

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

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**IN THE FAMILY COURT  
AT PUKEKOHE**

**I TE KŌTI WHĀNAU  
KI PUKEKOHE**

**FAM-2019-057-000147  
[2020] NZFC 4309**

IN THE MATTER OF	THE FAMILY PROCEEDINGS ACT 1980
BETWEEN	[VERONICA MITCHELL] Applicant
AND	[RICHARD MALONE] Respondent

Hearing: 12 June 2020

Appearances: J Williams for the Applicant  
No appearance by or for the Respondent

Judgment: 12 June 2020

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**ORAL JUDGMENT OF JUDGE K TAN**

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[1] These are paternity proceedings that have been filed by [Veronica Mitchell] in relation to her daughter [Florence O'Connor-Mitchell] born [date deleted] 2015. Ms [Mitchell] is present in Court today with an agent for her lawyer.

[2] The named respondent in the proceedings is Mr [Richard Malone]. He is not present in Court today. He was served by way of substituted service on his mum, [Rachel Copeland]. That occurred on 1 November 2019. There has been ample time then for Mr [Malone] to file a response if he had any issues.

[3] The matter today proceeded by way of formal proof. On the Court file there is the original affidavit from Ms [Mitchell] sworn on 1 October 2019. There has been no updated affidavit filed by her, so she was sworn in and counsel asked her some questions as did I. What is evident from the evidence that she gave in the witness box is in summary the following:

- (a) She was in a relationship with a [Kurt O'Connor] for approximately six months before she entered into a sexual relationship for approximately three months with [Richard Malone]. She was quite upfront in saying that there was approximately seven days between when she last had sexual intercourse with Mr [O'Connor] and when she started having sexual intercourse with Mr [Malone].
- (b) When she found out she was pregnant with [Florence] her sexual relationship with Mr [Malone] had concluded.
- (c) During the course of her pregnancy she notified both men that they were potentially the father of her baby, but she thought that it was perhaps going to be [Kurt O'Connor]. Subsequently [Florence] was born [later in 2015]. She put the timeframe when she last had sex with Mr [Richard Malone] in November 2014.

- (d) She then approached both potential fathers to see if they would complete DNA testing. Mr [O'Connor] declined to do so. However, Mr [Richard Malone] agreed.
- (e) [Florence] was approximately three months old when DNA testing took place. The applicant obtained swabs from DNA Diagnostic Centre, a company in New Zealand. She said that Mr [Malone] came to her home and a swab was taken from his mouth as well as the mouth of [Florence], and then it was sent off to DNA Diagnostic Centre.
- (f) From her recollection it took two weeks for the results to come back. The results are attached as exhibit A to her affidavit. The results indicate that there is a 99.9996 percent probability that [Richard Malone] is the father. In the results it does note that there was no identification given or a chain of custody that showed that the swab was indeed from [Richard Malone], but Ms [Mitchell] in her sworn evidence today has confirmed that the swab that was put in and sent to DNA was from her daughter and from Mr [Malone] and nobody else.
- (g) From there she informed both gentlemen of the outcome.
- (h) Before the testing came through Mr [O'Connor] had been having regular contact with [Florence], Mr [Malone] not so much. He had only met her once when he had taken the swabs. The response from Mr [O'Connor] was that he was upset and angry that he was not the father. Mr [Malone] at the time was happy.

[4] What came out in the evidence was, in fact, that Mr [Kurt O'Connor] is actually recorded on [Florence]'s birth certificate as her father, and in fact [Florence] has registered as her surname [O'Connor-Mitchell]. It was not apparent from the affidavit that had been filed that there was either a perspective father, or that in fact anyone else had been named on the birth certificate, so that information was a bit of a surprise. The reason why Ms [Mitchell] has had difficulty with changing the birth certificate is not that it is a situation of no one being named, but in fact Mr [O'Connor] has not co-

operated in terms of agreeing to have his name removed from the birth certificate as [Florence]'s father. Ms [Mitchell] tells the Court that Mr [Malone] would be happy to have his name put on the birth certificate as her father, but this cannot occur without a consent position from Mr [O'Connor].

[5] Subsequent to that time Mr [Malone] has had some intermittent contact with [Florence] but has not had any contact for the last one to one and a half years. The evidence of Ms [Mitchell] is that he has not denied paternity once presented with the DNA test, and in fact both him and his mum turned up to participate in [Florence]'s second birthday. That, however, has not occurred subsequently for her third or fourth birthday.

[6] The Court has to be persuaded on the balance of probabilities that Mr [Richard Malone] is [Florence]'s father. I must say that if it was based on the oral evidence alone of Ms [Mitchell] the Court would be unlikely to be able to determine that he was the father, because of the close proximity of the sexual intercourse that occurred with both him and Mr [O'Connor]. However, I am satisfied that with the DNA test results, and the evidence that Ms [Mitchell] has given explaining how that was obtained and what occurred, that on the balance of probabilities Mr [Malone] is [Florence]'s father.

[7] Accordingly, I make a paternity order declaring [Richard Malone] the father of [Florence O'Connor-Mitchell] born [date deleted] 2015.

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Judge KMSH Tan  
Family Court Judge

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