of W.S. by S.S., her maternal uncle, on December 21, 2016, was procedurally proper and fully complied with the requirements of the Hague Adoption Convention, as she was a habitual resident of the United States at the time of that adoption. Moreover, the court also finds that the adoption of W.S. did not violate the intent or purposes of the Hague Adoption Convention and complied with the procedures outlined in N.J.A.C. 3A:50-1.5(b)(2). The application of S.S. for entry of an Amended Judgment of Adoption is hereby granted. Sadly, due to immigration complications, W.S. has been unable to return to the United States. This Amended Judgment of Adoption will facilitate the return of W.S. to her home of habitual residence.