

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, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE <https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/>

**IN THE FAMILY COURT
AT HAMILTON**

**I TE KŌTI WHĀNAU
KI KIRIKIROA**

**FAM-2020-019-000331
[2020] NZFC 4786**

IN THE MATTER OF	THE ADOPTION ACT 1955
BETWEEN	[BENJAMIN WILKINS] Applicant
AND	[KIRSTEN WILKINS] Child or Young Person the application is about

Hearing: 23 June 2020
Appearances: M Casey QC for the Applicant
Judgment: 23 June 2020

ORAL JUDGMENT OF JUDGE R PAUL

[1] This is an application for adoption filed by [Benjamin Wilkins] in respect of a female child, [Kirsten Wilkins] born on [date deleted] 2020 at [the Birthing Unit, location deleted].

[2] The background to [Kirsten]’s entrance into the world is heart-warming and complex. Mr and Mrs [Wilkins] were unable to carry to term a child on their own and required the assistance of a surrogate to help them make a family. Mrs [Wilkins] had

an existing health issue but had addressed that issue over a number of years to the point that her doctor felt that making application for surrogacy would be permissible.

[3] On that basis Mr and Mrs [Wilkins] were supported by Mr and Mrs [Riddle] to bring into the world [Kirsten] with Mrs [Riddle] carrying [Kirsten] to term. The genetic material for [Kirsten]'s creation came from Mr and Mrs [Wilkins]. The process for approval by the Ethics Committee was undertaken and approval granted. Happily, Mrs [Riddle] was able to conceive on the first attempt. Sadly, however Mrs [Wilkins] became ill soon after conception. She attended and participated as much as possible in prenatal appointments.

[4] The application for adoption was never meant to be just filed by Mr [Wilkins]. It was to be filed by Mr and Mrs [Wilkins]. Unfortunately, and very sadly for this family Mrs [Wilkins] passed away before [Kirsten] was born. Mr [Wilkins] has made his application for adoption as on [Kirsten]'s birth certificate Mr and Mrs [Riddle] are named as the parents.

[5] I have received the consents filed by Mr and Mrs [Riddle] which were undertaken under difficult COVID-19 restriction conditions. I have received a positive social worker's report which confirms that Mr [Wilkins] is a fit and proper person to adopt. There was an issue raised in these proceedings as to section 4 of the Adoption Act 1955. On the face of it the section prevents a single male adopting a female child. However, that section also provides for the Court to make an order in special circumstances.

[6] I have determined to grant the adoption order notwithstanding this restriction and identify the special circumstances which are as follows:

- (a) This is an application made with the approval of the surrogacy process.
- (b) This was not an application which was originally intended to be made by a single man but by husband and wife, Mr and Mrs [Wilkins]. Mr [Wilkins] should not be prejudiced in making his application because of the loss of his wife.

(c) Genetically [Kirsten] is the child of Mr [Wilkins]. He is her father.

[7] I now turn to the requirements of an adoption order. I accept that under s 7 appropriate and proper consents have been received from Mr and Mrs [Riddle], those persons named as parents on the birth certificate. I accept that the child has been properly placed with the applicant, Mr [Wilkins], notwithstanding the placement certificate lapsed within the COVID-19 period. That is a matter which was beyond the control of any person.

[8] I have received a report which finds that the applicant is a fit and proper person. I determine on all the information I have received that [Kirsten]'s welfare and interests will be promoted by the making of this adoption order and I determine also that an adoption order as a result should be made. I am mindful that today in Court there is Mr [Wilkins] who is well supported by his family, the family of [Julie Wilkins] and Mr and Mrs [Riddle].

[9] They are all evidence to me that this adoption is not only supported but is in this child's best interests and will promote her welfare and interests. I have no doubt that every person sitting here will continue to be involved with Mr [Wilkins] and this child long well into the future.

[10] That leaves me to turn to whether an order should be an interim order or a final order. It is the usual process in the Court legislation for an interim order to be made at the first instance. The purpose of that is to allow a period of monitoring and support for an adoptive child to adoptive parents. I have been asked today to make a final adoption order for special reasons and those reasons being that, firstly, this child has been in the care of her father since the day of her birth. [Kirsten] is now over three months old. The other reason is that the purpose for an interim order is to allow a period of support, monitoring and as Ms Casey has alerted me to, the probationary period.

[11] In this case that is not required nor is it appropriate. [Kirsten] is the child of Mr [Wilkins]. He is responsible for and has taken responsibility for [Kirsten]. I therefore will be making a final adoption order.

[12] I have also been asked to make a direction pursuant to s 23 Adoption Act which allows the release of the social worker's report to the applicant. I am reminded that the purpose of the restriction of adoption records is to keep secret the background of the adoption and the identity of the natural parents. That does not apply in this case. There is no secret as to the background of [Kirsten]'s creation or her natural parents. There is no need for a restriction of information.

[13] Against that background I make the following orders and directions:

- (a) I direct that the social work report filed in these proceedings can be released to the applicant pursuant to s 23.
- (b) I make a final adoption order in favour of [Benjamin Wilkins] to adopt [Kirsten Wilkins], a female child born [date deleted] 2020. There shall be no record of adoptive parent on that birth.

Judge R Paul
Family Court Judge

Date of authentication: 01/07/2020
In an electronic form, authenticated electronically.