Federal Court Cour fédérale

Date: 20160627

Docket: T-1418-15

Citation: 2016 FC 724

OTTAWA, ONTARIO, June 27, 2016

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

GENOVEVA WATZKE, RALPH WATZKE,
+ JEFFREY WATZKE (A MINOR)

Applicants

and

MINISTER OF CITIZENSHIP AND
IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

[1] This is the second application by the Watzke family challenging a decision by a delegate of the Minister of Citizenship and Immigration (Officer) refusing a Certificate of Citizenship for Jeffrey Watzke. The early administrative history of this dispute is well-described in the decision of Justice James Russell in *Watzke v Canada*, 2014 FC 19, 22 Imm LR (4th) 19, a part of which is set out below:

[2] The minor Applicant was born in the Philippines on December 17, 2005. His mother, Genoveva Watzke [Ms. Watzke], is a citizen of the Philippines. The application for a Citizenship Certificate was based on the assertion that Ralph Watzke [Mr. Watzke], a Canadian citizen, is the child's father. This would make Jeffrey a Canadian Citizen under subsection 3(1) of the Act. Citizenship and Immigration Canada [CIC] found that there was insufficient proof that Mr. Watzke is Jeffrey's biological father, and therefore refused the application for a Citizenship Certificate.

[3] Mr. Watzke visited the Philippines from March 10, 2005 to March 25, 2005, approximately nine months before the minor Applicant's birth, and again from December 21, 2005 to January 9, 2006, shortly after Jeffrey's birth. The Applicants were married during the latter visit, on January 7, 2006. Mr. Watzke applied to sponsor both Ms. Watzke and Jeffrey to immigrate to Canada, but was informed that since it was claimed that Jeffrey was a Canadian Citizen, he could not be included in the sponsorship application. Rather, they would need to apply for a Citizenship Certificate. Ms. Watzke arrived in Canada in April 2007, while Jeffrey apparently remained in the Philippines pending the outcome of the Citizenship Certificate application.

[4] It appears from the record that the Applicants first approached the Canadian embassy in Manila and were informed that DNA evidence would be required to show that Mr. Watzke was Jeffrey's father, since the birth had taken place at home under the care of a mid-wife and not in a hospital. They chose not to apply for the Certificate through the Manila embassy, but rather filed the application from inside Canada in June 2007, in the hopes it would receive more expeditious and favourable treatment. They claim to have feared that their application would be affected by corruption and ill-will from non-Canadian staff in the Manila embassy because they did not offer a bribe.

[5] In the event, officials in Canada consulted with officials at the Manila embassy regarding the application and were advised to request DNA evidence. This requirement was communicated to Mr. Watzke through a letter dated February 17, 2009, and was reiterated in further correspondence on July 23, 2009, June 1, 2010 and September 8, 2010. Mr. Watzke objected to the request for DNA evidence in a letter of June 30, 2010, arguing that it was unlawful and discriminatory. Thereafter he provided no further response. In December 2011, more than four years after the initial application was filed, the Respondent finalized its decision and informed the Applicants that the application had been denied.

[2] Justice Russell allowed the application on procedural fairness grounds for the following reasons:

> [40] So the rationale for requiring DNA testing in the present case was that "the child was born at home." This is why no consideration is given to the certificate from the Municipal Civil Registrar and why, as the letter of July 23, 2009 makes clear, a Birth Certificate was not even requested in this case. Neither the Municipal Civil Registrar certificate or a birth certificate would suffice in this case because Jeffrey was born at home.
>
> [41] The reason why a DNA requirement is needed for a child born at home is not articulated in the Decision or the record. There is no evidence that the reason for this requirement was ever explained to the Applicants or that it was publically available in the policy manual or elsewhere. There is no indication that the Applicants were advised that subsection 3(1)(*b*) could be satisfied in any other way than through DNA testing. They were told that, because Jeffrey was born at home, even a certified copy of a Birth Certificate would not suffice. However, Justice Noel pointed out in *Martinez-Brito*, Overseas Processing Manual 1 (OP 1 Procedures) states at 5.10 (emphasis added): "**A DNA test to prove relationship is a last resort**. When documentary submissions are not satisfactory evidence of a bona fide relationship, officers may advise applicants that positive results of DNA tests by a laboratory listed in Appendix E are an acceptable substitute for documents."
>
> [42] There is no way for me to tell from the record why the DNA requirement has been imposed, and upon what authority, by the Embassy in Manila and adopted by CPC-Sydney.
>
> [43] Without this information, the Decision lacks the intelligibility and transparency required by para 47 of *Dunsmuir* in order to render it reasonable. In addition, because the rationale and the legal justification for the DNA requirement were never explained to the Applicants, they had no opportunity to argue or explain why it should not be applied to them, or the opportunity to offer alternative evidence that could, reasonably speaking, suffice to satisfy subsection 3(1)(*b*) of the Act. This was procedurally unfair. The Court has warned against an oppressive and unyielding requirement of DNA testing: see *M.A.O.*, above, at paras 83-84; *Canada (Minister of Public Safety and Emergency Preparedness) v Martinez-Brito*, 2012 FC 438 (CanLII) [*Martinez-Brito*] at paras 46-50.

[3] Mr. Watzke contends that Justice Russell declared the birth records before the Officer were “valid proof of their contents”. On this basis, and relying on the law concerning the recognition of foreign birth records, he argues it was not open to the Officer to require further proof of his parentage of Jeffrey. I do not accept these arguments.

[4] Justice Russell did not decide whether the evidence submitted by the Watzkes was sufficient to prove that Mr. Watzke is the biological father of the child. What he did decide was that the first decision-maker had acted unfairly by failing to offer alternatives to DNA testing to prove paternity. Indeed, Justice Russell’s decision at paragraph 41 explicitly recognizes the possibility that documentary evidence will not always be satisfactory and that DNA testing can be a viable option.

[5] I also do not accept Mr. Watzke’s argument that the birth records he tendered to the Officer were conclusive evidence of paternity. As the Officer noted, the Certificate of Live Birth for Jeffrey discloses nothing regarding his father and his surname is given as “Tacoycoy”. It is only the subsequently issued Deed of Legitimation following marriage in which describes Mr. Watzke as the father of Jeffrey and the surname of “Watzke” is assigned. Mr. Watzke is also identified as the father of Jeffrey in a certified transcript of the Certificate of Birth issued more than a year after Jeffrey was born. Presumably this new information was supplied by the Watzkes. In the face of these inconsistencies, it was open to the Officer to require further and better evidence of Mr. Watzke’s parentage, and it was reasonable to request DNA testing.

[6] In this instance, the Officer did not demand DNA testing to the exclusion of other forms of evidence. The offer to receive alternate evidence in proof of Mr. Watzke's parentage is clearly indicated in the record as is the fact that the Watzkes declined to provide anything more. Specifically, the Officer's letter of August 17, 2015 to Mr. Watzke described the concern and gave him the means to resolve it:

> In order to issue a Citizenship Certificate to Jeffrey, I must be satisfied, based on the evidence presented in support of the application, that he is a person described in this provision of the *Citizenship Act*.
>
> At issue are two documents that were provided by you: the Certificate of Live Birth prepared by the National Statistics Office (NSO) on 21 December 2005, and a certified transcript of the Birth Certificate based on page 003, book number 020 of the Philippines Register of Births, issued on 8 March 2006. The Registry number on the transcript (2005-636) corresponds to Registry Number on the NSO document. A review of the file shows that the transcription was included with the application for a Citizenship Certificate for Jeffery [sic] in 2007, while NSO Certificate of Live Birth was not submitted until 26 October 2012.
>
> I must note that the certified transcript is a transcript of an original document, not an amendment of the original document. Therefore the information presented does not overrule information presented in the original. As such, I must refer to the original version of the NCO [sic] Certificate of Live Birth as the prima facie official government document recording the birth of Jeffery [sic].
>
> The pertinent sections (13 to 17) in the NCO [sic] Certificate of Live Birth which convey the recognized identity of the father are completely blank. In contrast, I have found that the transcription document of 2006 unacceptable due to the fact that the information transcribed was in error. In particular, it shows the '*Name of the Father*' as Ralph Frank Watzke, wherein as previously noted, that section on the original document is blank.
>
> As the NCO [sic] Certificate of Live Birth does not provide the documented proof we require to establish that Jeffrey is a person described as a Canadian citizen pursuant to subsection 3(1)(b) of the *Citizenship Act*, and I am unable to conclude based on this document that you are Jeffrey's biological father.

...

> You have been provided many opportunities to present documentation to support your contention that Jeffery [sic] has a derivative claim to Canadian citizenship, as well as having been invited to provide DNA evidence that would support your case regarding a genetic link. You have refused to supply DNA evidence, which is your choice, providing instead the supplied documentation which has been reviewed above.
>
> ...
>
> I would invite you to submit a new application for consideration should you decide to provide DNA evidence, as this can often provide a link to the genetic parent, or other evidence to establish a genetic link between yourself and Jeffery [sic].
>
> Alternatively, you may wish to apply for permanent residence for Jeffrey. Information is available on our website at: www.cic.gc.ca or by phone to our Call Center at 1-888-242-2100.

[7] Ostensibly on principle, Mr. Watzke adamantly refused to submit DNA evidence of his genetic link to Jeffrey. He also declined the opportunity to provide to the Department sworn evidence that he and Ms. Watzke were in a monogamous, intimate relationship at the time Jeffrey was conceived.

[8] It is also noteworthy that at no time did the Officer make a finding that Mr. Watzke is not the natural father of Jeffrey. The Officer found only that Mr. Watzke had failed to produce sufficient evidence of paternity to overcome the identified frailties of the Indonesian birth records. This was a reasonably held concern. Mr. Watzke is adamant that what he provided was legally sufficient; however, this is a decision that Mr. Watzke does not have the authority to make. Acting fairly and reasonably, it is the responsibility of the Officer to identify what is required to prove parentage.

[9] It is of some added significance that, before the Officer Mr. Watzke avoided any unequivocal assertion that he is the natural father of Jeffrey. This failure to directly address the definitive issue of paternity – including his refusal to provide DNA evidence – supports an inference that Mr. Watzke is either not the father of Jeffrey or has reservations about his genetic link to the child. On a matter as important as family unification, one is left wondering why Mr. Watzke was unwilling to accede to the Officer's reasonable requests for further and better proof or, alternatively, to immediately proceed with a sponsorship application when that option first arose.

[10] In conclusion, I am not persuaded that the Officer's decision is unreasonable or that it fails to conform to the Order given by Justice Russell. While there may be situations where foreign birth records ought to be accepted in proof of paternity, this is not one of those cases. The application is accordingly dismissed.

[11] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1418-15
STYLE OF CAUSE:	GENOVEVA WATZKE, RALPH WATZKE, + JEFFREY WATZKE (A MINOR) v MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA
PLACE OF HEARING:	REGINA, SASKATCHEWAN
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DATED:	JUNE 27, 2016

APPEARANCES:

RALPH WATZKE	FOR THE APPLICANTS (ON HIS OWN BEHALF)
GWEN MACISAAC	FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A	FOR THE APPLICANTS
William F. Pentney Deputy Attorney General of Canada Saskatoon, SK	FOR THE RESPONDENT