

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

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**IN THE FAMILY COURT
AT CHRISTCHURCH**

**I TE KŌTI WHĀNAU
KI ŌTAUTAHI**

**FAM-2021-009-000248
[2021] NZFC 4218**

IN THE MATTER OF	THE ADOPTION ACT 1955
BETWEEN	[ANGELINA ANTONOV] [YURI MARKOV] Applicants
AND	[SERGEI MARKOV] Child or Young Person the application is about

Hearing: 5 May 2021

Appearances: M Casey QC for the Applicants (via AVL)
S Burnhill for the Chief Executive (via telephone)
C Kyle as Social Worker

Judgment: 5 May 2021

ORAL JUDGMENT OF JUDGE M J DUGGAN

[1] This is an application made by [Angelina Antonov] and [Yuri Markov] to adopt [Sergei Markov]. [Sergei] was born in St Petersburg on [date deleted] 2020. [Sergei] is in Court today with his parents, Ms [Antonov] and Mr [Markov], along with his maternal grandmother, Mrs [Antonov].

[2] Ms Casey QC is joined by AVL, and Ms Kyle, the Oranga Tamariki adoption social worker who prepared a thorough report is also present, along with the Ministry's lawyer Ms Burnhill who has been joined by phone.

[3] I have already told Ms [Antonov] and Mr [Markov] that I am going to make an adoption order, but it is important that I set out why I am satisfied that an adoption order should be made and that it should be a final adoption order.

Background

[4] [Sergei] was conceived and born in Russia, using an anonymous donor egg and Mr [Markov]'s gametes. Ms [Natalia Kovalchuk] was [Sergei]'s surrogate mother.

[5] Ms [Antonov] and Mr [Markov] are Russian, they married in [date deleted] and are New Zealand citizens. Ms [Antonov] and Mr [Markov] have lived in New Zealand for many years. They now live in their own home in [suburb deleted] here in Christchurch. Mr [Markov] is in paid employment, Ms [Antonov] is currently caring for [Sergei] fulltime but anticipates returning to paid work in the future. Ms [Antonov] and Mr [Markov] are financially stable, and they have been assessed as "well equipped" to raise [Sergei].

[6] [Sergei] was born [a few] weeks early but, fortunately, Ms [Antonov] was able to get to St Petersburg, [duration deleted] before his birth. Ms [Antonov] immediately assumed responsibility for [Sergei]'s care. After his birth [Sergei] remained in hospital for a period and when he left, he left with his parents. Mr [Markov] arrived in St Petersburg, [duration deleted] after [Sergei]'s birth and the family lived together for [duration deleted] before he returned to New Zealand.

[7] Like many people around the world, Ms [Antonov] and Mr [Markov] were affected by the COVID-19 pandemic and, as a result of the COVID-19 restrictions, Ms [Antonov] and [Sergei] remained in St Petersburg much longer than anticipated. They returned, along with Mrs [Antonov], in [date deleted] last year. After the mandatory quarantine period, the family were reunited in Christchurch.

[8] After visiting the family in January, Ms Kyle completed her social work report. Ms Kyle's report concludes with her assessment that Mr [Markov] and Ms [Antonov] are fit and proper people, as is required by the Adoption Act 1955, to adopt [Sergei]. The report refers to the fact that the surrogacy arrangement was undertaken with the intention that the applicants would jointly parent the resultant child and therefore, in Ms Kyle's view, an adoption order will recognise and affirm the status of the applicants as [Sergei]'s legal parents. Ms Kyle also recommends that a final rather than interim adoption order be made.

[9] Ms Casey, counsel for the applicants, filed a helpful memorandum outlining what the Court must consider in relation to this adoption application and why an application was necessary. As explained, the adoption application was necessary because the Status of Children Act 1969 states that a child born using assisted reproduction techniques is the child of the birth mother. That is despite the fact that [Sergei] already has a Russian birth certificate that says that Ms [Antonov] is his mother and Mr [Markov] is his father.

[10] In terms of the issues I must consider; first I must consider whether the Adoption (Intercountry) Act 1997 applies. I am satisfied that it does not. That is because, while [Sergei] was born in Russia, it could not be said that he was habitually resident there. He was born there but the plan of his parents was always that he and they would return to New Zealand though they planned to return earlier than they did. I am satisfied that [Sergei], through his parents' intention, does have habitual residence in New Zealand.

[11] The second issue that I must consider is whether Ms [Kovalchuk] has given valid consent. I have her written consent on the Court file. It confirms that Ms [Kovalchuk] consents to [Sergei] leaving Russia to live permanently in New Zealand and that she agrees to the adoption because it was always intended that [Sergei] would be the child of Ms [Antonov] and Mr [Markov]. I am therefore satisfied that a New Zealand compliant consent has been signed and filed along with a supporting affirmation.

[12] Thirdly, as required by the Adoption Act 1955, I must be satisfied that Ms [Antonov] or Mr [Markov] are “fit and proper people” to adopt [Sergei]. Like Ms Kyle, I am satisfied that they are.

[13] Finally, I must consider whether an adoption order will be in the welfare and best interests of [Sergei]. I am in no doubt that an adoption order is in [Sergei]’s welfare and best interests. Mr [Markov] and Ms [Antonov] have gone to enormous lengths to ensure that they are in the best position to raise, love and support [Sergei]. I am also convinced that an adoption order will provide the necessary recognition for [Sergei] as the child of Mr [Markov] and Ms [Antonov].

[14] In conclusion, I am satisfied that it is entirely appropriate for me to exercise my discretion and to make a final adoption order today.

Judge M J Duggan
Family Court Judge

Date of authentication: 14/05/2021
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