

EDITORIAL NOTE: NAMES AND/OR DETAILS IN THIS JUDGMENT HAVE BEEN ANONYMISED.

NOTE: PURSUANT TO S 22A OF THE ADOPTION ACT 1955, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE [HTTP://WWW.JUSTICE.GOVT.NZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).

**IN THE FAMILY COURT
AT MANUKAU**

**FAM-2015-092-000123
[2016] NZFC 4683**

IN THE MATTER OF THE ADOPTION ACT 1955

BETWEEN GAURAV MITTAL
 ARADHANA CHAUDRI
 Applicants

Hearing: 3 June 2016

Appearances: D Kumar for the Applicants

Judgment: 3 June 2016

ORAL JUDGMENT OF JUDGE M L ROGERS

[1] This afternoon I am considering an application by Gaurav Mittal and Aradhana Chaudri to adopt Subhash Mittal who was born on [date deleted] 2014.

[2] Subhash is the child of Ram Mittal, who is Mr Mittal's younger brother, and Nikita Kaur. Both of the birth parents have provided consent to Subhash's adoption by the applicants and Subhash has been in the care of the applicants since four days after his birth. The applicants' home is the only home that Subhash has known and the applicants are in effect the only parents that Subhash has known.

[3] As is usual, a report has been obtained from Child, Youth and Family and that report dated 12 November 2015 is entirely positive about Mr and Mrs Mittal. It notes that Subhash is well settled in their care and that this is the only household he has known. The report also notes the very positive references that the social worker has received, reporting that the applicants both have very fine personal characteristics and an established ability to care for Subhash.

[4] It is properly acknowledged by the social worker that there was what could perhaps be described as a bit of 'a speed wobble' around Mother's consent to Subhash's adoption. That is understandable in the circumstances but Ms Kaur, that is to say Subhash's biological mother, ultimately reported to the social worker that on reflection she realised she simply was not able to care for Subhash. She is struggling to look after the two children in her care and Ms Kaur has very little support. Her main concern was really to ensure that she had some ongoing role in Subhash's life. The parties have now negotiated a contact agreement to ensure that Ms Kaur does have ongoing contact. It is understood by everyone, and most importantly by Ms Kaur, that that agreement is not legally enforceable and that the adoption order will in effect sever her legal rights to Subhash. Notwithstanding that significant step, Ms Kaur has been very clear in confirming that she does now support the adoption.

[5] This is a case where given the open nature of the proposed arrangements the Court needs to consider whether rather than severing the legal ties by adoption, orders under the Care of Children Act 2004 would be more appropriate. Those options were discussed by the social worker with the applicants and with Ms Kaur. Ultimately, none of the parties feel that Care of Children Act orders will adequately

reflect the nature of the arrangement that has been entered into. Ms Kaur was clear, even prior to Subhash's birth, that what she wanted was an adoption order and even with the discussions around contact that remains Ms Kaur's view.

[6] Subhash's father has really not been very involved in the arrangements. He has certainly consented to and supported them, but it appears he may have moved on with his life now, content to see Subhash raised in the care of his brother and Mrs Mittal. I suspect that the views of biological father are very much influenced by the fact that he has a close relationship with his brother and his wife and thus no concerns about his ability to remain a part of Subhash's life.

[7] The social worker comments that the applicants present as a warm, mature and committed couple who love Subhash as their own child. The social worker says that she has, "No doubt that the applicants will support Subhash with knowing his birth origins as he grows and his understanding increases." The social worker concludes by supporting the application for an interim adoption order on the basis that the applicants are fit and proper people in terms of s 11(a) of the Adoption Act 1955 and that the adoption will be in Subhash's welfare and best interests as contemplated by s 11(b). There are no relevant religious considerations in terms of s 11(c).

[8] In this case I think the Court has to be mindful of the family arrangements entered into from the very beginning of Subhash's life, the broader family expectations about Subhash's care and the underlying cultural dynamics that have led the parties to feel very strongly that adoption is more appropriate for them than Care of Children Act orders.

[9] I am satisfied, giving all those matters due weight, that an interim adoption order should be granted in favour of Mr and Mrs Mittal. Accordingly the application will be granted in terms as filed.

[10] I am very pleased to congratulate the applicants on the success of their application. It seems that Subhash is a much loved and very well cared for child and that is the ultimate priority for this Court. There will be a monitoring period now

that the interim order has been made, but I have every reason to believe that in the fullness of time final orders will be made as anticipated by all parties.

[11] I have just asked Ms Kumar to clarify the proper surnames for the applicants because at times they have been referred to as Mr Mittal and Mrs Chaudri and at times they have been referred to as Mr and Mrs Mittal. Ms Kumar has clarified that Chaudri is the female applicant's maiden name and that the correct full name for the female applicant is Aradhana Mittal, thus leaving us with Mr and Mrs Mittal as the applicants. That should be recorded on the order.

[12] Subhash's surname, and indeed name in total, will not need to change as his surname is already Mittal.

M L Rogers
Family Court Judge