

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 NORTH SHORE**

**I TE KŌTI WHĀNAU  
KI ŌKAHUKURA**

**FAM-2019-044-000628  
FAM-2019-044-000629  
[2020] NZFC 11085**

IN THE MATTER OF	THE ADOPTION ACT 1955
BETWEEN	VALERIE-LEE DUNBAR GRAHAM EANNA PRONNSIAS DOYLE Applicants
AND	ELINOR CATRIONA GRAHAM VICTORIA GRACE GRAHAM Children or Young Persons the application is about

Hearing: 10 December 2020

Appearances: V Freeman for the Applicants  
M Casey QC as Counsel to Assist

Judgment: 10 December 2020

---

**ORAL JUDGMENT OF JUDGE R VON KEISENBERG**

---

[1] There are two adoption applications before me in respect of Elinor Catriona Graham and Victoria Grace Graham, twin girls, born on [date deleted] 2002. It is an application by their stepfather Eanna Pronnsias Doyle and the girls' mother, Valerie-Lee Dunbar Graham. Valerie is the children's biological mother.

[2] The background to this application is that the children's birth father is Graham John Middlemiss. Mr Middlemiss and Ms Graham were married on 26 August 1993 in the United Kingdom. They came to New Zealand to live. Ms Graham and Mr Middlemiss separated in 2008, when the girls were approximately six years of age.

[3] It appears, on reading the file, that the main issue in the breakdown of the marriage was Mr Middlemiss' alcohol issues. Mr Middlemiss eventually returned to live in Scotland and died suddenly in 2015 from complications, it seems, arising from alcohol use at the age of 47 years.

[4] The applicant, Ms Graham, met Mr Doyle and commenced a de facto relationship in 2012. They married on 28 January 2017. The applicant, Mr Doyle, is 65 years of age and Ms Graham is 55.

[5] The reason the applicants are seeking an adoption order and I am distilling what have been quite comprehensive proceedings filed, is effectively to formalise the relationship that Victoria and Elinor have with him and to recognise the importance of that relationship to them.

[6] A s 10 social worker's report was obtained from Oranga Tamariki on 4 June 2020. It is a comprehensive report and addresses all aspects of the application. It has looked at the applicants themselves, their relationship, the parties' previous relationships, their home and environment, their financial position, police reports which I will return to shortly. It also addresses and examines the young persons who are the subject of this application, Elinor and Victoria, their circumstances and their attitude to this adoption.

[7] Boiling it down, the social worker supports the making of an adoption order and recorded in the summary of that report are the key points of their investigation. The social worker said that Mr Doyle and Ms Graham presented as "responsible and secure couple who exhibit suitable parenting capacity. They have an open, honest and communicative relationship from which to build a long-term future for providing security for Elinor and Victoria".

[8] She went on later to say that Elinor and Victoria enjoy a safe and secure upbringing with considerable care and consideration for their needs. They appear to have a good relationship with their mother and have developed a strong bond with Mr Doyle. Importantly, she noted and I quote: “Elinor and Victoria were able to clearly articulate who the important people in their lives are, which includes Mr Doyle and have clearly expressed their desire to be adopted by him. Elinor and Victoria want to acknowledge the person who has been a father to them for the last eight years. He has played a big part in their lives and they want to legally recognise the father/daughter relationship.”

[9] She concluded her report by stating that in her view, it was in the best interests of Elinor and Victoria to be Mr Doyle’s legitimate daughters and granting the adoption order would address Elinor and Victoria’s wish to be adopted.

[10] On 30 June, counsel to assist Ms Casey QC was appointed. She was asked to investigate and report. She did not meet with the young persons, the subject of the adoption order, relying understandably, on the social worker’s report. Ms Casey filed a comprehensive report and memorandum of submissions on 17 August 2020. She addressed the main issues that this adoption raised.

[11] I have also had the benefit of submissions for counsel for the applicants, Ms Freeman. She is present here today with Mr Doyle, Ms Graham and the two girls, Elinor and Victoria.

[12] It is generally agreed that there are four main issues for the court to consider in an adoption; does the court have jurisdiction to make an order in respect of 18-year-old girls? There is the issue concerning consents; what consents are required. The third most significant aspect of this adoption is whether the applicants are fit and proper persons in terms of s 11(a). (In that regard, an issue raised was in the social worker’s report which was addressed by Ms Casey in her report and addressed more fully, upon further direction by the Court, by Mr Doyle and Ms Graham in subsequent affidavits. I address this in more detail shortly). Finally, does the making of an order promote the welfare and best interests of Elinor and Victoria.

## **Jurisdiction**

[13] Clearly, the Court has jurisdiction. Section 2 of the Adoption Act 1955 provides that the Court has jurisdiction to make adoption orders for persons under the age of 20 years. A child means a person who is under the age of 20 and includes any person in respect of whom an interim order is in force; notwithstanding the person has obtained that age.

[14] In terms of consents, this is not an issue in this application. The only person whose consent would have been required was Mr Middlemiss. Clearly this is not required in view of his death. A separate consent is not required from the birth mother, the applicant in this matter. In short no further consents are required.

[15] Section 7 of the Act sets out what is required for the making of an adoption order under the Act. Once the issue of jurisdiction and consents are addressed, s 11 of the Adoption Act says there are three conditions which must be satisfied. The first is determining whether the applicants are fit and proper persons to have the role of providing day-to-day care of the child and the ability to bring up and maintain and educate the child.

[16] The court must also be satisfied that the child's welfare and interest is promoted by the adoption, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of that child; and that any condition imposed by any parent, with respect to religious denomination and practice, has been complied with. (The latter is not relevant in this instance.)

[17] The conditions under s 11 have been found by the court to be conjunctive; that is, they are not separate considerations.

[18] As earlier noted, the fit and proper assessment was undertaken by the social worker in her report. Notably, no issues were identified for either applicant except in relation to Mr Doyle's earlier failure to pay tax to the IRD. In that regard, he was convicted and fined a sum of \$13,000 in January 2009. The social worker was fully aware of this and despite this, recommended the adoption should take place.

[19] This matter came before Judge Partridge on 13 October. She directed that each of the parties, Mr Doyle and Ms Graham, were to file updating affidavits addressing the concerns that the Court had in relation to these convictions. The affidavits were duly filed on 16 November. Mr Doyle in his affidavit, provided details regarding the circumstances of his offending, attaching the summary of facts and what appears to be sentencing notes from his Honour Judge Down.

[20] The Court has previously dealt with criminal convictions in the context of adoptions. Ms Casey addressed this in her submissions which I quote from: “Having perused a number of cases where criminal convictions are considered within the context of a Court’s determination of whether an applicant is deemed a fit and proper person, it is clear that previous convictions, per se, are not disqualifying factors.” She relies on a Family Court decision of her Honour Judge Binns in a matter of *Re CITH*.<sup>1</sup>

[21] However, an applicant will fail to meet the necessary threshold where there are other issues identified in addition to the conviction, such as a lack of honesty, possible immigration motivations, concealment of birth identity, a failure to disclose the convictions to the birth parents who have consented to the adoption. Additionally, an unwillingness to accept responsibility for the offending or lack of remorse is also relevant.

[22] She submits that essentially what the court is looking for are other issues coupled with a conviction which are likely to impact negatively on the ability of a person to appropriately care for a child. In the decision of Judge Rogers in *Tafili v Mann* 2015, she observed that where there was a criminal conviction history for one of the applicants, the court observed it was not necessarily looking for applicants who “never made mistakes” but rather for people who can be assessed as fit and proper.<sup>2</sup>

[23] In a decision of Judge Mahon in *[Re Penitani Children]*, His Honour made similar observations quoting from an earlier decision of Judge Southwick QC.<sup>3</sup> “It must therefore be a question of considering the nature and timing of the conviction,

---

<sup>1</sup> *Re CITH* FC Palmerston North FAM-2011-054-180, 25 November 2011

<sup>2</sup> *Tafili v Mann* [2015] NZFC 122 at [15].

<sup>3</sup> *[Re Penitani Children]* [2019] NZFC 9195.

the remedial steps taken, consideration of the current dynamic and attitudes which might have impact upon the child. In short, there is a broad-based consideration of all relevant matters.”

[24] I accept the submissions without demur from both counsel that there are strong countervailing factors in this matter; Mr Doyle has expressed regret and remorse; it is a first offence; there was a disclosure of his convictions to Elinor and Victoria; there was no attempt by Mr Doyle to hide from the convictions and that the offending was of a financial nature. (It must be added in regard to the latter point that this in itself does not extinguish the gravity of any offending, but arguably, this type of offending does not impact on a parents’ ability to provide good parenting.)

[25] All in all, I am satisfied that the convictions under the Tax Administration Act 1994 in the circumstances, does not disqualify Mr Doyle or prevent the court in finding that he is a fit and proper person.

[26] The next matter is for the court to be satisfied that making an adoption order is in the best interests of Victoria and Elinor. I have touched upon one of the issues this matter raised when I first read this file, that is, what is the motivation and the purpose of an adoption order of two young women to a stepparent and the birth mother?

[27] Ms Casey in her submissions referred me to a case by His Honour Judge Adams where he expressed a reluctance to make adoption orders in similar circumstances. I have heard submissions today from Ms Freeman and I accept that there is some merit in what has been said today; that is, the making of the adoption order in the circumstances of this case, where for want of a better expression, Mr Doyle has stepped into the in-parentis locus role.

[28] Mr Doyle has been a father to these girls for a considerable part of their lives. I accept the submission from Ms Casey that there are a number of factors that I can take into account and that there is a trade-off in such an adoption. I quote from her submissions, “the reality of their genes that is that they have been born a Middlemiss

and the adoption is a trade-off of the reality of their lives” in that Mr Doyle has stepped into the breach as their father.

[29] I have also taken the opportunity today to talk to Victoria and Elinor. They are intelligent, thoughtful girls who are doing very well in their lives. They have clearly given the application some considerable thought. I did enquire from them as to whether they fully understood what an adoption order meant in terms of the severing of ties of their birth father as recorded on the birth certificate.

[30] Victoria said somewhat sagely, that she knows who her birth father is but is keen and wants to have her birth certificate recognise Mr Doyle as her father. This sentiment was echoed by Elinor. Accordingly, I am satisfied that the requirements of s 11 of the Act have been met. I find the applicants, Mr Doyle and Ms Graham to each be fit and proper persons to continue the role in providing day-to-day care and to parent and educate the children. I am satisfied that the welfare and interests of Elinor and Victoria are promoted by the making of an adoption order.

[31] Accordingly, on that basis I am satisfied the application for an adoption order should be granted. In the circumstances, I am also satisfied that the grounds have been met today for a final adoption order to be made in favour of the applicants.

[32] Finally, at the request of counsel to assist, she has asked that the social worker’s report dated 4 June 2020 be released to Elinor and Victoria. I have enquired from the parents whether they are happy for this to be released to them and they have agreed to do so. Accordingly, I direct that a copy of the social workers report can be released to Victoria and Elinor.

---

Judge R von Keisenberg  
Family Court Judge

Date of authentication: 08/01/2021

In an electronic form, authenticated pursuant to Rule 206A Family Court Rules 2002.