# Re UKM
# [2018] SGFC 20

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| **Case Number** | : OSA 355/2014 |
| **Decision Date** | : 08 March 2018 |
| **Tribunal/Court** | : Family Court |
| **Coram** | : Shobha G. Nair |
| **Counsel Name(s)** | : Mr Koh Tien Hua/Mr Ivan Cheong/Mr Shaun Ho (Eversheds Harry Elias LLP) for the Applicant; Ms Low Siew Ling/Ms Germaine Boey (Attorney-General's Chambers) for the Guardian-in-Adoption |
| **Parties** | : Re UKM |

*Family Law – adoption of infant – single male applicant – same-gender parenting – assisted reproductive technologies - surrogacy – role of the Guardian-in-Adoption*

8 March 2018

**District Judge Shobha G. Nair:**

1 The applicant presented a simple, earnest request. He sought an order allowing him to adopt his biological son who is currently four years of age. The issues for consideration however, brought into sharp focus policy, legal and ethical challenges which perhaps unsurprisingly, mirror our complex world. The application was dismissed and the applicant appeals against the same.

2 When family cases present ethical dilemmas, there is an unrelenting danger of embracing ideas borne of limited human experiences, leading therefore to subjective, idiosyncratic conclusions. In my view, the starting point for a court is to recognise this human limitation. Hurdling this, the end point must be to arrive at decisions which closely reflect the common good and the rights of the most vulnerable – in adoption cases, it would be the child. These reference points are essential to fair resolution.

3 The laws of a state are not judicial creatures. The court cannot change laws when it did not make them. The duty of the family court is to abide by the letter of the law and where this appears unclear, to move into its spirit. These laws must then be fairly applied to the often complex factual matrix of family cases. In proceedings involving the adoption of children, fairness mandates that the child, who sits at the centre of competing and at times obstreperous claims and arguments, be the party this court is accountable to.

4 On 26 December 2017, I issued my decision on the application and in dismissing the same, gave brief reasons orally. To facilitate understanding of key concerns of the court in arriving at its decision and to prevent time being expended on taking notes, a copy of what was said was handed to both counsel at the end of the hearing. It was not meant for publication nor was there any formal request to allow access to a larger audience.[note: 1] The reason is this. In oral grounds, only a broad flavour of the concerns were highlighted and this could well allow for the assumption that one root anchored the decision when in fact the roots were mainly fibrous and even at times, adventitious. Indeed I had alerted both parties that full written grounds of decision would be issued at a later time, should there be a need. An appeal against the decision would certainly give rise to that need. Even when greater detail is provided, it is important to acknowledge that litigants in family cases are compelled to expose intimate matters in public arenas. It would be helpful to be mindful of their anxieties, especially those of the silent child who will grow in awareness.

## ***Factual Background***

5 The case before me was no different from most other adoption cases from the standpoint of the intentions of the applicant. He appears to love children and together with his partner, expressed a basic human need to love a child of his own and be loved by that child. As he is in a same-gender relationship with his partner of 13 years, the couple explored the prospect of adopting a child. They approached the Ministry of Social and Family Development (MSFD) and were advised that the Ministry was unlikely to

recommend adoption of children by parties who were in a same-gender relationship. The Ministry also shared with the couple that marriages between persons of the same gender have not, to date, been legalised in Singapore. The applicant and his partner are not in fact married but the position that was then expressed was that any child a same-gender couple sought to adopt would accordingly not be approved by the Ministry. This is because it would be against public policy on the composition of a family unit and parenthood.

6 The applicant, a Singaporean medical doctor, was aware that in Singapore, assisted reproduction services can only be provided to a married woman with the consent of her spouse and further, that there are no services available to enable surrogacy, regardless of sexual orientation. The couple chose to travel to the United States of America (U.S.) with the intention of exploring avenues to further their desire to have a child. A licensed physician provided in vitro fertilisation services (IVF) to enable the creation of embryos using the reproductive cells of the applicant and his partner and the egg(s) of an anonymous female donor. The applicant was successful. His partner was not. It is not clear if gender selection procedures were undertaken. The embryo was then transferred into the womb of a lady (surrogate) who with the consent of her husband, agreed to carry and give birth to the child.

7 The rights and obligations of parties were documented in a gestational surrogacy agreement (GSA). The agreement was made between the surrogate (and her husband) and the applicant (and his partner). The court was informed that the entire surrogacy undertaking cost the applicant approximately US$200,000.[note: 2] No detailed breakdown of this figure was given but from the terms of the agreement, the Court understood that a direct payment of US$25,000 was provided to the surrogate for reasonable living expenses and reimbursements for a fixed period of time (and which would be disbursed in instalments from the seventh week after the embryo transfer until two weeks after the delivery of the child). The GSA also stated that the surrogate was not employed at the time and was to be given a small monthly allowance to cater for essentials such as meals, nutritional supplements, maternity clothing and costs in caring for any children she may already have and who may require care while their mother was pregnant. The surrogate's husband who was employed at the time, was paid for lost wages arising from having to attend/accompany his wife to screening or invasive procedures. It is not known what he was employed as and what amount if any, was paid as lost wages. A cap on the number of days of lost wages was in any event provided for.[note: 3] All medical expenses that the surrogate would incur in carrying the infant to term and travel expenses connected to the process undertaken were to be paid for by the applicant. So too were payments to be made *inter alia*, for accidental

death policy premiums, the surrogate's legal fees if any, psychological counselling fees and housekeeping fees from the third gestational trimester and ending three weeks after delivery of the child. Provisions catering for compensation in the event of multiple births, death of the surrogate in carrying out her obligations under the agreement or loss of reproductive capability were all spelt out in the agreement.[note: 4]

8 From in vitro fertilisation, embryo transfer and surrogacy, a male child was born in the U.S. in 2013 and is accordingly, a U.S. citizen. In accordance with the provisions of the GSA, he was handed to the applicant and his partner with the surrogate and her husband relinquishing all rights over the infant and recognising the applicant and his partner as legal parents of the child[note: 5]. He was brought to Singapore shortly after his birth and has been in the care of the applicant and his partner since. The applicant took out this application for adoption "to legitimise his relationship" with the child and in so doing hoped to secure Singapore citizenship for the child and thereby to stay on in Singapore. [note: 6]

***The role of the Guardian-in-Adoption***

9 It was one of the main contentions of the applicant that the Director of Social Welfare (MSFD) in her role as Guardian-in Adoption (GIA) was acting outside the scope of the authority of her office in raising policy concerns as a ground for disapproval.

10 Under the Constitution of the Republic of Singapore (Responsibility of the Minister for Social and Family Development) Notification 2017[note: 7], the promotion of marriage and parenthood is a key responsibility of the Ministry. The Minister under the same notification, is responsible for the welfare and protection of children which includes the adoption of children. The Ministry's position when first approached by the applicant and his partner (and before IVF and surrogacy were explored), was that it would not recommend the adoption of a child by the applicant and his partner.[note: 8]

11 One of the key roles of the Office of the Director of Social Welfare is to ensure that vulnerable individuals like children are protected from harm. Indeed Section 10(3) of the Adoption of Children Act (Cap. 4) (Adoption Act) allows for the court to appoint a person or body to act as a guardian -in -adoption of the infant *with the duty of safeguarding the interests of the infant before the court*.[note: 9]

12 The Court must necessarily place value on the views of the Office arising from the fact that the law itself mandates the latter's appointment to look into the interests of the child. If it is the view after investigations, that the interests of the child are not met by an adoption order in favour of the applicant, it is a position the Court must take seriously.

13 The Ministry in making its recommendations may well drive home the policies which guide it. Policies are not whimsical expressions of social expectations. The identification of problems faced by and within society prompts decision- making on how best to address them. When policies are formulated, these *may* find its way to Parliament as bills for consideration. *If* translated into law, these must be interpreted with an awareness of the policies which propelled its making. The laws in other words, effectively mirror the wishes of the majority as the process of policy making itself is not a random exercise. It involves taking into account a myriad of views, observing the rights of the majority, reflecting on the consequences of policies for the larger society and factoring in available resources for optimal solutions.

14 It was the position of the GIA that Singapore's public policy encourages parenthood within marriage as it is in the interests of the child to grow up in a family with a father and a mother. As same-gender marriage is not recognised in Singapore, it would be contrary to public policy to allow for an adoption in this case where the applicant is in effect seeking the court's endorsement of his intent to form a family unit with his male partner.[note: 10] The GIA pointed to various parts of the Adoption Act to support the policy that it defended.

15 Section 3(3) of the Adoption Act requires married couples to apply for the adoption of a child jointly and if it is intended that only one spouse adopt the child, the consent of the other spouse must be obtained.

16 Under Section 7(1) of the Act, upon an adoption order being made, all duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child are extinguished. All those same rights, duties, obligations and liabilities are vested with the adopter "*as though the adopted child was a child born to the adopter in lawful wedlock; and in respect of the same matters and in respect of the liability of a child to maintain his parents, the adopted child shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock….*"[note: 11]

17 The tenor of the Adoption Act, the GIA argued, was to facilitate the strengthening of the family unit and the references in Sections 3 and 7 reflect the prevailing social norms of marriage between heterosexual couples and parenthood within that family unit. This was a position well within the discretion of the Guardian-in Adoption to adopt and express to the Court.

18 While the recommendation of the GIA is respected, there is nothing in the Adoption Act or any other legislation which compels a Family Court to accept the same. Indeed the Courts do not simply notarize recommendations. It must remain faithful to the laws. Sections 3 and 7 of the Adoption Act highlighted by the GIA as supportive of the relevant public policies must be looked at in the context of other express provisions of the same Act.

***An adoption application in form alone***

19 This was an adoption application in form but not in substance. Simply put, it was not an application by a single male applicant with a different sexual orientation seeking to adopt a child who needed a home. It was instead, an application by a single male applicant with a different sexual orientation choosing to take on certain procedures to have a biological child when those very procedures were not available to him in Singapore. He then sought to adopt his biological child. He was not denied custody of the child. The child remains in his care and will continue to do so.

20 Under Section 5(1) of the Private Hospitals and Medical Clinics Act (Cap.248) (PHMCA) "*no premises or conveyance shall be used as a private hospital, medical clinic, clinical laboratory or healthcare establishment except under the authority and in accordance with the terms and conditions of a licence issued by the Director*".[note: 12] Under Section 6(2) (a) of the Act, the Director may issue a licence subject to terms and conditions as he thinks fit to impose. If the private hospital, medical clinic, laboratory or healthcare establishment breaches the terms of the licence, every person having the management or control thereof shall be guilty of an offence.[note: 13] The licensing terms and conditions[note: 14] make it clear that where IVF or other Assisted Reproductive (AR) procedures are carried out for procreation, the AR centre shall carry out such procedures only on a married woman and only with the consent of her husband. The terms and conditions also do not allow for any AR Centre to enable surrogacy activities, foetal reduction[note: 15] purely for social and financial reasons and sperm sorting techniques in gender selection. These activities are not made illegal in the sense that the applicant, if he chooses to embrace those procedures does not stand criminally liable. The

observance of the terms and conditions however is *desideratum* for valid licences to practice as an AR Centre in Singapore and a breach of the same by anyone in management or control of the AR centre would attract criminal sanction.

21 Against this backdrop, I concerned myself with the following questions. Could a male person adopt a child under existing laws? If so, did subsisting laws when first drawn up, contemplate an application by a single male of a different sexual orientation? In any event, should the factual matrix of this case, specifically the desire to have a biological child through means which were not open to him in Singapore, lend itself to judicial endorsement?

22 Clearly when the Adoption Act was first enacted, it did not envisage the specific situation this case presents. The clear cry of the Act on its birth,[note: 16] was to place children in good, safe homes if one or both parents were not able to provide for their biological child. This can be garnered from the provisions of the 1939 Ordinance, the amendments that followed and the present state of legislation. One example would be the current Section 4(4). An adoption order cannot be made without the consent of a parent, guardian, custodian or person (s) liable to contribute to the support of the child. In other words, the Act contemplates situations where there is a party who is responsible for the child, who wishes to give up both rights and responsibility and whose consent must then be obtained before the child can be adopted by someone else. In the present case, no one stood responsible for the child prior to him being handed over to his biological father and the latter's partner. Not the egg donor. Not the surrogate.

23 With advances in assisted reproductive technologies, the Status of Children Act (Assisted Reproductive Technology) Act (Cap. 317A) (Status of Children Act) was enacted to address the various complexities such advances have given rise to. The Status of Children Act does not move away from the traditional family unit where couples who seek to have children must be in a marriage. The exceptions in the Act do not address the factual matrix of this case. In any event, the Act only applies to cases where a child was born on or after 1 October 2014.

***Single applicants/same-gender parenting***

24 The Adoption Act does not prohibit the adoption of children by single applicants. Male children may be adopted by single male applicants. What is prohibited however is the adoption of female children by single male applicants.

This is contained in Section 4(3) of the Adoption Act. In similar vein, the Adoption Act does not prohibit single female applicants from adopting children of either gender. As stated before, I am not aware if the applicant had gender selection procedures done in this case. If the child were to have been a female, there would be no ability to take out the present application and the applicant would have had to raise the child without any rights to citizenship which he believed an adoption order would facilitate.

25 It is clear from legislative history that the makers of the parent law only contemplated scenarios where people, married or single, stepped forward to provide hope, security and love to another child denied of these. In the 1960s and 1970s many did not apply for adoption orders and it was quite common for neighbours and relatives to give care to children of others in loosely formed arrangements. In the 1980s and 1990s we saw more couples who were unable to have children of their own seeking to formally adopt children from Singapore or abroad. In the last approximately two decades, more single applicants have come forward – giving, loving, able and willing. A few who had a different sexual orientation, may have been open with the information to the GIA and some, I assume, would have kept it quiet in fear of the very response this particular applicant received. The individuals who take courage and inform the GIA of their sexual orientation may be well placed for the adventure of parenting. Predictably, Section 4(3) of the Act has given rise to much debate.

26 If the obvious protection of female children from potential sexual abuse in the hands of single male adopters underpins Section 4(3), would we not need to be concerned about male children in the care of single male applicants with a different sexual orientation? Should the same position not be taken with respect to single female applicants? Are these very suggestions ignorant or has history shown us that these are legitimate concerns to be looked into? While the law is silent, the GIA does concern itself with these matters when they investigate each case. These concerns are no less important when investigations are conducted into the suitability of adoption by heterosexual couples. If there is suspicion of possible (not probable) abuse, it may be prudent to err in favour of the child. Is it possible for the GIA to know everything that may go on behind closed doors? I would have to assume not. Clearly the challenges are many. The answers, few. In my view, the satisfactory way to approach these difficulties at this point in time is to treat each case on its merits and each individual applicant's position with a willing and true respect.

27 The GIA did emphasise that while the applicant requests for an order as a single male applicant, it effectively would be a situation where the child is raised by two fathers. In fact, the child bears the surnames of both the applicant and his partner and refers to the applicant as "Papa" and his partner as "Daddy". The applicant and his partner describe their relationship as one akin to that of husband and wife.[note: 17] The applicant acknowledged that the child will face challenges and shared how those challenges would be met. This case however does not turn on the issue of the propriety and/or effectiveness of same-gender parenting. Indeed social science research is as varied in its conclusions as the arguments for and against same-gender parenting. Ultimately, it is for different societies guided by its own set of norms and beliefs that will guide the laws. The laws reflect the desires, some propelled by moral or religious convictions, of its people.

## ***The role of the Family Court***

28 While it may be time to address the issue of parenting by an individual with a different sexual orientation or parenting by a same-gender couple, this is not the case nor the law courts the place for this discourse. The Court is obliged to interpret the law and not make it. The law allows for single male applicants to apply for adoption of male children. There is nothing to suggest that the applicant has ill intentions towards the child simply because of his sexual orientation. The policy positions expressed by the Guardian-in-Adoption insofar as same-gender parenting are concerned, while forming an apposite backdrop to the present application, cannot in my view, form the basis of a legal decision.[note: 18] I come now to more specific aspects of the law which guided this case to its conclusion.

## ***What other legal requirements would need to be met?***

29 Sections 5 and 11 of the Adoption Act stipulate certain matters with respect to which the court needs to be satisfied before an adoption order is made. For ease of reference, the provisions are as follows:

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| *Section 5(a):* | *That every person whose consent is necessary under this Act and whose consent is not dispensed with has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights*; |

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| *Section 5(b):* | *That the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant*; and |
| *Section 5 (c):* | *That the applicant has not received or agreed to receive, and that no person has made or given, or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the court may sanction.* |
| *Section 11:* | *It shall not be lawful for any adopter or for any parent or guardian except with the sanction of the court to receive any payment or other reward in consideration of the adoption of any infant under this Act or for any person to make or give or agree to make or give to any adopter or to any parent or guardian any such payment or reward.* |

### *a) Consent of relevant persons*

30 In this case, the requirement imposed by Section 5(a) was met. The applicant is the biological father of the child. The anonymous female egg donor and the surrogate mother have both consented to the arrangement.

### *b) Welfare of the child*

31 The application was also premised on the provisions of Section 5(b) of the Adoption Act. It was argued that an adoption order would be for the welfare of the child. It was the position of the applicant that he was not seeking to form a family unit but that an adoption order would be desired to formalise the applicant's relationship with his biological child, to secure his long-term residency in Singapore through Singapore citizenship and to gain all the benefits otherwise legitimate children would obtain.[note: 19] The affidavit of the social welfare officer spoke of how the applicant shared with the officer that he felt legalising the relationship would increase the likelihood of the child obtaining Singapore citizenship. In 2013, when the child was born, an application for citizenship was denied. The child was granted a long-term visit pass instead. When the welfare officer explained that an adoption order would not guarantee citizenship rights, the applicant acknowledged the information and stated that if he could not obtain citizenship for the child, he would actively

consider migrating with the child to a jurisdiction where he could continue with his medical practice.[note: 20] Regardless of what may have been discussed, what is the true import of the word "welfare"?

32 There is judicial articulation of the word "welfare" in adoption cases and these provide instruction. In very much earlier times as seen in *Re Mcgrath (Infants)*[note: 21], it was defined in the following terms: "…*the welfare of the child is not to be measured by money alone nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare must be considered as well as its physical well-being. Nor can the ties of affection be disregarded*."[note: 22]In more recent times, the word "welfare" has been defined rather more widely to embrace "benefits" such as the ability to obtain citizenship or to avoid the stigma of illegitimacy[note: 23] In ***Wan Yijun and another***[note: 24], Wee Chong Jin, CJ, citing English cases which had embraced this wider definition stated that whether a particular matter is to the infant's benefit or advantage must be a question of fact and depend on the circumstances of each case.

33 By virtue of his profession, the applicant knew that assisted reproductive technologies were only permitted to be offered to married couples in Singapore. Further, there are no services which promote surrogacy in Singapore. The applicant chose to enable the birth of the child by undertaking both in vitro and surrogate procedures in the U.S. Having so chosen, the applicant seeks to have the courts of Singapore allow the adoption of the child by pointing to the welfare of the child. The application is in reality an attempt to obtain a desired result – that is, formalising the parent-child relationship, by walking through the back door of the system when the front door was firmly shut. Notwithstanding, it is still the duty of the court to consider unlocking the back door if the welfare of the child demands it. It is clear to me that it does not. The child will continue to have shelter, food on his table, a good education and a sound support system in the shape of an extended family, although the applicant's mother had deep reservations at the outset.[note: 25]

34 Unlike the position expressed in cases from the English Courts, an adoption order in Singapore does not guarantee a successful application for citizenship. Under Section 7(9) of the Adoption Act, "*an adoption order shall not by itself affect the citizenship of the adopted child*." The Singapore Immigration Authority will act independently on matters concerning citizenship. Even if an adoption order may, catalyse positive consideration for citizenship, it is incongruous with the notion of just outcomes to grant adoption orders in the face of breaches of positions taken on assisted reproduction and surrogacy by reference to perceived benefits these breaches may bring to a child. The child

effectively becomes the shield *to* protect the interests of the intended adopter when the quintessential nature of welfare is the receipt of advantages to the child *from* the intended adopter.

35 The applicant also raised that an adoption order would lend towards removing the stigma of illegitimacy the child might face, especially in school. I found this difficult to comprehend. Given that the child was born in the U.S. where the applicant's status as the biological father is recognised, there would be no need to *reinforce* the biological link via an adoption order. In the absence of an adoption order, the birth certificate issued by the U.S. authority and/or other documentation from the fertility clinic (including the GSA) establishes the "legitimacy" of the father-child relationship and these documents remain in the possession of the applicant. If it is the stigma surrounding the circumstances of his birth that is of concern, similarly, an adoption order would not be able to address it. The applicant's partner is male. If an adoption order is issued in Singapore, a new birth certificate would follow. The new birth certificate would not reflect the male partner's name as the mother of the child. It only removes any reference to the surrogate mother. An adoption order would not be able to remove any stigma, perceived or real, associated with the fact that the child will be seen to be raised by two fathers and the circumstances of his birth may be a subject of discussion both in and out of the school playground.

36 The question of social stigma must lead us to examine the rights of the child. When we speak of the rights of a child in the larger context of his welfare, we must appreciate what those rights are from the very beginning of life and not only as they appear today. It is poignant that this child's right to know his mother has been denied. Even with prosperous advances in technology, a child is born of the union between a man and a woman. That remains today, the starting point of any reasonable discourse on human identity and the rights of individuals. If this be the starting point, denying him the right to his mother brings about far more challenging consequences than the perceived stigma associated with his birth process. The adoption court has seen time and again the deep, almost abstruse desire of adopted children to seek the face of their biological parents in an effort to find themselves. To care for the welfare of this child *now* would be to be truthful to him and to work with him on the way forward.

37 The need to cater for the child financially was raised but arguments in this regard were not robust. The applicant if he wishes to entrench the child's inheritance rights, can do so by executing a will. As for maintenance, there was no real concern presented by the applicant. He is able to provide materially for the child.

### *c) The price of life*

38 Sections 5 (c) and 11 of the Adoption Act presented in its provisions, the last aspect of material concern. This relates to the embrace of surrogacy as a means to have a child. Counsel for the applicant took pains to impress that surrogacy is not illegal in Singapore and pointed to various sources to support that. This is a valid point. There are no local laws which criminalise the act of surrogacy save that the medical practitioner who enables it in Singapore would stand in breach of his licence to practice and face losing that licence and/or criminal sanction. In some jurisdictions such as the U.K. there is express recognition of surrogacy as a legal means to have children.[note: 26] In some others like Thailand, new laws have come about in 2015 in an effort to choke commercial surrogacy. What concerns me is the practice of surrogacy in the context of the Adoption Act in Singapore. The fact that the medical profession is not to provide the facilities and services for surrogacy speaks of the local position. While there was no movement of money for the adoption of the child, simply because the applicant was not adopting a child from a parent or guardian as is the usual case,[note: 27] the fact remains that a stranger had agreed, for money, to carry this child to term. Unlike adoption cases where the Court can sanction any payment which may have been made to help the biological mother with the costs of medical/delivery expenses, surrogacy is not a practice where similar sanction should easily be provided. Here, the surrogate who does not have any physical or emotional link with the biological father, steps forward to birth his child with the intention, from the outset, of handing that child over, for a fee.

39 The use of money to encourage the movement of life from one hand to another is the very thing the spirit of the Adoption Act as seen in Section 11, seeks to prevent. It matters not the figure that was paid. A thousand dollars to the rich man is the cost of his bottle of wine for the day, but to the poor man, the water that runs through the taps in his home for a year. Counsel suggested that the payments were not compensatory in nature. I am however unable to sanction the payments arising out of an agreement which in its comprehensive set of terms seek to ensure the best outcome for the applicant, entrenches the right to terminate the pregnancy and insist on foetal reduction in the event there are three or more foetuses.[note: 28] The agreement promotes the idea of the child as a commodity and is drawn up to facilitate the severance of human ties so as to enable the creation of new ones at a fee to be paid to the surrogate, the physician and the lawyer. Among a plethora of devastating

consequences, commercial surrogacy demeans and exploits human beings at various levels, especially women in poverty. This explains in part, Singapore's position on the practice.

40 The spirit of Section 11 of the Adoption Act is to avoid situations where money is used as a tool to coax and embolden parents into giving their children up for adoption and this same spirit must guide adoption applications made possible by enabling the practice of surrogacy. While this case does not rest on this issue alone, it is germane.

***A lattice of considerations***

41 The applicant was acutely aware that the medical procedures undertaken to have a child of his own would not have been possible in Singapore. He cannot then come to the Courts of the very same jurisdiction to have the acts condoned. It bears repeating that this is an adoption request in form but not in substance. It is not a single male applicant with a different sexual orientation seeking to adopt a child from the latter's parent or parents. It is an unusual request by a biological parent to adopt his child. Adoption is pursued in other words, to legitimise a relationship in a country which was clear in its position on who would be able to avail themselves of IVF procedures. While the child will obtain tangible benefits such as a place to stay and education, he will labour over issues of identity. Identity is not a question to which answers are sought at four years of age. A child responds to loving people and even at times, highly abusive people, if he needs to for his survival. A child however grows and eventually faces the world on his own. Clearly this Court is not the place nor is it equipped to undo the knots created by the acts of the applicant.

42 An adoption order does not address issues relating to child welfare. The child is well maintained and he is not stateless. He is an American citizen. To argue that the applicant may have to move his work as a doctor overseas in the event citizenship is not granted to the child is not a sufficient reason to allow this application. There is in fact no evidence that the applicant and the child would have to move. Even if so, parents often take uncomfortable steps for their children. While I appreciate that as a Singaporean, the applicant should not be compelled to move, the truth remains that the reason for the birth of the child in the U.S. was precisely because it was not possible in Singapore. Regardless, the applicant desired it. Regardless, he chose to proceed with ways to meet that desire. An adoption order merely continues to serve him.

43 The applicant retains rights to the child as the biological father in the absence of any challenge by the surrogate mother and I am sure he will give his best to the child. I cannot however endorse this adoption request. The courts must never be used to sanction a *fait accompli.* Even then, the welfare of the child warrants looking past deliberate acts which bind the hands of the court. The fact is however, the child is no more vulnerable today than he was at his birth. An adoption order will not reduce that vulnerability nor promote his welfare.

## ***Conclusion***

44 An adoption order on the facts of this case would be to smear the thin line between the rights and interests of adults and those of children. It is a line we must endeavour to respect if we are to truly honour and protect the rights of children everywhere. Having said that, the innocence of this child legitimises him and I wish both the applicant and the child the very best in their journey forward, together.

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[note: 1]Section 10 of the Family Justice Act (Act 27 of 2014) provides that adoption proceedings are to be held in camera and Rule 671 of the Family Justice Rules (2014) provide that no judgment pronounced or delivered shall be available for public inspection unless the court allows it.

[note: 2]Applicant's 2nd set of submissions dated 27 October 2017 at page 17 of Annex A.

[note: 3]It was capped at 10 days.

[note: 4]Exhibit A of the GSA.

[note: 5]Recitals to GSA at para G.

[note: 6]Paragraph 63(b) of the applicant's 1st set of submissions dated 21 September 2017.

[note: 7]S522 of 2017

[note: 8]At that time, the discussion was on adopting a child who was not related to either the applicant or his partner.

[note: 9]See also Rule 133(1)(a) of the Family Justice Rules (2014) which mandates that an application for an adoption order seek the appointment of the Director of Social Welfare.

[note: 10]Paragraphs 15 and 16 of the GIA's submissions dated 20 October 2017.

[note: 11]Section 7(1)(b) and (c) of the Adoption Act.

[note: 12]Director refers to the Director of Medical Services.

[note: 13]Section 5(2) of the PHMCA.

[note: 14]Tab 24 of the GIA's Bundle of Documents.

[note: 15]Foetal reduction is a procedure which reduces the number of foetuses in a multifoetal pregnancy.

[note: 16]Adoption of Children Ordinance 1939 (Ordinance No.18 of 1939).

[note: 17]The GIA's affidavit dated 2nd August 2017 at para 17.

[note: 18]*Cf.* ***In re W*** (A Minor) [1998] 1 Fam 58 where there was no public policy guiding decisions on applications by persons of different sexual orientation.

[note: 19]Paras 21 and 28 of the applicant's 1st set of written submissions.

[note: 20]GIA's affidavit dated 6 September 2017 at para 9.

[note: 21][1893] 1 Ch 143 at 148.

[note: 22]A similar articulation by Chan Sek Keong, JC (as he then was) is found in ***Tan Siew Kee*** v ***Chua Ah Boey*** [1987] SLR 549 albeit, in the context of a guardianship application. He said that "*the expression 'welfare'….means the general well-being of the child and all aspects of his upbringing, religious, moral as well as physical. His happiness, comfort and security also go to make up his well-being." A loving parent with a stable home is conducive to the attainment of such well-being. It is not to be measured in monetary terms.*"

[note: 23]In ***re A*** (An infant) [1963] 1 WLR 231 at page 234; In ***re D*** (An Infant) [1959] 1 QB 229

[note: 24][1990] SGHC 65

[note: 25]See the GIA's affidavit at para 20 on the position of the applicant's mother.

[note: 26]See Stalford, Hollingsworth and Gilmore (Eds.), "***Rewriting Children's Rights Judgments (from Academic Vision to New Practice)***" Hart Publishing, Oxford and Portland, Oregon (2017) on the decision in ***Re X and Y*** (Foreign Surrogacy) [2008] EWHC 3030 (Fam) and the commentary by Emma Walmsley in Part II of the text on the complexities of international surrogacy this case presented.

[note: 27]In the context of the egg donor and the surrogate being two different people it would be necessary notwithstanding the provisions of the GSA to consider the relevant U.S. state laws to ascertain who would be the biological mother.

[note: 28]Clauses 10 and 11 of the GSA.

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