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

IN THE FAMILY COURT
AT DUNEDIN

I TE KŌTI WHĀNAU
KI ŌTEPOTI

FAM-2019-012-000206
[2019] NZFC 9705

IN THE MATTER OF	THE ADOPTION ACT 1955
BETWEEN	[MARION DENNIS] AND [AUBREY DENNIS] Applicants
AND	[LYDIA PORTER] Child or Young Person the application is about

Hearing: In Chambers

Appearances: N Williams lawyer to assist

Judgment: 10 December 2019

IN CHAMBERS DECISION OF JUDGE D FLATLEY

Introduction

[1] The applicants, Mr and Mrs [Dennis] apply under s 3 of the Adoption Act 1955 (the Act) to adopt [Lydia Porter], born [date deleted] 1999, now aged 20.

[2] The Court has been particularly assisted by counsel appointed – Ms Williams who prepared detailed and helpful submissions which should be read in conjunction with this decision. I agree with Ms Williams' application of the relevant law and analysis generally and I do not intent to 'reinvent the wheel' here.

Background

[3] Mrs [Dennis] is [Lydia]'s biological mother and [Lydia] has lived with her throughout her life. [Lydia]'s biological father is Mr [White], with whom Mrs [Dennis] was in a brief relationship with during 1999, a relationship which ended upon discovering Mrs [Dennis] was pregnant.

[4] In the joint affidavit Mrs [Dennis] states that Mr [White] did not support her during the pregnancy and made it clear, at that time, he was not interested in becoming a father. Further, Mrs [Dennis] states that Mr [White] stated he did not want his name on [Lydia]'s birth certificate.

[5] Mr [White] has sought contact with [Lydia] twice over the years. On the second occasion, he applied for and was granted contact pursuant to a parenting order. Mr [White] exercised contact once and has had less than 10 hours of contact with [Lydia] over her entire life. And has not had no contact in the last 13 years.

[6] Mr and Mrs [Dennis] formed a relationship in 2009 and have subsequently married. They have two children together aged six and three years old.

The law

[7] The applicants apply jointly under s 3(3) of the Act which reads as follows:

> **3 Power to make adoption order**
>
> …
>
> (3) an adoption order may be made in respect of an adoption of a child by the mother or the father of the child, either alone or jointly with his or her spouse.

[8] The Court has discretion under s 5 of the Act to make a final order in the first instance were 'special circumstances' render it desirable to do so.

[9] Section 7 of the Act deals with required consents.

[10] Section 11 states that before an adoption order is made the Court must be satisfied that:

(a) the applicants are fit and proper persons to care for the child;

(b) the welfare and interests of the child will be promoted by the adoption; and

(c) any condition imposed by the parent or guardian in respect of religious denomination is being complied with (this point is not relevant in the current case as Mrs [Dennis], being the only parent or guardian of [Lydia] does not seek any condition imposed).

Consent

[11] Section 7(3) sets out the parents and guardians who are required to give consent for an adoption, unless dispensed with under s 8. Mrs [Dennis] was not married or living with Mr [White] during the time between conception and birth. Mr [White] is not, however, a guardian and has not been appointed a guardian of [Lydia] under s 19 of the Care of Children Act 2004. Mr [White]'s consent is not required, nor is Mrs [Dennis]'s as she is a joint applicant.

[12] Section 7(3)(b) of the Act provides that the Court to otherwise require Mr [White]'s consent if in the opinion of the court it is 'expedient' to do so. His Honour Judge Inglis adopted the following dictionary definition of expedient: "advantageous, fit, proper and suitable to the circumstances of the case."[1] Subsequent cases have discussed what is considered fair to a father, particularly where a father has been involved in the child's care or had an interest in the child's upbringing.[2]

[13] Here, Mr [White] was advised of the pregnancy and birth. He was not denied the opportunity to have contact, some degree of care or have an interest in the child's upbringing. He has chosen not to do so.

[14] Ms Williams is of the view that there are sufficient grounds for a finding by the Court that it is not expedient to obtain Mr [White]'s consent for adoption. She

---

1 *K v B* (1990) 6 FRNZ 604 (FC) at 623.

2 *DPH v Horton* [2004] NZFC 325, (2004) 29 FRNZ 700 at [54]; *Orlwski v Hardy* HC Christchurch M258/78, 25 August 1978.

highlights factors including the lack of contact, the fact Mr [White]'s family has had no contact with [Lydia], and the anxiety that would be caused for all but particularly [Lydia], if Mr [White] were to be involved in the proceeding.

[15] I agree with Ms Williams' analysis and I find that, in all of the circumstances here, it would not be expedient to require Mr [White]'s consent to be obtained. He has had no involvement in [Lydia]'s life and has made his position clear. His consent is not required.

Section 11 criteria

[16] There is no doubt that the applicants are fit and proper people. Mrs [Dennis] has cared for [Lydia] all of her life, and Mr [Dennis] became involved in 2009. The joint affidavit supports a finding that the applicants are fit and proper people.

[17] The effect of an adoption order and particularly that the granting of the adoption order will irrevocably sever the relationship between [Lydia] and Mr [White]. In considering this, I have had regard to the lack of contact over the years and the fact that Mr [White] has had many opportunities to instigate and foster a relationship with [Lydia], however, he has chosen not to do so. I have also taken into account the position of the applicants and [Lydia], who at the age of 19 has made her views very clear. Given her age, these views must be afforded the appropriate weight by the Court.

[18] In *Re Application by SJKB* Judge O'Dwyer noted that each application need be considered on its own facts and that step-family adoptions should not be presumed for or against.[3] I have considered all of the relevant factors pertinent to this application.

[19] In *Brooks v Hooper* it was observed that a final adoption order in favour of the step-father was important for a psychological perspective as it was sent to complete the child's connection with his family and gave the child equal status with the siblings.[4]

---

3 *Re Application by SJKB* FC Dunedin FADM-2009-009-3956, 24 November 2011 at [27].
4 *Brooks v Hooper* [2016] NZFC 1904 at [12].

In the current circumstance, the applicants and [Lydia] are already part of the same family unit; there is no emotional attachment between [Lydia] and Mr [White].

[20] It is important that [Lydia] be treated equally and as part of the family unit. This is what is sought by all and I can see no disadvantage for [Lydia].

[21] I find that granting the adoption application is entirely in the best interests of [Lydia]. She has been in the care of Mrs [Dennis] her entire life and Mr [Dennis] since around 2009. The granting of this order may be seen as a mere 'rubberstamping' of the relationship which already exists. However, it is important recognition of the family unit and recognition of Mr [Dennis] as [Lydia's] adoptive father.

[22] I consider this to be an entirely appropriate case to grant the order. Further, I consider there to be special circumstances such that a final order can be made in the first instance.

Result

[23] The application is granted and a final adoption order is made in the first instance.

D Flatley
Family Court Judge