

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 SEE <https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/>

**IN THE FAMILY COURT
AT WAITAKERE**

**I TE KŌTI WHĀNAU
KI WAITĀKERE**

**FAM-2020-090-000432
[2020] NZFC 7259**

IN THE MATTER OF THE ADOPTION ACT 1955

AND

IN THE MATTER OF An application by

[APRIL WEBER]
[BARRY WEBER]
Applicants

To adopt a child

[NATALIE WEBER]

Hearing: 24 August 2020

Appearances: M Casey QC for the Applicants
M Sharplin for Oranga Tamariki
J Burdus Social Worker

Judgment: 24 August 2020

ORAL JUDGMENT OF JUDGE B R PIDWELL

[1] There is a very special little girl appearing in my court today, virtually, from Hawaii. Her name is [Natalie]. She was born just over a month ago on [date deleted] 2020. She is accompanied by her parents, [Barry] and [April Weber]. Ms Casey QC appears as their lawyer. We have the social worker and counsel for Oranga Tamariki attending also today via VMR.

[2] The applicants are her parents as the result of a gestational surrogacy using [Barry]'s gametes and a donor egg. [Natalie] has been cared for by them since her birth in Hawaii. They would really like to bring her home.

[3] This court hearing is just one step in what I suspect has been a very long process. It has been convened urgently in the hope that they will be able to secure a passport for [Natalie] and travel home shortly.

[4] I will now go through the legal steps that are required. To some people this may seem somewhat odd that biological parents need to apply for an adoption order, but it is because the law is still essentially catching up with the surrogacy process.

[5] [Natalie] was carried by a surrogate, [Krista Everett], in Hawaii, United States of America. She has no genetic link to [Natalie]. She has children of her own with her husband, [Calvin]. They have formed a friendship, it appears, with the applicants and they are providing them with ongoing support while they wait out their time in Hawaii while the processes are put in place to bring [Natalie] home legally.

[6] A surrogacy agreement has been signed. Such agreements are not unlawful in Hawaii. [Natalie] was issued with a birth certificate in Hawaii and the New Zealand Minister of Immigration has provisionally confirmed her eligibility for a visa to enable her to travel to New Zealand subject to some conditions being met. Those conditions include DNA testing, which is being completed, and the intention for this application under the Adoption Act 1955 to be filed.

[7] However, despite those conditions having been met, the applicants are experiencing a lengthy delay in the issuing of a passport for [Natalie] in the United States. Very recently this issue has been brought to the attention of the

authorities in New Zealand and a Covid 19 International Surrogacy Protocol has been developed to address this issue. This is the first application that is being heard under that protocol.

[8] In order for me to make an adoption order, I need to be satisfied of a number of things. First, some jurisdictional issues. The applicants need to be in a relationship or married, which they clearly are. They were married in New Zealand on [date deleted] 2012. They need to be of a requisite age which they are; and [Natalie] needs to be a child which she clearly is, being newborn.

[9] I also need to consider whether the Adoption (Intercountry) Act 1997 applies. I have submissions from Ms Casey QC on this issue in particular. I need to be satisfied that [Natalie] is not habitually resident in Hawaii. Obviously she was born there and has not been out of that country for reasons primarily due to the global pandemic. Her habitual residence was always intended to be New Zealand. Her intention is imputed from her parents who have specifically travelled to Hawaii in order to be there for her birth and bring her home.

[10] There was never any settled purpose for her parents to be in Hawaii but for her birth and bringing her home and the delay in that occurring has only been caused by the state of the world at this time. It has not altered their intention. I am fully satisfied that her habitual residence is New Zealand and the Adoption (Intercountry) Act does not apply.

[11] Secondly, I need to be satisfied that the birth parents have signed valid consents. Consents have been filed by both the surrogate and her husband as is required. They were witnessed by a notary public in Hawaii and they were given legal advice by an experienced New Zealand lawyer in respect of the effects and implications of their consents and the adoption order.

[12] The consent was done that way because of the current challenges and also the fact that a notary public in Hawaii, I am told, is required to complete matters in accordance with their law and do not have any experience or education in New Zealand law. Because of that, Ms Casey engaged Ms Wademan to provide the

necessary advice on New Zealand law and that has been done. Ms Wademan has signed an affidavit confirming that. I am satisfied that the consents are valid, due to the combination of the physical witnessing of the signature by the notary public together with the confirmed advice from Ms Wademan.

[13] I now need to turn to the next step which is to consider whether the applicants are fit and proper people to adopt this little girl. The court always requires a report from a social worker and that has been filed and has been discussed during the hearing today. It is a lovely report and one that clearly outlines the applicants' situation, their whakapapa, their family history. Mr [Weber] stems from the United Kingdom, his wife from [continental Europe]. They [both work] in [location deleted] and have good support in terms of their wider family. There is no issue with their finances, their health, police checks have been completed, Oranga Tamariki checks have been done. They have a lovely home environment which they are eager to get back to. There is no doubt whatsoever that they are fit and proper people, as assessed by the social worker, and certainly as endorsed by the court.

[14] Turning now to whether an adoption order is in [Natalie]'s best interests and welfare. What the court is being asked to do is simply confirm what is essentially [Natalie]'s reality, which is that the people who are caring for her and loving her are her parents. There is the biological link and it is certainly, in my view, clearly in her best interests and welfare to be legally secured within the family who she is genetically related to and who are her intended parents.

[15] Finally, the last thing I need to consider is whether the order should be interim or final. I need to consider whether there are special circumstances in order to exercise my discretion to make a final order at the first instance. An interim order is designed essentially to test the bonding and the placement of the child with the parents. That requirement was passed in 1955 when it was certainly different times from now and this scenario. There is no question that the bonding is clearly happening, that the parents are clearly capable and there is no need for any ongoing monitoring by the social worker. She has confirmed that in her report. Therefore, I am fully satisfied that a final order should issue at the first instance.

[16] In addition, I see no reason why the social worker's report should not be released to the parents. That forms part of [Natalie]'s birth history and is an important document to be available to her when her parents consider that is appropriate.

[17] In those circumstances I am fully satisfied that [Natalie] should be confirmed by way of an adoption order as the legal child of the applicants. Further, I consider this is a situation where circumstances exist where there is no merit in making an interim order. Therefore I do make a final order at the first instance. It will record [Natalie]'s current name. It will remain unchanged and the birth certificate will not include the words *adopted parents*.

[18] The social worker's report may be released to the applicants.

[19] Congratulations. I wish you all a safe journey home.

Judge B R Pidwell
Family Court Judge

Date of authentication: 25/08/2020
In an electronic form, authenticated electronically.