IN THE
**SUPREME COURT**
OF THE
**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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**IN THE MATTER OF THE ADOPTION AND CHANGE OF NAME OF Y.M.F.V., Minor Child,**
**By**
**DOMINGA F. VILLAR**
Petitioner-Appellant

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**SUPREME COURT NO. 2010-SCC-0004-FAM**
**SUPERIOR COURT NO. 08-0374**

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**Cite as: 2011 MP 7**

Decided June 23, 2011

Joe Hill, Saipan, Commonwealth of the Northern Mariana Islands, for Appellant
Tom Schweiger, Assistant Attorney General, Commonwealth Attorney General's Office, for Appellee
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; JOHN A. MANGLONA, Associate Justice.

DEMAPAN, C.J.:

¶ 1 This appeal arises from a trial court order denying Dominga F. Villar's petition to adopt Y.M.F.V., a minor child. The trial court denied the petition after finding that (1) Y.M.F.V. had not resided in the Commonwealth for the statutorily-required one year residency period because time spent in the Commonwealth on a tourist visa does not count toward this requirement; (2) the adoption was not in Y.M.F.V's best interests; and (3) the adoption was intended to circumvent Commonwealth immigration law. We hold that time spent in the Commonwealth on a tourist visa counts toward the one year residency requirement. However, because Y.M.F.V. filed her Amended Petition for Adoption less than one year after arriving in the Commonwealth, the trial court erred in evaluating the merits of the adoption petition. Accordingly, we VACATE the trial court's order denying the adoption petition and REMAND with instructions to dismiss without prejudice for failure to satisfy the adoption residency requirement.

## I

¶ 2 Y.M.F.V. was born in the Philippines on February 7, 1995. On June 14, 2008, the child arrived in Saipan as a tourist and stayed with her aunt, Appellant Dominga F. Villar ("Ms. Villar"), who lives in the CNMI. On June 26, 2008, Ms. Villar filed a Petition for Adoption seeking to adopt Y.M.F.V., and on June 11, 2009, Ms. Villar filed an Amended Petition for Adoption. Y.M.F.V's natural mother lives in the Philippines and consented to the adoption. Y.M.F.V's natural father has never had contact with or supported Y.M.F.V.

¶ 3 On June 25, 2009, the Commonwealth Office of the Attorney General ("OAG") filed a document entitled "Opposition to Adoption." Therein it argued that the adoption was not in the best interests of the child, was intended to circumvent Commonwealth immigration law, and that Y.M.F.V. did not meet the requirement that a prospective adoptee reside in the Commonwealth for one year prior to filing an adoption petition. Ms. Villar and Y.M.F.V. testified at a hearing in the Commonwealth Superior Court in this matter, and the trial court subsequently denied the petition.[1] A timely notice of appeal was filed and we have jurisdiction pursuant to 1 CMC § 3102(a) and 8 CMC § 1413(a).

¶ 4 Aside from the merits of this appeal, this case potentially implicates the federal takeover of Commonwealth immigration law. Under 8 CMC § 1410(b), "[t]he Attorney General shall have the right to intervene in any adoption; such intervention right shall be for the sole purpose of ensuring that the proceeding will not be used to circumvent or evade the immigration laws of the Commonwealth." This section was repealed by Commonwealth Public Law 17-1, which became effective on November 28, 2009. Since this date, Commonwealth immigration law has been governed by U.S. Public Law 110-229.[2]

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1 *In re the Matter of the Adoption of: Y.M.F.V.*, Civ. No. 08-0374 (NMI Super. Ct. Nov. 16, 2009) (Order Denying Petition for Adoption).

2 Public Law 110-229 is codified primarily at 48 U.S.C. § 1806.

¶ 5 Ms. Villar filed her opening appellate brief on May 27, 2010. The OAG then declined to file a response brief, asserting that since U.S. immigration law was imposed in the CNMI it no longer had legal authority to participate in this case. Simply put, the OAG argues that since it was only authorized to be involved in this case to prevent immigration fraud, and the OAG is no longer entrusted with this task following the federal immigration takeover, it could not be involved in the appeal. On October 25, 2010, this Court ordered the OAG to either file a supplemental brief supporting why it could no longer participate in this appeal, or file a response brief addressing the merits of the appeal. The OAG subsequently filed a brief addressing these issues and appeared at oral argument.

**II**

¶ 6 The trial court denied Ms. Villar's adoption petition, finding that (1) Y.M.F.V. had not resided in the Commonwealth for the statutorily-required time period; (2) the adoption did not serve the best interests of the child; and (3) because the adoption was not in the child's best interests it was intended to circumvent Commonwealth immigration law. Because we find the first issue dispositive in this case, we decline to examine issues two and three.

A. *Adoption Residency Requirement*

¶ 7 The Commonwealth Code establishes the procedure and requirements for adopting a child in the CNMI. Under 8 CMC § 1402, "[a]ny resident under the age of 18 years may be adopted . . . provided . . . the court is satisfied that such adoption is not for the purpose of circumventing or evading the laws of the Commonwealth or of the United States of America. . . ." A "resident" is defined as "an individual who is physically present and living in the Commonwealth for at least one year prior to the filing of the petition for adoption . . . ." 8 CMC § 1401(i).

¶ 8 In its order denying the adoption petition, the trial court ruled that Y.M.F.V. had not resided in the Commonwealth for the statutorily-required one year period. Ms. Villar filed her Amended Petition for Adoption on June 11, 2009. Appellant's Appendix to the Brief ("Appendix") at 10. The trial court found that Y.M.F.V. had resided in the Commonwealth since July 8, 2008 – the date Y.M.F.V. "submitted an immediate relative application to the Division of Immigration." Order Denying Petition for Adoption at 2.[3] The court reasoned that prior to this date, Y.M.F.V. was in the Commonwealth as a tourist and that the tourist visa is "a classification that lacks the requisite intent of 'residing' or 'living' in the Commonwealth." *Id.* The court then concluded that since one year had not passed between the filing of the immediate relative application and the Amended Petition for Adoption, the petition was procedurally defective. Despite this finding, the court proceeded to the merits of the case. The order itself does not explain the basis for this decision. The trial transcript appears to reflect that the court discounted the

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[3] This application is not included in the appellate record and so it is unclear whether Y.M.F.V. or Ms. Villar submitted it.

significance of this deficiency because at the time of the hearing Y.M.F.V. had resided in the Commonwealth for over one year.[4] The trial court's decision raises two issues: (1) whether time Y.M.F.V. spent in the Commonwealth on a tourist visa counts toward the one year residency requirement; and (2) whether Y.M.F.V. met the one year requirement at the time the petition for adoption was filed.

1. *Time Spent in the Commonwealth on a Tourist Visa Counts Toward Adoption Residency Requirement*

¶ 9 We review the trial court's interpretation of the adoption residency statute de novo. *See Rebuenog v. Aldan*, 2010 MP 1 ¶ 15 (Slip Opinion, Jan. 29, 2010) (citations omitted). We find that the trial court erred in concluding that time spent in the Commonwealth on a tourist visa does not count toward the one year residency requirement for adoption. Under 8 CMC § 1401(i), a "resident" is defined as "an individual who is physically present and living in the Commonwealth for at least one year prior to the filing of the petition for adoption . . . ." A "basic principle of construction is that language must be given its plain meaning. When language is clear, we will not construe it contrary to its plain meaning." *King v. Bd. of Elections*, 2 NMI 398, 403 (1991) (citation omitted). This ensures that we "give effect to the intent of the legislature." *Commonwealth Ports Auth. v. Hakubotan*, 2 NMI 212, 221 (1991) (citations omitted). The statutory definition of "resident" set forth in 8 CMC § 1401(i) does not include intent as an element.[5] Given this absence, we decline to read this requirement into the statute as this would violate well-established canons of statutory construction and risk undermining the legislature's intent.[6]

¶ 10 Our prior case law also supports this position. We dealt briefly with a similar issue in *In re the Adoption of N.I.L.S.*, 2007 MP 31, wherein the trial court denied two adoption petitions and this Court reversed after finding that the lower court had failed to consider whether the adoptions were in the children's best interests. In *N.I.L.S.*, children came to the CNMI as tourists from the Philippines and their aunts and uncles (who lived in the Commonwealth) petitioned to adopt them. *Id.* ¶¶ 2-4. The trial court ruled that the adoptions were intended to circumvent immigration law and denied the petitions. *Id.* ¶ 1. On appeal, this Court stated that a "cautious view toward relative adoptions is needed" and that "[c]hildren entering and remaining in the Commonwealth on tourist visas, and then being adopted in order to avoid immigration law, cannot be permitted to occur under the Commonwealth's adoption law." *Id.* ¶ 10. Despite these concerns, however, this opinion reflects that time spent in the CNMI on a tourist visa does

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[4] The court stated, "Um, the Attorney General's opposition, ah, one of their grounds is that um-ah, [the child] wasn't here for a year, I guess, but ah, [the child] has been here for a year now, so ah, I'm not gonna use that ah." Transcript of Proceedings ("Transcript") at 30.

[5] In contrast, the legislature has included an "intent" requirement in the Commonwealth's voter residency statute. *See* 1 CMC § 6204(a) ("[t]he residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has the *intention* to return.") (emphasis added).

[6] This position also makes intuitive sense. Adoptions generally involve young children who in many cases are unable to form intent concerning where they wish to live. It is therefore logical that the legislature would not have included an intent requirement in the statutory definition of resident.

count toward the one year residency requirement. Specifically, after quoting the residency definition in 8 CMC § 1401(i), we stated: "The trial court heard testimony that all three children arrived in the Commonwealth in 2004 as tourists. Thus, the children are considered residents and meet the Commonwealth's basic adoption requirements." *Id.* ¶ 7 Indeed, the Court never even discussed the possibility that tourist-status would preclude a residency finding, but instead set the critical inquiry as whether the tourist visas were obtained in order to effectuate a "sham" adoption and thus circumvent immigration law. Our decision in *N.I.L.S.* – while not identical to the case presently before us – is inconsistent with the trial court's position. Accordingly, relying on a plain text reading of 8 CMC § 1401(i), and our precedent in *N.I.L.S*, we hold that the one year residency requirement for an adoption has no intent element and time can accrue to satisfy this requirement even if the child is in the CNMI on a tourist visa.

2. *Y.M.F.V. Failed to Satisfy Adoption Residency Requirement*

¶ 11 Given our holding, the trial court's basis for ruling that Y.M.F.V. did not meet the one year residency requirement is flawed because it used July 8, 2008 – the date Y.M.F.V. submitted her immediate relative application – as the start of the residency period. The court should have instead used the date that Y.M.F.V. arrived in the Commonwealth. Ms. Villar states that it is "undisputed that the adoptee arrived in the CNMI on June 14, 2008 as a tourist." Appellant's Brief at 3; *see also* Appellee's Br. at 1 ("On June 14, 2008 the thirteen year old prospective adoptee arrive in the CNMI as a tourist); Transcript at 11. It is similarly uncontested that Ms. Villar filed the petition to adopt Y.M.F.V. on June 11, 2009. Appendix at 10. Under 8 CMC § 1401(i), a "resident" must be "physically present and living in the Commonwealth for at least one year *prior to the filing of the petition for adoption* . . . ." (emphasis added). It is evident from the record that this requirement was not met because Y.M.F.V. had not resided in the Commonwealth for one year when the Amended Petition for Adoption was filed on June 11, 2009.[7] Thus, while the trial court used the wrong date to determine residency, its ultimate conclusion – that the one year requirement was not satisfied – is correct.

3. *Proper Disposition is Dismissal Without Prejudice*

¶ 12 The Commonwealth Code does not address what action the trial court should take when an adoption petition is filed before the one year residency requirement is satisfied. It does provide that dismissal is appropriate when other requirements – such as obtaining required consents – are not met. *See* 8 CMC §§ 1411(c)-(d). In determining the proper outcome in this case, we acknowledge the dissent's position that adoption statutes should be liberally construed. This principle may justify overlooking a procedural deficiency in certain unusual cases. However, the facts in this case do not provide sufficient

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[7] While not mentioned in the trial court order or by either party, we observe that neither the petition for adoption nor the amended petition for adoption complies with 8 CMC § 1408(a)(1), which requires an adoption petition to state "the period of residency in the Commonwealth, of the individual to be adopted."

justification for the trial court's decision to evaluate the merits of the petition and thereby in effect ignore the adoption residency requirement.[8] We are also mindful that the child's best interests are paramount in adoption cases. Accordingly, we order the trial court to dismiss without prejudice this case for failure to satisfy the adoption residency requirement.[9] This outcome strikes the proper balance between respecting statutory requirements and protecting Y.M.F.V.'s interests.

## III

¶ 13 For the foregoing reasons, we hold that the trial court erred in concluding that time spent in the Commonwealth on a tourist visa does not count toward the one year adoption residency requirement. However, because Y.M.F.V. filed her Amended Petition for Adoption less than one year after arriving in the Commonwealth, the trial court erred in evaluating the merits of the adoption petition.[10] Accordingly, we VACATE the trial court's order denying the petition for adoption and REMAND with instructions to dismiss without prejudice for failure to satisfy the adoption residency requirement.

SO ORDERED this 23rd day of June 2011.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
ALEXANDRO C. CASTRO
Associate Justice

MANGLONA, J., concurring in part and dissenting in part:

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[8] We recognize the trial court's position that the one year requirement was met at the time of the adoption hearing; however, this misconstrues the nature of the statutory requirement. Permitting this reasoning would encourage parties to file adoption petitions without meeting the one year requirement, knowing that by the time the court heard the matter one year would have passed. Certainly this could not have been the legislature's intent.

[9] Nothing in this opinion precludes Ms. Villar from re-filing a petition for adoption, and if all necessary requirements are met the trial court may evaluate the petition pursuant to applicable Commonwealth adoption law.

[10] Immigration matters in the Commonwealth are now governed by federal law and our decision in this case does not speak to the immigration consequences arising from Y.M.F.V.'s potential adoption.

¶ 14 I respectfully dissent from section II(A)(3) of the majority's opinion in this case. I write separately to express my belief that to adequately protect Y.M.F.V.'s interests we must review the merits of this appeal and not decide this matter based on a relatively minor procedural deficiency.

¶ 15 The Commonwealth legislature has clearly conveyed its intent that CNMI adoption law be "liberally construed to the end that the best interests of the adopted children are promoted." 8 CMC § 1419. We echoed this priority in *In re Adoption of Olopai*, 2 NMI 91, 103-04 (1991), stating that "the best interest of the child is the paramount criteria to consider" in adoption proceedings. While I agree that Y.M.F.V. had not resided in the Commonwealth for one year when the amended adoption petition was filed, the child was only a few days short of meeting this requirement. While strict adherence to statutory requirements is generally appropriate, this demand is less pressing in the present case. Specifically, liberal construction of the residency requirement is warranted because this matter involves the best interests of the child. This circumstance justifies reaching the merits of this appeal. Accordingly, I believe the Court erred in finding the procedural deficiency dispositive, and should instead review the trial court's application of the *Olopai* factors to determine whether the adoption was in Y.M.F.V.'s best interests.

¶ 16 For these reasons I respectfully concur in part and dissent in part.

Dated this 23rd day of June 2011.

/s/

JOHN A. MANGLONA
Associate Justice