

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

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**IN THE FAMILY COURT
AT WAITAKERE**

**I TE KŌTI WHĀNAU
KI WAITĀKERE**

**FAM-2018-090-000424
[2018] NZFC 7814**

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

BETWEEN [MALIKA BOLDWORTH]
Applicant

AND REGISTRAR-GENERAL OF BIRTHS,
DEATHS AND MARRIAGES
Respondent

Hearing: 4 October 2018

Appearances: M Stewart for the Applicant
No appearance by or for the Respondent
M Casey as Lawyer to Assist

Judgment: 4 October 2018

ORAL JUDGMENT OF JUDGE E B PARSONS

[1] Today is a happy day. It is a day which is set down for a short course hearing to deal with an application filed by Ms [Boldworth]. She filed on 12 June 2018, an application with accompanying affidavit in support for a declaration pursuant to s 28 Births, Deaths, Marriages and Relationships Registration Act 1995 seeking a declaration in terms of an order for an appropriate birth certificate to be issued in

respect of the applicant, containing the information that the applicant is a person of a sex specified, in this case the nominated sex being female.

[2] The background is that the applicant was born in [city deleted] in [date deleted]. She lived in [that city] until she was approximately six years old. At the time she was born, her birth certificate recorded that she was a male. She moved to [overseas] when she was six and now is a bilingual speaker of both Māori and English and has, in terms of her evidence, indicated that she has always felt and maintained the gender identity of female and that is the gender identity that she intends to maintain in the future. She has already had her sex changed on her passport to female and in terms of irreversible gender reassignment, she underwent surgery in June 2017.

[3] Section 28 Births, Deaths, Marriages and Relationship Registration Act 1995 provides a discretion in subsection (1) to grant the order sought. Prior to that, there are various jurisdictional matters that need to be covered. One is that the Registrar-General has to be served with the application and in this case, there is a memorandum recently filed by the Registrar dated 6 September 2018 confirming that the Registrar-General would assist the Court in any matter but importantly did not intend to take any active steps and would abide the decision of the Court.

[4] Helpfully also, there has been a memorandum of counsel to assist filed, dated 13 August 2018. Before I turn to that, I do wish to comment on the quality and thoroughness of the application that was filed. It has meant that the evidence required is easily accessible to the Court and available and it was a well-constructed application by counsel. Counsel to assist has been incredibly helpful in terms of stepping the Court through the processes required, utilising and exercising the discretion provided in s 28(1).

[5] Importantly, prior to the case of *“Michael”*, there was no Google roadmap as Ms Casey puts it, to determine how matters were to be looked at, considered and that discretion exercised.¹ Judge Fitzgerald needs to be thanked because it was his decision in *“Michael”* that has provided the outline for the assessment process required in terms of an application made under s 28.

¹ *“Michael” v Registrar-General of Births, Deaths and Marriages* [2008] 27 FRNZ 58.

[6] As set out by Ms Casey, the steps required are firstly, a determination about whether the registration of the applicant's birth includes information that the applicant is a person of the sex opposite to the nominated sex. Step 2 is to determine whether the applicant has assumed and always had and intends to maintain the gender identity of the nominated sex and wishes that to appear on the birth certificate and step 3 involves a three limb test that must be satisfied on all levels and that relates to medical evidence. What the applicant must satisfy is that, first, the test which relates to the applicant's psychological assumption of the female identity. The second test assesses the applicant's adoption of a physical confirmation that accords with the female general identity as a result of medical treatment including surgery. Thirdly, the third test is assessing the permanence of the physical change brought about by the applicant's past or current treatment of the applicant's future life.

[7] Ms Casey has taken the Court through applying the law to Ms [Boldworth]'s application in her memorandum and in terms of step 1, Ms [Boldworth]'s birth certificate records Ms [Boldworth]'s sex as male, therefore, that is a sex to the opposite to the nominated sex of female that is sought on the application. In terms of the assumption of nominated sex, there is clear evidence and it has been confirmed today that Ms [Boldworth] has assumed and always has assumed the gender identity of female since her earliest memory. Her intention is very clearly to maintain female identity and that has been consistent throughout her entire life. She has assumed openly the identity of female for many years. It has not been a hidden feature of her existence.

[8] In terms of step 3, there is evidence filed as well as background facts which provides not just evidence but in fact, ample and well-constructed evidence to support the psychological assumption of female gender identity. There is a diagnosis confirmed of gender dysphoria and there is a confirmation that psychologically, Ms [Boldworth] has assumed a female identity for the majority of her life. There is also evidence that there was an irreversible two stage surgery undertaken in June 2017 which has enabled the applicant to assume the physical confirmation of a female. This took place after a long period of saving and took place [overseas], which has been explained to me as one of the only options for transgender people seeking surgery because New Zealand does not, at this stage, provide that as an option.

[9] In terms of summary, what we have here is clear evidence that Ms [Boldworth] has demonstrated she has committed herself to living the life of a female for many years, as Ms Casey puts it, it is from her earliest memory. There is evidence to fully satisfy the criteria set out in s 28 and accordingly, the application as sought for the order that it is appropriate to have the gender of female recorded on the applicant's birth certificate is granted at this stage with the thanks of the Court to both counsel and counsel to assist and for Ms [Boldworth] and her family for being here today.

[10] Thank you very much, congratulations. An order will issue soon. The appointment of Ms Casey as counsel to assist is concluded with the thanks of the Court.

E B Parsons
Family Court Judge