

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 AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE

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**IN THE FAMILY COURT
AT MANUKAU**

**I TE KŌTI WHĀNAU
KI MANUKAU**

**FAM-2019-092-001142
[2021] NZFC 7363**

IN THE MATTER OF	THE FAMILY PROCEEDINGS ACT 1980
BETWEEN	[HAAMIDA AL-ZAIDI] Applicant
AND	[NADHEER SHAHEED] Respondent

Hearing: In chambers

Appearances: Panama Le'au'anae for the Applicant
No appearance by of for the Respondent
Vatau Sagaga for the Registrar-General of Births, Death and Marriages

Judgment: 26 July 2021

DECISION OF JUDGE M L ROGERS

Background

[1] Ms [Al-Zaidi] and Mr [Shaheed] are both Iraqi. They met on social media in 2016 and got married in Iraq on [date deleted] 2016. They separated on [date deleted] 2018 because of Mr [Shaheed]'s family violence towards Ms [Al-Zaidi]. Ms [Al-Zaidi] has a final protection order against Mr [Shaheed].

[2] During the marriage, Ms [Al-Zaidi] became pregnant with the parties' only child, [Asfia Shaheed], a female child born on [date deleted] 2019.

[3] Ms [Al-Zaidi]'s unchallenged evidence is that initially, Mr [Shaheed] was very excited about the pregnancy and told family and friends that he and Ms [Al-Zaidi] were expecting a child. But five months into the pregnancy, Mr [Shaheed] started saying that the child was not his and accusing Ms [Al-Zaidi] of sleeping with someone else. Over this time, the relationship between Mr [Shaheed] and Ms [Al-Zaidi] was deteriorating rapidly and Ms [Al-Zaidi] left Mr [Shaheed] when she was seven months pregnant.

[4] Mr [Shaheed] has continued to deny that [Asfia] is his daughter. He was not present at [Asfia]'s birth and has had no contact with her. Ms [Al-Zaidi]'s unchallenged evidence is that Mr [Shaheed] is [Asfia]'s father because he was the only man she had sex with.

Proceedings

[5] After [Asfia] was born, Ms [Al-Zaidi] tried to get a birth certificate showing her name as [Asfia]'s natural mother and Mr [Shaheed] as [Asfia]'s natural father. Mr [Shaheed] would not co-operate with this process, even when contacted by the Registrar-General. Because Mr [Shaheed] would not respond to communication from the Registrar-General, [Asfia]'s birth certificate was completed with her natural father recorded as "unknown".

[6] Ms [Al-Zaidi] was advised that to rectify the situation, she would need to get a paternity order pursuant to s 47 of the Family Proceedings Act 1980.

[7] Ms [Al-Zaidi] filed that application on 17 October 2019. On 16 March 2020, an application for substituted service was filed and granted. That authorised service of Mr [Shaheed] by way of social media. Mr [Shaheed] was served in that manner on 24 March 2020. He has never responded to the proceedings or challenged Ms [Al-Zaidi]'s evidence.

[8] The matter came before me for a formal proof hearing on 28 January 2021. This was on the basis that Mr [Shaheed] had taken no steps and the paternity application could proceed unopposed.

[9] In my minute of that date, I note that pursuant to s 5 of the Status of Children Act 1969, any child born during its mother's marriage or within 10 months of the marriage being dissolved shall, in the absence of evidence to the contrary, be presumed to be the child of its mother and her husband or former husband.

[10] On the basis of that statutory presumption, I adjourned the proceedings for Ms [Al-Zaidi]'s counsel to have further correspondence with the Registrar-General with a view to Mr [Shaheed] being recorded as [Asfia]'s father pursuant to the s 5 provisions.

[11] The file came back to me on 13 May 2021 when I was advised that the Registrar-General had declined to record Mr [Shaheed] as [Asfia]'s father and instead required prosecution of the paternity application. On that basis, Counsel again sought a formal proof hearing.

[12] I issued a minute dated 28 May 2021, noting the advice that the Registrar General required a Court order, having regard to the provisions of s 15 (2) of the Births, Deaths, Marriages and Relationships Registration Act 1995:

The Registrar-General must register or direct a Registrar who is authorised by the Registrar-General to register births to register, as part of the birth information of a child, information about the identity of a parent of the child if—

- (a) the form is accepted under section 9(2)(b) or (c), the information relates to a person who has not signed the form, and the Registrar-General is satisfied that the person is a parent of the child; or
- (b) the information relates to the child's father, and—
 - (i) [[the Family Court]] or the High Court has declared the man to be the child's father; or
 - (ii) [[the Family Court]] has made a paternity order declaring the man to be the child's father; or
 - (iii) the man has been appointed or declared a guardian of the child under section 19 or 20 of the Care of Children Act 2004; or
- (c) the parent requests, in writing, his or her details to be included and the Registrar-General is satisfied that either or both of the following apply:

- (i) the person is a parent of the child:
- (ii) the other parent does not dispute the accuracy of the information.

[13] In my minute I noted that if Ms [Al-Zaidi] were to file the required form, the Registrar General could choose to exercise the power at s 15 (2)(c). There was no evidence that there had been any assessment made in that regard. I expressed the view that

“it would be open to the Registrar General to register Mr [Shaheed] as [Asfia]’s father in reliance on s 15 (2)(a) having regard to the statutory presumption provided by s 5 of the Status of Children Act 1969”

[14] I also commented that I considered it inappropriate to make a paternity declaration in this case because of the pre-existing statutory presumption as to parenthood arising from the parties’ marriage. I directed the Registrar General to file a Memorandum addressing ss 9 and 15, and

“explaining what the Registrar General sees as the remaining obstacles to registering Mr [Shaheed] as [Asfia]’s father”

[15] I have today received a memorandum of counsel for the Registrar-General of Births, Deaths and Marriages dated 19 July 2021. That memorandum sets out the Registrar-General’s review of s 5 of the Status of Children Act 1969 and s 9 and 15 of the Births, Deaths, Marriages and Relationships Registration Act 1995.

[16] The Memorandum concludes

“On the basis of the information available to him, the Registrar General’s view is:

- a) The s 5 Status of Children Act presumption is applicable here. The child was born to the applicant while the parties were married. Even though the parties had separated, the marriage had not been formally dissolved. There is no formal evidence provided to rebut the presumption.
- b) S 15 (2)(b)(i) of the Births, Deaths, Marriages and Relationships Registration Act 1995 is applicable here. The Registrar General notes that the Court considered the evidence available to it on 28 January 2021 and again on 28 May 2021, when it deemed and declared the respondent to be the child’s father. The Registrar General has not seen any evidence to refute this.

[13] Pursuant to s 15 (2)(b)(i) of the Births, Deaths, Marriages and Relationships Registration Act, the Registrar General will register the respondent as the child's father.

[17] On the basis that Mr [Shaheed] will now be recorded as [Asfia]'s father pursuant to s 5 of the Status of Children Act, the application for a paternity order under the Family Proceedings Act 1980 will be struck out as it is no longer required.

Judge M Rogers
Family Court Judge

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