

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/](https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/)**

**IN THE FAMILY COURT
AT TOKOROA**

**I TE KŌTI WHĀNAU
KI TOKOROA**

**FAM-2020-077-000130
[2021] NZFC 8561**

IN THE MATTER OF	THE ADOPTION ACT 1955
BETWEEN	[BROOKE SHUTE] [SIMON DONALD] Applicants
AND	[LEE SHUTE] Child or Young Person the application is about

Hearing: 31 May 2021

Appearances: L Gamble for the Applicants
M Bodde-Phillips as Counsel to Assist

Judgment: 23 August 2021

RESERVED JUDGMENT OF JUDGE A C WILLS

[1] [Lee Shute] ([Lee]) is the daughter of [Brooke Shute] and [Blair Haynesworth]. Mr [Haynesworth] died on [date deleted] 2016 before [Lee] was nine months old. Ms [Shute] and Mr [Haynesworth] are recorded on [Lee]'s birth certificate as her parents and were a couple at the time of conception and birth. Following the death of Mr

[Haynesworth], the paternal family maintained a relationship with [Lee], and over the years contact has regularly occurred by telephone and in person.

[2] Ms [Shute] met Mr [Donald] and the couple formed a relationship in 2017. They were married on [date deleted] 2020. Mr [Donald] has been in a parenting role for [Lee] for all the life that she remembers. At the time of this application being filed, [Lee] saw Mr [Donald] as her father and although she has continued to have contact with her paternal grandfather, [Grant Cleave], whom [Lee] calls [nickname deleted] and her grandmother Ms [Haynesworth], whom she calls “Nan”, she did not understand that she had a father different from Mr [Donald].

[3] The adoption application was filed by Ms [Shute] and Mr [Donald], who want an adoption order to formalise what is a close family unit. The application is supported by the biological paternal grandparents.

[4] When the application was filed, a social work report was directed. That social work report did not recommend the adoption order being made. In general, that was based on a concern about [Lee]’s identity and her loss of biological ties if an adoption order was made. The social worker recommended the making of orders pursuant to the Care of Children Act 2004 for day-to-day care and appointment as additional guardian.

[5] Noting the content of the report Ms Bodde-Phillips was appointed as counsel to assist the Court, and has reported. Ms [Shute] and Mr [Donald] have also had the opportunity to file a further affidavit and they have done so on 18 June 2021.

[6] At the time the social work report was filed, Ms [Shute] and Mr [Donald] had not spoken to [Lee] about her parentage as they felt she was too young to understand and wanted to wait until her sense of self and her capacity to comprehend the complexities of relationships had developed.

[7] Having read the social worker’s report, their affidavit makes it clear that they have started to talk with [Lee] in a natural way about the fact that she has two dads and to explain to her that her dad [Blair] had died when she was a baby. Mr [Cleave]

had previously talked with her about Mr [Haynesworth] being her father and so the concept was not entirely foreign to her. She has certainly come to understand much better. There are photos that she has seen and talked about and there is a photo book that Ms [Haynesworth] had made for [Lee] called “My Dad [Blair]”. That book is available to [Lee] both at Ms [Shute]’s and Mr [Donald]’s home, and at her grandparents’ houses.

[8] Mr [Cleave] and Ms [Haynesworth] call or video call [Lee] on a weekly basis. [Lee] stays at Mr [Cleave]’s house overnight approximately monthly and Ms [Haynesworth] often visits the [Donald] household in the weekend.

[9] I accept entirely that the relationship is strong and positive and that Ms [Shute] and Mr [Donald], and Mr [Cleave] and Ms [Haynesworth], all have confidence that it will continue in the way that it has since 2018.

[10] The criteria for the making of an adoption order are clearly met. The two criteria necessary are:

- (a) the child cannot be cared for by his or her own parents; and
- (b) the proposed adoption will provide the child with a permanent family life.

[11] There is no doubt that the applicants are fit and proper persons to care for [Lee]. The only question is whether the proposed adoption is in the best interests of [Lee].

[12] In circumstances where the paternal family agree to the making of this adoption order and where [Lee] has a strong relationship with her grandparents, the only issue really is whether it is, or would be, helpful to have Care of Children Act orders which enable the granting of leave and provision for flexible contact arrangements to accompany a final adoption order.

[13] It is for that reason alone that I consider an interim order should be made. That will enable Mr [Cleave] and Ms [Haynesworth] to identify whether they wish to participate in court proceedings to achieve that goal. If they do not, then a final order

should be made. The purpose of an interim order, as Judge Pidwell identified in *Re Tagioalisi*¹ is to:

... test the bonding and establishment of a relationship with the child and to enable the social worker to provide ongoing monitoring.

[14] The testing of bonds and establishment of a relationship are clearly unnecessary in this case. The relationship is strong and the bonds are tight. The only issue is the legalisation of the paternal family's ability to maintain the ongoing relationship that already exists.

[15] For that reason, an interim order in favour of the applicants is made at this time. Ms Bodde-Phillips' appointment is continued to enable her to have a discussion with the paternal family about Care of Children Act applications. If a consented application is filed, it should be referred to me in chambers for the making of orders which need not be prescriptive or specific.

[16] The registrar should conduct a case management review in two months to monitor the filing of the report from Ms Bodde-Phillips. Ms Bodde-Phillips should also identify whether there is jurisdiction which would enable a final order to be made prior to the statutory six-month period.

Judge AC Wills

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 23/08/2021 at 1.16pm

¹ *Re Tagioalisi* [2015] NZFC 2319.