

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

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**IN THE FAMILY COURT  
AT AUCKLAND**

**I TE KŌTI WHĀNAU  
KI TĀMAKI MAKĀURAU**

**FAM-2019-004-001086  
[2020] NZFC 3344**

IN THE MATTER OF      THE BIRTHS, DEATHS, MARRIAGES,  
AND RELATIONSHIPS REGISTRATION  
ACT 1995

BETWEEN                [SANDRA LOGAN]  
Applicant

AND                      REGISTRAR-GENERAL OF BIRTHS,  
DEATHS AND MARRIAGES  
Respondent

Hearing:                5 May 2020

Appearances:        Applicant appears in Person (via telephone)  
No appearance by or for the Respondent  
M Casey QC as Counsel to Assist (via telephone)

Judgment:             25 May 2020

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**RESERVED JUDGMENT OF JUDGE R VON KEISENBERG**

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[1]      This matter came before me on 5 May 2020. It was intended that the applicant would appear in person together with counsel to assist but following the COVID-19 restrictions, the hearing proceeded by way of teleconference.

[2]      After hearing from the applicant and counsel to assist, Ms Casey, I granted the application as sought and indicated that I would give my reasons in writing later.

[3] The applicant sought a declaration that she is a female and for a birth certificate to be issued to record her as a female. The Court has jurisdiction to make such an order pursuant to s 28 Births, Deaths, Marriages, and Relationships Registration Act 1995 (“the Act”). Counsel to assist, Ms Casey was appointed and provided a helpful report on the jurisdictional issues arising and whether there were any issues arising that could prevent an order being made.

[4] The application was served on the Registrar-General of Births, Deaths and Marriages by letter dated 9 December 2019. Counsel for the Registrar-General filed a memorandum advising that Births, Deaths and Marriages did not intend to take any active steps in the proceedings and would abide the decision of the Court.

[5] Ms Casey, in her first memorandum to the Court, reported that further medical evidence was required from the applicant in relation to the treatment she had received, and more information was needed regarding her personal history.

### **Background**

[6] The applicant was born a biological male. Her name at birth was [Sam Logan]. She was born on [date deleted] 1972. She is now [in her late 40s].

[7] The applicant is self-representing. She has filed two affidavits in this matter. The critical evidence before the Court is that:

- (a) The applicant says that when growing up, she struggled for years with her gender identity but was not aware that transitioning was a possibility. In 2016, she was referred to [a Sexual Health Clinic] by her general practitioner and was assessed as ready for hormone therapy.
- (b) She was supported through her medical transition by the health clinic between August 2016 and April 2018 at which time she was discharged back to her GP. In August 2016, she commenced female hormone therapy and male hormone (testosterone blocking) therapy which she has continued with.

[8] For the hearing, Dr [Simmons] provided a full report dated 3 April 2020. This was attached to a second affidavit of 30 April together with Dr [Simmons]'s updated report, there was a letter from a twin sister, [Iva], supporting [Sandra]'s application and confirming aspects of the applicant's transition from male to female. In the letter from Dr [Simmons], he confirmed:

- (a) That there was a "readiness for hormone therapy assessment" by a psychotherapist, Bogusia Loska, prior to the commencement of the medical transitioning. Dr Loska supported Ms [Logan]'s decision to take feminising hormones in accordance with international standards of care.
- (b) The purpose of starting feminising hormones was to enable the applicant to acquire physical conformation that was in alignment with her gender identity.
- (c) That many of the physical changes that have occurred since commencing hormone therapy in August 2016 are permanent. Ms [Logan], in her interactions with Dr [Simmons], has been consistent in her decision to continue with the medical transitioning process since commencement. Dr [Simmons] observed that when he last met with her in April 2018 the applicant had fully socially transitioned and was living as a woman.
- (d) In April 2018, the applicant was referred to the Ministry of Health high cost treatment pool for gender affirmation surgery. At that time, she was placed number 79 in the treatment pool.

[9] In her affidavit of 19 March 2020, the applicant confirmed that she began dressing and living as a woman fulltime from 2016, once she had commenced the hormone therapy. She reported that the process has been a "mixed bag of emotions" but over time, life had steadily improved for her. She had the ongoing love and support of her partner, Mr [Bennett], and close friends and family.

[10] In her second affidavit the applicant attached letters of support from her friend Ms [Robertson] and employer Ms [Curtis]. Ms [Robertson] confirmed that the applicant has been living as a woman as long as she had known her. Further corroboration was provided by the applicant's employer who confirmed in her letter that the applicant had worked part-time at her [business] since 2017 and in that environment, the applicant presented herself completely as a woman. To reflect this the [business] had changed her name on their advertising.

[11] Between the filing of the application and updating affidavit came COVID-19. Further letters of support provided by the applicant were unable to be filed by way of sworn affidavit. These included letters from the applicant's father and stepmother and another from her twin sister. His father and stepmother confirmed their son's struggle with his identity, recalling a conversation some 19 years earlier in which the applicant had told her stepmother that she was "not gay but rather a woman trapped in a man's body" and wanted to become a woman. His twin sister confirmed that Ms [Logan] had been living/dressing as a woman for 4-6 years. The applicant's family support his application without reservation.

### **Legal Principles**

[12] In order for the Court to be able to make a decision under s 28 of the Act, the Court must be satisfied of the following procedural issues:

- (a) That the applicant is an eligible adult; s 28(1);
- (b) That the Registrar-General has been served together with any person who has an interest or may be affected by the granting of the declaration; s 28(2)(a) and (b);
- (c) Section 27A defines the term "eligible adult" as a person whose birth is registered and is over the age of 18. The applicant's New Zealand birth certificate records that she was born with a male body on [date deleted] 1972 with the name [Sam Logan]. Accordingly, Ms [Logan] meets the "eligible adult" test.

- (d) The Registrar-General of Births, Deaths and Marriages has filed a memorandum confirming he will not take any active steps in the proceeding and will abide the decision of the Court.

### **Substantive application**

[13] The primary directive provisions for the Court are contained in s 28(3):

#### **28 Declarations of Family Court as to sex to be shown on birth certificates issued for adults**

The Court shall issue the declaration if and only if, —

- (a) it is satisfied either that the applicant's birth is registrable under this Act but is not yet registered, or that there is included in the record of the applicant's birth—
- (i) information that the applicant is a person of the sex opposite to the nominated sex; or
  - (ii) information that the applicant is a person of indeterminate sex; or
  - (iii) no information at all as to the applicant's sex; and
- (b) it is satisfied that the applicant is not a person of the nominated sex, but—
- (i) has assumed and intends to maintain, or has always had and intends to maintain, the gender identity of a person of the nominated sex; and
  - (ii) wishes the nominated sex to appear on birth certificates issued in respect of the applicant; and
- (c) either—
- (i) it is satisfied, on the basis of expert medical evidence, that the applicant—
    - (A) has assumed (or has always had) the gender identity of a person of the nominated sex; and
    - (B) has undergone such medical treatment as is usually regarded by medical experts as desirable to enable persons of the genetic and physical conformation of the applicant at birth to acquire a physical conformation that accords with the gender identity of a person of the nominated sex; and

- (C) will, as a result of the medical treatment undertaken, maintain a gender identity of a person of the nominated sex; or ...

[14] Counsel has referred me to the decision of Judge FitzGerald in *“Michael” v Registrar-General of Births, Deaths, and Marriages*.<sup>1</sup> This case is generally accepted as the leading decision in this area. This comprehensive decision examines the relevant public and social policy, tracing the passage of the legislation through Parliament thus providing a background to s 28 and summarises the relevant interpretation principles.

[15] In *Michael*, Judge FitzGerald outlined the assessment process required following a s 28(3) application. He said:

- (a) Step 1 involves a determination whether the registration of the applicant’s birth includes information that the applicant is a person of the sex opposite to the nominated sex.
- (b) Step 2 is to determine whether the applicant has assumed and always had and intends to maintain the gender identity of a person of nominated sex and wishes that sex to appear on his or her birth certificate. This requires assessing the applicant’s own evidence as to her intentions and wishes.

[16] In this respect, Judge FitzGerald said:

[58] That “test” is necessarily prospective and to a large extent can only be met by assurances from the applicant and a review [of] and analysis of historical conduct and other social and psychological factors.

- (c) Step 3 involves a three-limb test that must be satisfied on all levels on the basis of expert medical evidence, the applicant must satisfy:

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<sup>1</sup> *“Michael” v Registrar-General of Births, Deaths and Marriages* (2008) 27 FRNZ 58.

- (i) A first test which relates to the applicant's psychological assumption of the female gender identity.
- (ii) A second test which assesses the applicant's adoption of the physical conformation that accords with the female gender identity as a result of medical treatment including surgery.
- (iii) A third test which assesses the permanence of the physical change brought about by the applicant's past or current treatment of the applicant's future life.

**[17] Applying law to this particular application and the evidence available**

**Step 1 – Birth information**

[18] The birth certificate records the applicant's sex as male. Therefore, Ms [Logan] is of the sex opposite to the nominated sex.

**Step 2 – Assumption of nominated sex**

[19] It is Ms [Logan]'s evidence that she assumed the gender identity of a female in 2016 after she began hormone treatment. As earlier noted, her treatment doctor, Dr [Simmons], has provided a letter and report confirming these matters together with letters from friends and family who corroborate her evidence that she has assumed and maintained the nominated sex from 2016. The applicant took a further step towards the assumption of a female identity by changing her name by deed poll from [Sam] to [Sandra] which took effect from [mid-2019]. It is the applicant's evidence that she intends to continue to live life as a woman and has provided evidence of that decision both in her relationships with her partner, her family and friends and work relationships.

**Step 3 – Psychological assumption/physical conformation and permanence of physical change**

[20] As noted earlier, the Court has been provided evidence from her treating doctor, her friends, family and employer of the applicant's assumption of a female gender identity. The applicant herself deposed that it was not an easy task initially and likened it to having a "crash course in what it is like to be a woman." Dr [Simmons], in his report, wrote that the purpose of starting feminising hormones was to enable the applicant to acquire a physical conformation that was in alignment with her gender identity. He noted that many of the physical changes in the applicant's body that occurred over time with the feminising hormones were permanent. He confirmed that the applicant had been consistent in her decision to continue with the process of medical transition since starting treatment in 2016 and that by 2018 she had fully socially transitioned and was living as a woman.

[21] Two years after commencing treatment, the applicant was placed on the waiting list for feminization surgery. However, even without surgery, medical experts confirmed the permanence of her physical changes. Although the Court does not have evidence of the applicant's gender reassignment surgery it is not an essential prerequisite for the granting of an application. A decision of 13 March 2013 of Judge Russell in *DAC v Registrar-General Births, Deaths and Marriages*<sup>2</sup> summarised the position as follows:

[12] ...All of those cases emphasise the importance of the Court being satisfied that the decisions that a person makes about the gender they wish to live at when seeking an application under s 28 are fully and properly considered. Such applications need to be supported by proper evidence of medical treatment being undertaken to assist the person living their life in the gender they seek, such as hormone therapy treatment. The Court needs to be satisfied the person has lived their life in this way for a sufficient period of time that it can be confident there is no sudden urge about making the application which may be later regretted or that an applicant is likely to change his/her mind. Evidence of gender reassignment surgery having been undertaken while helpful is not an essential prerequisite from such an application being granted.

[22] I am satisfied that from the evidence before the Court and with the helpful submissions from counsel to assist that the three-step process as required by s 28 has been undertaken and properly established. In short, I am satisfied that there is ample evidence of:

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<sup>2</sup> *DAC v Registrar-General Births, Deaths and Marriages* [2013] NZFC 1998.

- (a) Irreversible physical changes as a result of the hormone treatment which has established the applicant to assume the physical conformation of a female.
- (b) A psychological assumption of the female identity since August 2016.
- (c) Evidence of commitment to living her life as a woman as corroborated by friends, family and the medical profession.

[23] Accordingly, as I indicated in Court, I granted the application sought and directed that the birth certificate of the applicant is changed from male to female and a new birth certificate issued accordingly.

R von Keisenberg  
Family Court Judge