

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 PUKEKOHE**

**I TE KŌTI WHĀNAU
KI PUKEKOHE**

**FAM-2023-057-000068
[2024] NZFC 4673**

IN THE MATTER OF	THE ADOPTION ACT 1955
BETWEEN	[OFA FANUA] [SIONE FANUA] Applicants
AND	[MATA FANUA] Child or Young Person the application is about
AND	[ALISI MANU] Other Party

Hearing: 16 April 2024

Appearances: A Talakai for the Applicants
No appearance by or for the Other Party

Judgment: 16 April 2024

ORAL JUDGMENT OF JUDGE T M SHARKEY

[1] This is an application for adoption by [Ofa Fanua] and [Sione Fanua] (“the applicants”) to adopt [Mata Fanua], born [date deleted] 2018. [Mata] is five, turning six [detail deleted].

[2] On or about 1 March 2023 the applicants made an on-notice application for an adoption order.

[3] On 30 November 2023 the s 10 social workers report was filed by Oranga Tamariki. The social worker, Ms Humphrey, accepts the applicants to be fit and proper people in terms of s 11(a) of the Adoption Act 1955 (“the Act”), however, reports that she does not consider the making of an adoption order to be consistent with [Mata]’s welfare and interests whilst she is unaware of her biological origins. The report does not specifically assess or comment on the criteria under s 11(b) or (c) of the Act. Finally, the report writer concludes that if an adoption order is made, an interim adoption order is recommended.

[4] This matter came before me on 14 February 2024. The applicants were directed to file an affidavit in response to the s 10 report addressing the issues raised. I directed the filing of legal submissions for this hearing today.

[5] On 2 March 2024 the applicants filed a joint affidavit addressing the adverse matters that were outlined in the s 10 report.

[6] On 18 March 2024, counsel for the Chief Executive of Oranga Tamariki filed submissions. Those submissions advised the Court that the s 10 report writer would be away on leave for this hearing, that the report writer had considered the joint affidavit of the applicants dated 2 March 2024 but that the affidavit did not alter the report writer’s recommendations. Despite this comment, counsel advised that the report writer confirmed they do not wish to formally oppose the adoption order sought by Mr and Mrs [Fanua].

[7] Biologically speaking, the adoption is by the maternal aunt and uncle of the child. Ms [Fanua] is a cousin of [Mata]’s biological mother, [Alisi Manu].

[8] Ms [Fanua] was present at [Sione]’s birth. The applicant’s surname was gifted to [Mata] and in the first few months after [Mata]’s birth, she was registered with the applicant’s surname with the full knowledge and consent of the biological mother.

That to me is significant. It shows the intention of Ms [Manu] and the applicants and the public and reputational aspects of this adoption within the wider family.

[9] The biological father is now known. He is [Lesieli Moala]. He met the biological mother on a social media platform. He is not the father of any of the biological mother's other children. He has played no role in [Mata]'s life and the biological mother deposed in affidavit that he expressed no interest in acknowledging [Mata]. He did not engage with Ms [Manu] during her pregnancy.

[10] It could be argued that the consent of the biological father is not required pursuant to s 7 of the Act. The biological parents were not married to each other at the time of [Mata]'s birth or at the time of her conception and he is certainly not a guardian of [Mata]. However, in terms of s 7(3) of the Act the Court may require the consent of the father if in the opinion of the Court it is expedient to do so. It appears to be the firm position of Oranga Tamariki that the biological father's consent is required, or at least that he is served with a copy of these proceedings.

[11] Having reviewed the evidence, I do consider the totality of the evidence to be supportive of a finding that it is expedient to require the biological father's consent as suggested by the report writer. However, in all the circumstances I am satisfied that it is appropriate to dispense with the biological father's consent pursuant to s 8(1)(a) of the Adoption Act 1955. The applicants have filed the appropriate application to dispense with the consent of the biological father, and I consider it to be entirely appropriate that I grant that application.

[12] The s 10 report and subsequent submissions from Oranga Tamariki make much of the fact that [Mata] has not been told about her biological origins, that she does not know that she is adopted, and that she is being raised with a little sibling without being informed of the true narrative around this.

[13] Respectfully, I disagree with the social worker's observations and comments. The s10 report refers to Oranga Tamariki's cultural practice guide, which is called Va'aifetu, and the concept of Nofo 'a Kainga which is relevant to the Tongan culture and 'living within the family' which within this concept is much wider than is

understood in this report. In fact, the concept provides the necessary lens to be able to view this particular family's way of living within their own cultural context and structure. [Mata]'s welfare and interests will be promoted by the adoption in this way.

[14] This adoption will not be a secret. In understanding the Tongan culture, it is well accepted that the culture is collective, not individual. I have no doubt that the applicants will share [Mata]'s adoption with her when the time is right, and they are the best placed people out of anyone in this world to know when the time is right. The Court will not impose an obligation on the applicants to tell their child of her biological origins in the way it is suggested.

[15] An adoption order will enable [Mata] to become a fully integrated member of her family and household. I consider that this goes to the central core of [Mata]'s identity. The applicants are the only parents [Mata] has ever known.

[16] An adoption order is weighted favourably in the absence of contact with her own biological parents, the consent of the biological mother, the love, care and devotion given to [Mata] by her parents and their circumstances over the last almost six years, in particular the environment provided by two of the most important people in her life, which are her parents.

[17] Upon the making of an adoption order, [Mata]'s birth certificate will show her parents as her mother and father. There will be no record on that birth certificate of this adoption. For all intents and purposes, at law [Mata] is a child of the applicants.

[18] [Mata] is here today, and it is clear from observing the closeness she has with her parents that she would wish to be adopted by the applicants and to be, at law, fully integrated into the only family she knows. I consider the application to be driven by the applicants' desire to be recognised at law as [Mata]'s parents. The grounds for making the adoption order have been made out pursuant to s 11 of the Act.

Interim or final

[19] Finally, there have been discussions about whether this adoption order should be interim or final. The s10 report recommends an interim order.

[20] I have heard from Ms Talakai who is counsel for the applicants who submits that a final adoption order should be made.

[21] An application for a final adoption order can be made pursuant to s 5 of the Act, which provides as follows:

Upon any application for an adoption order, if the court considers that the application should be granted, it shall in the first instance make an interim order in favour of the applicant or applicants:

provided that the court may in any case make an adoption order without first making an interim order, if—

- (a) all the conditions of this Act governing the making of an interim order have been complied with; and
- (b) special circumstances render it desirable that an adoption order should be made in the first instance.

[22] The Act does not define special circumstances. Case law indicates that the reason the Adoption Act established a two-stage process of an interim order followed by a final order was to provide a probationary period during which the success of the interim adoption placement could be observed by a social worker before an adoption order was made.

[23] The period between an interim and final order is tantamount to a performance appraisal of the adopting parents. Having considered the particular circumstances of the applicants and [Mata], I consider that a probationary period is not required and would be a pointless formality.

[24] I pay particular consideration in this case to the fact that it is clear that [Mata] has been in the care of her parents since birth. They are who she identifies as her parents. The Court is satisfied as to the security and stability of care arrangements for [Mata]. The applicants require no performance appraisal.

[25] In addition, there have already been delays with these proceedings, dealing with the issues of service, waiting on the s 10 report, and it is simply not in the welfare and interests of [Mata], or her parents, to continue to have to go through these court proceedings and come back in six months' time to see whether it should be made final.

Orders and directions

[26] Accordingly, therefore, I make an adoption order that [Mata Fanua], born [date deleted] 2018, is to be adopted by [Ofa Fanua] and [Sione Fanua].

[27] This is a final adoption order.

Judge T M Sharkey

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 17/04/2024