

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

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**IN THE FAMILY COURT
AT WAITAKERE**

**I TE KŌTI WHĀNAU
KI WAITĀKERE**

**FAM-2021-090-000594
[2021] NZFC 11710**

IN THE MATTER OF	THE FAMILY ADOPTION ACT
BETWEEN	[LAURENT CHAUVIN] [VINCENT BAKER] Applicant
AND	[TIMOTHE CHAUVIN-BAKER] Respondent

Hearing: 19 November 2021

Appearances: M Casey QC for the Applicants (via AVL)
I Opacic – Social Worker for the Respondent (via AVL)

Judgment: 19 November 2021

ORAL JUDGMENT OF JUDGE B R PIDWELL

[1] This is an application filed jointly by [Laurent Chauvin] and [Vincent Baker] to adopt a little boy, [Timothe Chauvin-Baker] born on [date deleted] 2021. They are all beaming into my Court virtually today and I can see them on my screen. They form a very happy, content picture of a new little family.

[2] Ms Casey QC represents them. She is beaming in from Auckland and we also have Ms Opacic, the social worker, who has prepared the report for the Court. I am grateful to you all for making yourselves available in this way. It is one of the benefits of COVID-19 that we can actually conduct virtual hearings like this and it is pleasing that it is working well for everyone.

[3] This application falls within the criteria for the protocol established by the Family Court for international surrogacy adoptions under COVID-19 and has therefore been fast-tracked and streamlined so that it can occur today to enable the hearing to occur virtually, for the order to be made, and in accordance with the inter-agency process, a new birth certificate and passport to be issued quickly so that these new parents can bring young [Timothe] home.

[4] [Timothe] was born as a result of a gestational surrogacy agreement using an egg donor and a surrogate who lives in Indiana. She is [the surrogate], married to [her husband]. They have two children together. Using gametes from Mr [Chauvin] and egg donation the embryo was hatched by [the surrogate] and young [Timothe] was created and born on [date deleted] 2021 in [city deleted] Indiana.

[5] As described by Ms Casey, the embryo was in fact created a couple of years prior using the IVF process and he is a long-awaited and much-wanted child of the applicants. Obviously, the COVID-19 pandemic has interfered somewhat with that process and the delay in his ultimate birth but it is obviously a happy day now that he is here and that he is able to come home.

[6] The applicants have formed a lovely relationship with [the surrogate] and the documents that have been prepared, their affidavit together with her affidavit and the social worker's report, confirm that. The egg donor wishes to remain anonymous but of course the applicants are open to or wanting, in fact, her to be known to [Timothe] so his full birth history and birth story are transparent to him.

[7] In order for me to make an adoption order I need to be satisfied of a number of things. Firstly, the jurisdiction. I need to be satisfied that the parties are in a relationship and spouses and they clearly are. They were married on [date

deleted] 2020 and have been in a relationship since 2013. They are also of the requisite age and [Timothe] is clearly a child, being a new-born - the Act requires the child to be under the age of 20 which he clearly is.

[8] I also need to be satisfied that the Adoption Inter-country Act 1997 does not apply. Ms Casey has provided submissions on this aspect and it is noted that a child's habitual residence is intrinsically linked with that of their parents. The enquiry is one of fact and intention. Both Mr [Chauvin] and Mr [Baker] are New Zealand citizens. They are only in Indiana in order to witness the birth of their son and bring him home. There is no evidence that they wish to remain there in any way. They have a home in Auckland, they have jobs awaiting them, family here and the fact that [Timothe] was born in Indiana is simply a circumstance of his birth and the fact that the woman carrying him, the surrogate, lived there, but there has never been any intention for him to reside there permanently. Indeed, the surrogate herself addresses that in her affidavit as well and confirms her view and her consent that [Timothe] can come to New Zealand to be raised here permanently. Therefore, I am satisfied that they are not habitually resident in Indiana and the intention is for them to live in New Zealand therefore the International Adoption Act does not apply.

[9] I also need to be satisfied that the appropriate consents have been provided by the surrogate. That is because under the Status of Children Act 1969, in New Zealand the woman who carries the child and gives birth to the child is the presumptive mother and her legal husband is the presumptive father. The situation here is that [the surrogate] and her husband are not genetically linked to [Timothe] in any way. There is a clear surrogacy agreement that was signed, a gestational carrier agreement, which dictates the intention from the outset. We now need to use the Adoption Act to unravel the presumptions in our law under the Status of Children Act. The consent of the egg donor is not required but the consents of [the surrogate] and [her husband] have been provided and notarised, together with an affidavit confirming the background in the agreement and her consent. Therefore, I am satisfied that the appropriate consents have been provided and meet the criteria necessary in the Act.

[10] I now need to turn to consider whether the applicants are fit and proper people to be parents of this little boy. The Court always directs a s 10 social worker's report

to provide some enquiry into that aspect and it is always a delight for a Family Court Judge to read these reports. This one in particular is a lovely read. It describes the background to each of the parents including their upbringing, and their multinational status. This child has been born into a lovely mix of cultures and backgrounds. It describes the relationship between Mr [Chauvin] and Mr [Baker] and if I can just take some words from the social worker, she has formed the view that Mr [Chauvin] and Mr [Baker] are “humble, personable, respectful and have a positive outlook on life. I have also formed the belief that they have a genuine, stable, committed and loving relationship.” So that is just a taste of what the report says and it certainly is comprehensive. It covers the birth story of [Timothe] and confirms that there are no medical or physical or financial impediments, neither applicant has any criminal convictions and it is wholly supportive of the couple coming into their new role as parents for [Timothe]. It assesses them as fit and proper people and confirms the view of the social worker that the adoption is in [Timothe]’s best interests and welfare and supports a final order issuing at the first instance.

[11] I wholeheartedly concur with the conclusions of the social worker. It is always a somewhat uncomfortable enquiry for a judge to make when a child is so wanted and so loved and biologically linked to one of the parents for us to then have to enquire into whether they are fit and proper people from an objective perspective. We do not do that for parents who are simply creating a child on their own but this process requires us to do that. There is overwhelming evidence that the applicants are fit and proper people and that it is in [Timothe]’s best interests and welfare for him to be legally part of the family that has created him and wants him and loves him.

[12] The final step that I need to take is to consider whether there are special circumstances for orders to issue in the final form from the first instance. Interim orders are usually issued simply to monitor the family and ensure everything works out in terms of bonding and commitment but that is not premised on a surrogacy arrangement. What we are doing here is simply confirming, legally, the biology and relationship that is already in existence. The social worker does not consider any monitoring is required and neither do I. Therefore I am satisfied that there are special circumstances to promote the welfare and best interests of [Timothe] and that a final order should issue at the first instance.

[13] In those circumstances, I am fully satisfied that [Timothe] should be confirmed by way of adoption order as the legal child of the applicants. Further, I consider there are special circumstances for an order to issue at the first instance. There need not be any name change to the new birth certificate to issue but the birth certificate is to issue without the words “adoptive parents” on it.

[14] The social worker’s report can be released to the applicants to form part of [Timothe]’s birth story and pursuant to regulation 13(2) I direct that a copy of the full adoption order be released to the applicants for the purpose of use in the future for any immigration purposes, if required.

Judge B R Pidwell

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 03/12/2021