



OUTER HOUSE, COURT OF SESSION

[2025] CSOH 87

AD2/25

OPINION OF LADY TAIT

In the Petition of

AB and CD

Petitioners

for

orders under the Adoption and Children (Scotland) Act 2007

**Petitioners: Scott KC; Wright, Johnston & Mackenzie LLP**

13 June 2025

**Introduction**

[1] In this petition for adoption of an 8 year old child, the petitioners are unmarried and are not civil partners. They no longer live in the same household. They co-parent the child and their adopted son. The child has lived with the petitioners since 16 August 2020. In April 2021 a permanence order with authority to adopt was granted. Since the petitioners' separation in July 2023, both children have had a home with each of the petitioners. The children regard each other as siblings.

[2] The child is thriving in the petitioners' care. The petitioners have provided her with a high standard of consistent care. The child is progressing well at school. Both the

section 17 report and the report of the curator *ad litem* are positive and supportive of the orders sought.

[3] The petitioners are wholly committed to the child and have been able to work together in her interests. The child shares her week between the petitioners. The petitioners are in regular and frequent communication about her care and welfare. The child is a valued member of the petitioners' wider families. The second petitioner's new partner is supportive of the child. The petitioners' adopted son sees the child as his sister. The child has a secure relationship with both petitioners whom she regards as her parents. She regards their adopted son as her brother. She is secure and settled. She wishes to be adopted.

[4] Following a hearing, I made an adoption order under section 28 of the Adoption and Children (Scotland) Act 2007 ("the 2007 Act"). As the petition raised an issue not previously the subject of a published opinion in Scotland, I was invited to provide a written decision.

### **The statutory provisions**

[5] Section 14(3) of the 2007 Act makes the welfare of the child throughout her life the court's paramount consideration.

[6] The key issue arises from section 29 in terms of which the petitioners must be a "relevant" couple. Specifically in terms of section 29(3)(d), a couple is "relevant" if its members are "persons who are living together as if civil partners in an enduring family relationship."

## Submissions

[7] It was submitted that while the petitioners have separated and both have other partners, they have created a cohesive, integrated family life together with the child and their adopted son such that they can be said to be a relevant couple.

[8] Senior counsel relied upon the following two authorities, the first relating to the Human Fertilisation and Embryology Act 2008 (“the HFEA 2008”) and the second to jurisprudence from England and Wales relating to the Adoption and Children Act 2002 (“the ACA 2002”).

[9] *AB Petitioners* [2023] CSOH 46 concerns applications under section 54 of the HFEA 2008. Parental orders were sought by a couple who had separated but sought an order together on the basis that they were “two persons who are living as partners in an enduring family relationship”. Lady Carmichael adopted a liberal and purposive approach to construction. She held that whether the petitioners were in an enduring family relationship was a matter of fact. What was required was an unambiguous intention to create and maintain family life and a factual matrix consistent with that intention. This was a question of fact and degree. Were the orders not made, the children were:

“likely to be denied the social and emotional benefits of recognition of their relationships with their parents and would not have the legal reality that matches their day to day reality.”

A broad and flexible construction should be adopted where necessary to secure effective protection of Article 8 ECHR rights: para [18]. The parents in that case were both involved in the lives of the children and described themselves as co-parenting.

[10] *A v B and others* [2021] EWFC 45 was an adoption petition considered by Cobb J. Two women who did not marry had two children. Ms A was the biological mother of their first child, using a sperm donor. The child was adopted by Ms B. They reversed this

process for their next child, with Ms B becoming the biological mother and Ms A seeking adoption. The couple separated before an adoption order could be granted. They continued to bring up both children jointly, implementing a shared care arrangement. The children spent equal time with each parent. The parents maintained a positive, flexible and constructive relationship which was of considerable benefit to the children.

[11] The ACA 2002 required that adopters were “living as partners in an enduring family relationship”. In interpreting the phrase “living as partners in an enduring family relationship”, it is reasonable to have regard to the case law generated under section 54 of the HFEA 2008, given (a) the similar legal test; and (b) that the legal, personal, emotional, psychological, and social consequences of adoption orders and parental orders are so similar. The ACA 2002:

“should be construed in such a way as to achieve a ‘sensible’ result, having regard to, and in the light of, the statutory subject matter, the background, the purpose of the legislative test, its importance, its relation to the general object intended to be secured by the Act, and the actual or possible impact of an outcome if [he] were to reject this construction”: paragraph 43.

Further, the ACA 2002 has as its essential ethos the promotion of the best interests of children through adoption; the court can and should take into account the child’s best interests when reviewing all of the factors listed in paragraph 43 above and reaching its view. It is not necessary for the “partners” to be sharing the same property in order to be living in a family relationship; what is required is an unambiguous intention to create and maintain family life and a factual matrix which is consistent with that intention: paragraph 58. There is no rule that requires that intimacy, conjugality, or cohabitation be a component of an enduring family relationship. These are not requirements for married applicants, nor are they requirements in relation to parental orders under the HFEA 2008

which requires applicants for that order to be “living as partners in an enduring family relationship”.

[12] On the particular facts, Cobb J concluded that “family life” existed between the applicant and the child. Integrated family relationships had continued for all members of this family notwithstanding the separation of Ms A and Ms B. The law permitted him to conclude that Ms A and Ms B were living as partners in an enduring family relationship.

[13] In the present petition, senior counsel submitted that applying the principles of the case law, there was strong support for finding the petitioners are a relevant couple. An adoption order would be entirely consistent with Article 8 ECHR.

### **Decision**

[14] The child is loved, well-cared for and thriving in the care of the petitioners. She has gained security, stability and a sense of belonging with the petitioners. The petitioners have made a lifelong commitment to her.

[15] The petitioners have demonstrated themselves to be adept at co-parenting over the 2 year period since their separation. They both attend the children’s activities together, effectively as a family unit. They are both committed to the child and achieving what is best for her. The arrangement is working and meeting all of the child’s needs. The child is already part of the family unit; views herself as such; and is viewed by others as such. There is a particular concern about the child perceiving herself as being treated differently to the petitioners’ son whom the child views as her brother. The shared care arrangement is identical for both children. The children are particularly close and have a normal sibling relationship.

[16] To be a relevant couple in terms of section 29(3)(d) of the 2007 Act, the petitioners require to be “persons who are living together as if civil partners in an enduring family relationship”. I adopt the same liberal and purposive approach as in *AB Petitioners supra* and in *A v B and others supra*. If an adoption order were not made, the child would not have the legal reality which matches her day to day social and emotional reality. A broad and flexible construction should be adopted to secure the effective protection of the Article 8 ECHR rights.

[17] What is required is an unambiguous intention to create and maintain family life, and secondly, a factual matrix consistent with that intention which is a question of fact and degree. It is not necessary for the “partners” to be sharing the same property in order to be living in a family relationship. The petitioners created and have been living in a family unit with the child and their adopted son since August 2020 albeit living across two households since July 2023. Following upon their separation, the petitioners have demonstrated their commitment to maintain that family unit for the benefit of both children. I have to regard the need to safeguard and promote the welfare of the child throughout her life as the paramount consideration. I must consider the value of a stable family unit in the child's development. The purpose of the defined relationships within section 29(3) is to ensure that a child is adopted into a stable family unit. In the present circumstances, there is no reason why such a stable family unit should be viewed as insufficient to allow the child to gain legal security. It would be neither sensible nor satisfactory for the child to be placed in a different position to the petitioners’ adopted son when both children have been subject to an identical care regime within the same family unit since August 2020, both before and after the petitioners’ separation. I am satisfied that there is an unambiguous intention to create

and maintain family life and that, in the particular circumstances, the petitioners are a relevant couple.

[18] In all the circumstances, I am satisfied that adoption will safeguard and promote the child's welfare throughout her lifetime, and that it is better for the child that I make the adoption order than that I do not.