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 TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE HTTP://WWW.JUSTICE.GOVT.NZ/FAMILY-JUSTICE/ABOUT-US/ABOUT-THE-FAMILY-COURT/LEGISLATION/RESTRICTION-ON-PUBLISHING-JUDGMENTS.

IN THE FAMILY COURT
AT WELLINGTON

FAM-2016-085-000458
[2017] NZFC 2556

IN THE MATTER OF	THE ADOPTION ACT 1955
BETWEEN	[CHARLOTTE CLARKE] [ELISE HOUGHTEN] Applicants

Hearing:	31 March 2017
Appearances:	W Davis for the Applicants
Judgment:	31 March 2017

ORAL JUDGMENT OF JUDGE J A BINNS

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[1] This is an application by [Charlotte Clarke] and [Elise Houghten] to adopt a female child, [Freya Houghten], born [date deleted] August 1999. I note that [Freya is present. I have spoken with her. She supports the application. In fact that is probably fairly legalistic to say that as my impression is that she is thrilled to support the application and that she wants both [Charlotte and [Elise], who are her two mothers, to be her legal parents.

[2] The background is that [Elise] is the biological mother of [Freya]. Both [Elise] and [Charlotte] have been living together as partners since 1995. They both have an equal parenting role in [Freya]'s life and have done so since [Freya] was born. They meet all the criteria for an adoption. They are both in good health. There are no significant health concerns. They have sound financial circumstances which they set out in the application. [Freya] was very much, a planned child, They have been co-parenting her since she was born.

[3] A report has been received from a social worker dated 21 February 2017. That has been provided to counsel for the applicants. It records background information in relation to the two applicants, the background of their relationship and how they met and their relationship as parents to [Freya]. The social worker sets out the police checks, medical checks and references. There is also a paragraph in relation to [Freya].

[4] It is clear that [Freya] identifies with both Ms [Clarke] and Ms [Houghten] as her parents and also the extended families. It is [Freya]'s intention to either go travelling or to enrol at [tertiary institute deleted] in [location deleted], when she finishes school.

[5] The report from the social worker refers to the fact that fertility associates offered the applicants a choice of several sperm donors when they were making their decision to have a child. They both deliberately chose a donor who was willing to have contact with the child which would be created by the in vitro fertilisation process. The social worker spoke to [Freya] about her genetic father.

[6] I note that in this case, there is no formal record on the birth certificate of the father but in any event, had his details been recorded, the position would be pursuant to the Status of Children Act, he would not be legally considered the father.

[7] In this case I think it is important to set out some of the history of the law in relation to adoption because the Adoption Act is an old Act now and it was enacted in 1955, so it is just older than me.

[8] The Adoption Act was quite specific in terms of providing for an order to be made in favour of a husband and a wife and that they would make a joint application. The law has developed since that time and the position is that now, there may be an application of two spouses jointly in respect of a child, so they do not have to be a husband and a wife in the traditional sense. The definition of spouse has also been further widened. I refer to some of the legal authority for that. Firstly, the High Court decision in *AMM & Anor, Re*[1] an application by AMM and KGO to adopt a child which dealt specifically with s 3(2) Adoption Act 1955. That section provided the Courts with power to make an adoption order in respect of a child on the application of two spouses jointly.

[9] Section 2 Adoption Act, which referred to husband and wife in conjunction with s 3(2) Adoption Act was determined by the High Court in that decision, in conjunction with s 6 New Zealand Bill of Rights Act 1990 to entitle the Court to take a wider interpretation of the word "spouse", to include de facto couples of the opposite sex. Since that case was decided, Parliament has enacted the Marriage (Definition of Marriage) Amendment Act 2013 which amended the Marriage Act 1955, to the effect that persons of the same sex are now legally able to marry. The Marriage (Definition of Marriage) Amendment Act 2013 has caused the Adoption Act to be amended.

[10] Accordingly s 2 Adoption Act currently provides that an adoptive parent is, "Any person who adopts a child in accordance with an adoption order and in the case of an order in favour of a married couple on their joint application means both spouses." It is the position that Parliament's action in respect enacting the amendment and the consequent amendments to the Adoption Act, now provide the basis for a

[1] *AMM & Anor, Re* [2010] NZFLR 629

wider interpretation to be given to the word "spouse" for the Adoption Act which includes de facto couples of the same sex. That is the case here. I wanted to cover that because there has been some debate historically about the development of the law. I wanted the parties to know that I had considered that, in considering their application.

[11] It is clear that they have been in a de facto relationship for a long time and that they have a very committed relationship. Therefore they meet the jurisdictional criteria to apply for an adoption order.

[12] I have referred to the s 10 report from the social worker. That leaves me to consider the requirements in s 11 of the Act. They are firstly, that every person who is applying for the order is a fit and proper person to have the role of providing day-to-day care of the child, in this case [Freya], and is of sufficient ability to bring up, maintain and educate the child. [Freya] is now 17. It is quite clear that both applicants meet those criteria admirably. They have been doing their job as parents for a very long time. It is clear, from my brief discussion with [Freya], that they have been fulfilling that role well.

[13] The next matter is, that the welfare and interests of the child will be promoted by the adoption, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child. [Freya] is 17 and it is clear that she understands fully what is sought. Essentially I am being asked to formalise, in a legal sense, what is her life and what she has known her whole life. I am quite satisfied that she has the maturity and understanding to not only know precisely what is proposed, but to be able to express her wishes to me as she has done.

[14] The only other issue I need to consider is whether or not an interim or a final order is made in the first instance. I note that the social worker has supports the making of a final order. This is not a case where there needs to be any probationary period. [Freya] is now 17 and there is no requirement to make an interim order in my view. Accordingly, I make a final order which takes effect immediately.

J A Binns
Family Court Judge