

Matter of Baby Girl

2023 NY Slip Op 32140(U)

June 26, 2023

Surrogate's Court, New York County

Docket Number: File No. 13-23

Judge: Hilary Gingold

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This opinion is uncorrected and not selected for official publication.

SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Adoption of a Child
Whose First Name is

File no. 13-23

BABY GIRL.

-----X

G I N G O L D, S .

Petitioners are seeking to adopt Baby Girl through an agency adoption, Jewish Family and Children’s Service of Greater Philadelphia/Open Arms Adoption Network (hereinafter, “JFCS”). Petitioners and Baby Girl are domiciled and reside in Philadelphia County, Pennsylvania, and have done so since November 2022. Baby Girl was born in October 2022, in Kings County, New York, and the birth mother’s instrument surrendering guardianship was duly filed in the King’s County Clerk’s Office on April 21, 2023. Nonetheless, petitioners have filed in this court, asserting that New York County, New York, is the correct venue pursuant to NY Domestic Relations Law 113[3][b][ii]. The statute states in its entirety: “[i]n any other agency adoption proceeding, the petition shall be filed in the same court, and wherever practicable, shall be assigned to the same judge of the county in which parental rights had been terminated, as a judicial surrender had been approved or the most recent proceeding under article ten or ten-A of the family court act or section three hundred fifty-eight-a of the social services law had been heard, whichever occurred last, or in the county where the adoptive parents reside or, if such adoptive parents do not reside in this state, in the county where such authorized agency has its principal office” (NY Dom Rel Law 113[3][b][ii]). Moreover, “[a]doption is solely the creature of, and regulated by, statute, and consequently, the adoption statutes must be strictly construed” (*see Matter of Yary*, 100 AD3d 200 [1st Dept 2012] [internal quotation marks omitted]).

As already noted above, parental rights were terminated in Kings County, New York, and the adoptive parents reside in Philadelphia County, Pennsylvania. According to the petition, petitioners applied to adopt Baby Girl from JFCS, 345 Montgomery Avenue, Bala Cynwyd, Pennsylvania, and according to the NYS UCS Attorney's Affidavit (UCS836) the agency fee of \$30,750 is to be paid to JFCS at this Pennsylvania address along with the \$2,478 in allowable birth parent expenses. Additionally, Meredith Rose, Director of JFCS, states that the principal office of JFCS is at 345 Montgomery Avenue, Bala Cynwyd, Pennsylvania, in each of the following documents filed with this court as part the required documents for an agency adoption: (1) Affidavit Regarding Status of Appeal; (2) Affidavit Concerning Criminal History Review; and (3) Verified Schedule (Agency) Adoption Form 1-B. Meredith Rose also completed the Form 2 (Certification as Qualified Adoptive Parent)/Affidavit and Report (Disinterested Person-Agency Adoption)/Adoptive Parent (Agency Adoption) with the adoptive home study attached. The home study states that petitioners have complied with Pennsylvania law in submitting their clearances. The report does not mention New York law. Additionally, Meredith Rose attached copies of her licenses as a certified social worker in both Pennsylvania and New Jersey.

Given the above information, the court contacted petitioners' counsel to discuss its concern that New York County is not the proper venue for this adoption. In response, Meredith Rose submitted a new Verified Schedule (Agency) Adoption Form 1-B which stated that the agency's principal office is 1180 6th Avenue, 8th Floor, New York, New York. No further information was provided by petitioners and no other information before the court was changed. In response, the court again contacted petitioners' counsel, reiterating its concern regarding venue. In response, counsel submitted a 'Memorandum of Law' to "clarify" the location of the principal office of JFCS.

JFCS is authorized to operate in New York State and the May 9, 2023 NYS Office of Children and Family Services confirmation of authorization sent to JFCS is included as an exhibit to the memorandum of law. Also included as an exhibit is a third Verified Schedule (Agency) Adoption Form 1-B, sworn to by Marques Storr, CFO of JFCS, in which she states that “[t]he address for JFCS in Pennsylvania is 345 Montgomery Avenue, Bala Cynwyd, Pennsylvania 19004 and their New York address is 1180 6th Avenue, 8th Floor, New York, New York 10036.” This Verified Schedule fails to address the question of the address for principal office of JFCS. The other documents filed with the court affirmatively state that the principal office of JFCS is located at 345 Montgomery Avenue, Bala Cynwyd, Pennsylvania.

Pursuant to CPLR 503[c] a foreign corporation is deemed a resident of the county in which its principal office is located as stated in its certificate of authority to do business in New York (*see Searle Suburban propane Div of Quantum Chem Corp*, 229 AD2d 988 [4th Dept 1996]). JFCS has not provided its certificate of authority to do business in New York. JFCS is registered with the NYS Department of State as a foreign not-for-profit corporation with jurisdiction identified as Pennsylvania, county identified as New York, and address for service of process as “The Corporation” at 135 West 50th Street, 6th Floor, New York, New York 10020. JFCS is not claiming that the address for the service of process is the principal office (*see Valasquez v Delaware River Valley Lease Corp*, 18 AD3d 359 [1st Dept 2005] [designation of principal office in a certificate of incorporation is controlling unless formally amended]). Moreover, the May 9, 2023 confirmation from New York State Office of Children Services that JFCS is an authorized adoption agency to do business within the state indicates that the address for notices to be sent to JFCS is PO Box 2238, Jenkintown, Pennsylvania.

Therefore, as repeatedly stated in the documents before the court, the principal office of JFCS is located at 345 Montgomery Avenue, Bala Cynwyd, Pennsylvania.

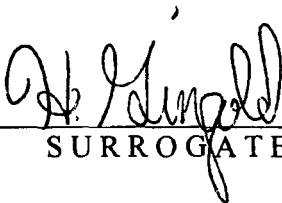
Accordingly, it is

ORDERED that, the petition for adoption of Baby Girl is denied.

This is the decision and order of the court.

The Clerk of the Court is directed to email a copy of this order to counsel at the address below.

Dated: June 26, 2023



SURROGATE

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