

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS].

**NOTE: PURSUANT TO S 22A OF THE ADOPTION ACT 1955, ANY REPORT
OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF
THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE
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**IN THE FAMILY COURT
AT NORTH SHORE**

**I TE KŌTI WHĀNAU
KI ŌKAHUKURA**

**FAM-2019-044-000701
[2020] NZFC 5859**

IN THE MATTER OF	THE ADOPTION ACT 1955
BETWEEN	ANON PHITAK (AKA) PHUSIT SANTIKUNAPORN Applicant
AND	PREECHA YOKAD SURADA SANTIKUNAPORN CHUTIMAN YOKAT Respondents

Hearing:	17 July 2020
Appearances:	J Cookson for the Applicant No appearance by or for the Respondents F Patterson as Counsel to Assist
Judgment:	17 July 2020

ORAL JUDGMENT OF JUDGE K MUIR

[1] In this adoption application the applicant, Anon Phitak, also known as Phusit Santikunaporn, is applying to adopt an 18 year old child, Pathomporn Yokat, who is his sister half-sister. Pathomporn was born on [date deleted] 2001 in Thailand. While she and the adoptive father both share the same mother, sadly their mother died on

19 May 2003 when Pathomporn was one year old only. Mr Phitak has been in a relationship with his partner for 10 years. They are both New Zealand citizens. They are both in Court today. However, Mr Phitak is the only applicant.

[2] Pathomporn has never been in her father's care. She does not have a relationship with her father. She was effectively abandoned by him shortly after she was born. Her father's guardianship status was terminated by the Courts in Thailand on 17 April 2018. At that time, Mr Phitak was appointed as Pathomporn's guardian. However, there is evidence on the file that Pathomporn's father is supportive of the adoption proceeding. Pathomporn has lived in New Zealand with Mr Phitak and his partner since 2017. Prior to that, she lived with her maternal aunt, uncle and two cousins in Thailand. However, her aunt and her uncle are now advancing in years and they are no longer in a position to continue to care for her. Pathomporn's only other significant relation is a sister who lives in Thailand still.

[3] Since she has lived in New Zealand, Pathomporn has been here under a student visa. She attends [a local college]. She is doing well and particularly enjoys her hospitality studies. The applicant and his partner both work in hospitality locally.

[4] Pathomporn is very supportive of this adoption application. It is something that she very much wants. The reality is that the applicant has been financially supporting Pathomporn since 2005. He has always felt responsible for her. That sense of responsibility has never diminished and he has never shirked that responsibility.

[5] I am helped in this case by two significant sources of information. The first is Ms Patterson who has been appointed as lawyer to assist and who has filed a very helpful memorandum and the second is a child study report that was prepared by Oranga Tamariki on 14 February 2020.

[6] This is an intercountry adoption, Pathomporn being from Thailand and not being currently a New Zealand citizen nor holding rights of residency. However, the provision of the Adoption (Intercountry) Act 1997 do not apply, nor do the provisions of the Hague Convention on intercountry adoptions. This is because Pathomporn is over the age of 18. The Hague Convention and the AIA only apply to the age of 18.

However, the Adoption Act 1955 continues to apply until Pathomporn reaches the age of 20.

[7] It is acknowledged freely by the parties that Pathomporn's residency status in New Zealand is one reason for this application being made. However, the Oranga Tamariki report writer confirms that she does not believe that that is the only or sole reason for this application.

[8] If I grant the application, Pathomporn will be able to obtain rights of residency in New Zealand. Indeed, she will be able to obtain New Zealand citizenship. However, the fact that the applicant is the child's closest relative, the fact that he has always supported her, and importantly has continued support for her and her continuing need for care and protection as a student in New Zealand even though she is now 18 years of age all indicate that the motivation for this application extend well beyond immigration technicalities. They all indicate that this application should be granted.

[9] In Ms Patterson's helpful submissions, she recorded that the application had been properly served in accordance with the directions as to service that were previously made by Her Honour Judge Partridge.

[10] The child study report notes that even though the Hague Convention does not apply here, a child study report would usually be sought from the child's country of origin. It is the practice of the Courts to endeavour to comply with the procedures set out in the Hague Convention even when an adoption application is made from a non-Hague contracting state. I should record for the record that Thailand is a signatory to the relevant Hague Convention. However, the report writer did not think that it was practicable or necessary to obtain or attempt to obtain a child study report from the child's country of origin. This was because the circumstances of the child in Thailand were well known and because of the fact of the close relationship between Pathomporn and the applicant. It is also relevant of course that Pathomporn is 18 years of age so the Hague Convention no longer applies. Her birth mother is deceased and her birth father is supportive of the adoption. Pathomporn's wish, given her age and maturity, also held considerable weight in the report writer's mind.

[11] Counsel to assist had met with both the applicant and Pathomporn. They presented as closely bonded. Ms Patterson spoke with Pathomporn on her own. She was gentle, reserved and quite vulnerable.

[12] It is clear from everything I have read that the applicant will continue to support Pathomporn's Buddhist faith practices. Pathomporn will remain appropriately immersed in the Thai culture in New Zealand. Pathomporn is aware of that. She loves everything about New Zealand. However, she has returned to Thailand on several occasions and it is likely that she will continue to return in the future.

[13] In order to make an adoption order, there are a number of matters which must be considered first. The first consideration is whether or not there is consent of the biological parents or whether I find that that consent should be dispensed with. As I have said, in this case Pathomporn's father had effectively abandoned responsibility for her care and I find that his consent is not necessary. I am prepared to dispense with it. However, I note the information on the file indicating that he consents.

[14] I then have to be satisfied that this is not an application that is governed by the provisions of the AIA. I have already recorded the fact that that Act does not apply, notwithstanding the fact that Thailand is a signatory to the Hague Convention, because of Pathomporn's age.

[15] I have to be satisfied that all of the requirements of the Adoption Act are met. Section 3 of the Act is satisfied. Section 4 of the Act is satisfied because the applicant is over 20 years and is a relative of the child. Section 4(2) says that:

An adoption order shall not be made in respect of a child who is a female in favour of a sole applicant who is a male unless the Court is satisfied that the applicant is the father of the child or that there are special circumstances which justify the making of an adoption order.

[16] I am satisfied that special circumstances exist here. The applicant is Pathomporn's brother. The applicant has supported the child for most of her life. The applicant and Pathomporn are in a settled relationship. The information that I have indicates that the child is safe with the applicant. In fact, I would be very concerned

if I were not in a position to grant this application because I would be concerned that that might have a negative impact on the child's sense of wellbeing and safety.

[17] I now turn to s 11 of the Act. I have to be satisfied that the applicant is a fit and proper person to have the role of providing the day-to-day care of Pathomporn. I have to be satisfied that he has sufficient ability to bring her up and maintain her.

[18] On the basis of the evidence that I have read, I find that not only the applicant but also his partner are fit and proper persons to have the role of providing the day-to-day care of Pathomporn.

[19] They are both clearly hard working and diligent. The significant support that the applicant has already provided to Pathomporn throughout her childhood is a good indication that she is in a safe and secure position materially.

[20] I must next be satisfied that Pathomporn's welfare and interests will be promoted by the adoption. I have to give due consideration to her wishes having regard to her age and understanding.

[21] I am satisfied by all of the evidence that her welfare will be promoted by the adoption. It complies with her wishes.

[22] I have to be satisfied that if any conditions have been imposed as to religious denomination or practices that they will be complied with. While no particular conditions have been imposed on the making of this order, I am well satisfied that Pathomporn's link to her Buddhist faith and her Thai culture will be not only preserved and protected but promoted if I confirm the order that is sought today.

[23] The order that I am being asked today is simply a declaration of the legal status of something that is a reality. The applicant is already Pathomporn's guardian. He is already the person who is responsible for her care. He is already the person to whom she looks for support and love.

[24] I have to consider whether this order should be an interim or final order. Usually, these orders are interim orders and they are made interim for a period of at

least six months. That is effectively a trial period to see whether or not the adoption is going to work. I can only make the order final if special circumstances are made out. There are a number of cases which have been decided in similar circumstances where special circumstances have been found.

[25] As I said, the adoption order that is being sought today is simply to make what has already happened in reality legal. I can only make the order final if those special circumstances are made out. As Judge Pidwell noted in *Re Tagioalisi*, the purpose of an interim order is, “To test the bonding and establishment of a relationship with a child and to enable the social worker to provide ongoing monitoring.”¹

[26] I bear that in mind and I also note from another reported decision case, *Re BH*, that in making a decision whether to make a final order or interim order the Court is essentially engaged in a balancing exercise where the matters to be considered include providing a sense of permanency against the stress that is associated with uncertainty.² They are to be weighed against the benefits of the social work overview that can occur during the interim period.

[27] Given the purpose of an interim order is generally to test the bonding and establishment of a relationship with a child it seems to me that it is unnecessary. All of the testing that is necessary has already been done. These are special circumstances that in my view mean that the order should be made. The length of time Pathomporn has been in the care of her brother and the sibling relationship that exists between them are important factors.

Orders

[28] Accordingly, I make a final order for adoption.

[29] I understand that the applicant and Pathomporn do wish to have the words “Adoptive Parents” appear on her birth certificate.

¹ *Re Tagioalisi* [2015] NZFC 2319.

² *Re BH* [2007] NZFLR 399.

[30] The child's name from now on for the purposes of the birth records will be Pathomporn Santikunaporn.

Judge K Muir
Family Court Judge

Date of authentication: 31/07/2020
In an electronic form, authenticated electronically.