

EDITORIAL NOTE: NO SUPPRESSION APPLIED.

**NOTE: PURSUANT TO S 169 OF THE FAMILY PROCEEDINGS ACT 1980,
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-
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**IN THE FAMILY COURT
AT ROTORUA**

**FAM-2016-063-000494
[2016] NZFC 10786**

IN THE MATTER OF	THE FAMILY PROCEEDINGS ACT 1980
BETWEEN	WARETINI WALLACE WALTERS Applicant
AND	ESTATE OF RAEWYN HUIA ENTWISLE Respondent

Date: 30 November 2016

Judgment: 16 December 2016

**JUDGMENT OF JUDGE A C WILLS
[On the Papers in Chambers]**

[1] The applicant Mr Walters has applied for a Declaration as to the validity of his marriage to Ms Entwisle pursuant to s 27 Family Proceedings Act 1980.

[2] In support of his application Mr Walters has filed an affidavit of 30 November 2016 accompanied by an affidavit from Ms Entwisle's daughter Louise Raewyn Edwards sworn 17 November 2016.

[3] A marriage ceremony took place on 23 August 2014 between Mr Walters and Ms Entwisle and later that day Ms Entwisle passed away. It later became apparent that Mr Walters and Ms Entwisle did not have a marriage licence and accordingly the Registrar of Births, Deaths and Marriages could not issue a Marriage Certificate.

The legal position

[4] Sections 27 and 28 give power to the Family Court to declare that a marriage is valid. The remedy is a discretionary one.

[5] Section 22 of the Marriage Act 1955 makes it clear that a defect in any licence required to register the marriage does not make the marriage void. That section provides as follows:

22 no marriage shall be deemed to be void by reason of any error or defect in the notice, declaration, or licence required before solemnisation, or in the registration of the marriage when solemnised where the identity of the parties is not questioned, or on account of any other infringement of the provisions of this Act.

[6] That section was applied in the decision of Judge von Dadelszen in *Re G (FC) Napier* FP 041/71/01, 27 April 2001. In that case the Family Court was asked to validate the marriages of two couples who had their ceremonies celebrated by a person who was not, at the material time, a licensed celebrant. The two couples had an honest belief that the celebrant was authorised. The celebrant had been authorised for a period of 16 years prior to the applications, but had been removed from the official list due to a clerical error. Granting the applications, Judge von Dadelszen noted that the marriage would only be void *ab initio* pursuant

to s 31 Family Proceedings Act 1980 if the couples “knowingly and wilfully” married in the absence of a marriage celebrant.

The facts of this case

[7] Mr Walters’s affidavit sets out the background to the marriage ceremony. He and Ms Entwisle were in a de facto relationship for 18 years which began in 1996. They became engaged in 2008 and intended to marry on 27 September 2014. The evidence shows that they had completed their wedding preparations with assistance from their respective daughters. The venue at Skyline Skyrides in Rotorua had been booked and paid for, Ms Entwisle’s dress ordered and some invitations sent. The Pastor from Living Well Church, who was a licensed marriage celebrant, was to perform the ceremony.

[8] At the time the marriage ceremony was being arranged Ms Entwisle was suffering from a terminal illness. On 23 August 2014 Ms Entwisle was admitted to hospital by ambulance and the family were advised that she had only a short time to live. With the support of and in the presence of their families Mr Walters and Ms Entwisle agreed to bring their wedding forward and marry that day. The Pastor was not available and accordingly his wife a licensed celebrant came to the hospital to solemnize the marriage. Both Mr Walters and the marriage celebrant signed. It is Mr Walters evidence that both he and Ms Entwisle believed that they had completed all of the paper work required for their marriage to be legal.

[9] The marriage ceremony took place at about 2.30 pm on that day in front of those family and friends who were able to attend. The ceremony was video recorded.

[10] Mr Walters in his affidavit confirms his honest belief that he and Ms Entwisle had taken all the steps necessary to be legally married. The marriage celebrant has provided a letter confirming her belief in the legality of the marriage. Mr Walters seeks the Declaration because he wishes to keep his promise to Ms Entwisle.

[11] Mr Walters's affidavit is confirmed by Ms Entwisle's daughter Louise Raewyn Edwards in her affidavit in support of Mr Walters application. She says:

I know that it was Raewyn's intention to be legally married to Waretini. Further, I believe that Raewyn and Waretini believed on 23 August 2014 that they had done all that was required in order for them to be legally married.

[12] Ms Edwards was present at the time of the marriage ceremony.

Decision

[13] The remedy in s 27 is a discretionary one. The evidence in this case is uncontested. Mr Walters and Ms Entwisle honestly believed that they had done everything necessary to achieve a valid marriage. Mr Walters promise to Ms Entwisle must be kept. I am satisfied that the marriage between Waretini Wallace Walters and Raewyn Huia Entwisle which took place on 23 August 2014 is a valid marriage and a Declaration is made accordingly.

A C Wills
Family Court Judge