

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

**NOTE: PURSUANT TO S 169 OF THE FAMILY PROCEEDINGS ACT 1980,
ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C
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**IN THE FAMILY COURT
AT HAMILTON**

**I TE KŌTI WHĀNAU
KI KIRIKIROA**

**FAM-2017-019-000906
[2018] NZFC 8468**

IN THE MATTER OF	THE FAMILY PROCEEDINGS ACT 1980
BETWEEN	[DECLAN BECKETT] Applicant
AND	[MADELEINE MORONEY] Respondent

Hearing: 17 October 2018

Appearances: G O'Brien for the Applicant
No appearance by or for the Respondent

Judgment: 17 October 2018

ORAL JUDGMENT OF JUDGE P R GRACE

[1] This is an application by [Declan Beckett] seeking a declaration pursuant to the Status of Children Act 1969 that he is the father of [Phoebe], born on [date deleted] December 2006. The application has been served on the respondent who is the child's mother and she has taken no steps in respect of the matter.

[2] The evidence before the Court therefore is based on the affidavits filed by Mr [Beckett] and today I have been handed up another affidavit from a [Denny Attwood]. Basically, the applicant says that he had intercourse with the respondent and that she subsequently informed him that she was pregnant and that it was his child.

[3] Throughout those periods of time, the applicant says he was led to believe that the respondent had not had intercourse with any other person and that therefore she could only have conceived as a consequence of their sexual liaison. Nothing happened at that stage. He did not attend the birth and he did not see the respondent for some little time. He however, found out that the child had been born when she was about three months of age.

[4] There were discussions about him signing the registration form for the child's birth but he never received the appropriate forms to sign. By that stage, the respondent had begun a relationship with another person. The applicant also commenced a relationship with another person and he then subsequently pursued the matter regarding this child's paternity and he claiming to be the father of the child.

[5] He has sought to have DNA testing but the respondent has refused or declined to undergo any DNA testing. As a consequence of her stance, she then turned around and claimed that she had slept with a number of other men at the time the child was conceived.

[6] The applicant has now filed an affidavit from [Mr Attwood] who has stated that he was also made aware that the applicant was the father of this child, not only from the respondent herself but also from the respondent's mother and he says that he has always understood that the applicant was the father of this child.

[7] The Status of Children Act allows the Court to make a declaration on the balance of probabilities and in the circumstances:

- (a) I consider that firstly the applicant is putting his hand up and saying that I am the father of this child.

- (b) Secondly, he has spent some years in the belief that he was the father of this child having made enquiries as to whether or not the respondent had had intercourse with anyone else.
- (c) Thirdly, it was only when he sought the DNA testing that she changed her mind to suggest that she had had a relationship with other men, thus causing some difficulty for him.

[8] The matter has previously come before the Court back in March of this year and there was some concern expressed about the lack of DNA evidence. That in itself is not fatal to an application and the Court has to be satisfied, as I have said, on the balance of probabilities.

[9] On the face of the evidence before me and in view of the respondent's refusal or failure to undertake DNA testing on which I infer that the applicant is the father of the child, I am going to make the declaration which is sought.

[10] If the respondent takes a different view then she would need to provide DNA testing and seek to have the order set aside but if she doesn't, then of course the order will stand.

P R Grace
Family Court Judge