

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

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**IN THE FAMILY COURT
AT DUNEDIN**

**I TE KŌTI WHĀNAU
KI ŌTEPOTI**

**FAM-2021-012-000087
[2021] NZFC 7886**

IN THE MATTER OF THE BIRTHS, DEATHS, MARRIAGES,
AND RELATIONSHIPS REGISTRATION
ACT 1995

BETWEEN [IOSEFA SUEGA]
Applicant

AND THE REGISTRAR of BIRTHS, DEATHS
AND MARRIAGES
Respondent

Hearing: 30 July 2021

Appearances: N A M Williams as Lawyer to assist the Court

Judgment: 30 July 2021

ORAL JUDGMENT OF JUDGE ANNIS E SOMERVILLE

[1] The applicant [Iosefa] applies, pursuant to s 28 of the Births, Deaths, Marriages, and Relationships Registration Act 1995, for a declaration that it is appropriate that his birth certificate should now show the information that he is of male gender and not the female gender as stated on his birth certificate.

[2] This is the formal proof hearing with [Iosefa] appearing in person. Ms Williams appears as counsel to assist and has filed full and helpful legal submissions.

[3] [Iosefa] has been sworn in, and I have been able to ask him questions in relation to the application that is before me. He has provided helpful answers to my main question about whether there was any suggestion that he would want to reverse his decision or go back on any changes that have been made. He has reassured me that is certainly not the case.

[4] The two affidavits have been filed by [Iosefa] and he has confirmed those affidavits as being true and correct. The application has been served on the Registrar-General as required by s 28(2)(a), and the Court has been advised that the Registrar-General does not intend to take any active steps and will abide by the decision of the Court. This was advised by a memorandum filed on 18 March 2021.

[5] There is no other person interested or might be affected by the granting of this declaration, s 28(2)(b).

[6] The counsel to assist has filed two memoranda. The earlier one raised some concerns that further evidence was required; that has now been addressed, and so all the evidence that is necessary is now before the Court. Further evidence included evidence regarding [Iosefa]'s personal history and his decision to openly assume the identity of a male. Further medical information was also provided for the Court.

[7] Section 28(3)(b)(i) notes that under s 28(3)(b)(i) the Court must determine whether the applicant has assumed and intends to maintain the gender identity of the person of the nominated sex. The test is set out in the case of *Michael v Registrar-General of Births Deaths and Marriages*, usually referred to as *Michael*.¹ This test is necessarily prospective and to a large extent can be met in part by assurances from the applicant and from a review of his past behaviour and other social and psychological factors.

¹ *Michael v Registrar-General of Births Deaths and Marriages* (2008) 27 FRNZ 58.

[8] Evidence [Iosefa] has provided and the further evidence that is put forward today is that gender identity dysphoria has dominated [Iosefa]'s life since early childhood. He explains that he repressed his feelings about his gender until the age of 15 and this was largely due to internalised transphobia. [Iosefa] says in his affidavit evidence:

At 15 I began to express myself in increasingly masculine ways by getting men's haircuts, deepening my voice and working out. I had already been dressing in my brother's clothing since I was about four or five. Even before officially presenting as male, I would be gendered by strangers as male and my family would sometimes accidentally refer to me using he/him pronouns. I identified as a butch lesbian during that period of my life, however I also said that I did not feel that I was a woman or that butch lesbian was my gender.

In retrospect, I clearly felt I was a man and would frequently refer to myself as one but because I had internalised transphobia I did not think it was possible for me to be a man, so I settled for what I thought was the closest thing.

And then he says:

From March 2019 onwards, I lived publicly and privately as male in work, school, within the home and elsewhere, and I have never once looked back after starting this journey. My only regret is I did not transition earlier.

[9] The applicant spoke to me about the fact that at one stage he went back into 'the closet' when he was not supported by his brother at that time, although he is now supported by his family and his brother.

[10] In his second affidavit, he does explain the reason why his mother felt unable to support his wish to transition when he came out to his family at the age of 12 years, and that was because the family did not have enough income to support a gender change, and that has been noted in the affidavit evidence of his mother.

[11] The evidence from both his parents has been provided and it is now clear that both parents are proud of their son and fully support his wish to transition to the male gender. His mother states, and this is an important aspect of [Iosefa]'s coping with his identity, is that:

[Iosefa] had had to put up with a lot of overheating due to covering up a body that does not fit with what his brain knows he is. It will be wonderful when [Iosefa] can work out at the gym without binders that can and do injure him, and go the beach and swim like he did before puberty dealt him a cruel blow.

I am so proud of [Iosefa]. He is more than I could ever have imagined him to be and he will be a part of making the world a better place.

[12] This is an indication of his mother's support and love for her son, and her insight of how it must have been for [Iosefa] as clearly set out in her affidavit.

[13] Accordingly, both parents corroborate [Iosefa]'s evidence that he has assumed and maintained the male gender identity. [Iosefa] has also provided evidence from his friend [name deleted] who confirms that he is seen and treated as a male. That evidence shows that he has supportive friends who have always been aware of his situation and supporting him in that.

[14] So, I accept the submission of Ms Williams that [Iosefa]'s evidence makes it clear he has assumed and intends to maintain the gender identity of a male.

[15] In terms of s 28(3)(c)(i) of the Act, I must be satisfied on the basis of expert medical evidence that [Iosefa] has assumed the gender identity of a male, the nominated sex. That he has undergone such medical treatment as usually regarded by medical experts as desirable to enable persons of genetic and physical conformation of the applicant female to acquire a physical conformation that accords with the male gender identity. And he will as a result of medical treatment undertaken, maintain a male gender identity. It is important that I am satisfied the decision of [Iosefa]'s making about the gender he wishes to live as, when seeking an application under the s 28, is fully and properly considered.

[16] There are three tests, also referred to as three limbs, that are required in order for me to take that into consideration.

[17] Section 28(3)(c)(i)(A) requires expert medical evidence relating to [Iosefa]'s psychological assumption of the male gender identity. He has stated that he has assumed the gender identity of a male in his interactions with family, friends, at school and elsewhere, and he has also clarified that the psychiatric evaluation referred to in his first affidavit was for the purpose of assessing his readiness for hormonal treatment.

[18] He has a letter from Dr Keyter, who is a consultant child and adolescent psychiatrist, who made the diagnosis of gender identity disorder. After a full evaluation, psychiatric evaluation, Dr Keyter assessed [Iosefa] ready for hormonal treatment. Her report is attached as exhibit C to the second affidavit. She notes that:

From the age of four or five years, [Iosefa] clearly preferred to wear his older brother's clothes, did not ever seek any female attire and felt uncomfortable in girls' clothes.

She also noted that:

Around the age of 12 years, [Iosefa] started to think that he was male and not female, however he was dissuaded by his mother as she felt that the family did not have enough income to facilitate a gender change, and that has been referred to.

[19] Dr Keyter records that both parents are now very supportive, stating his parents are very supportive with the fact he is seeking this help at the moment, and Mum who was [job details deleted] is also very supportive. She mentioned that they, despite being historically indoctrinated that this is wrong, can accept that for their child it is the way, and they have to fight their own demons, so to speak, around that.

[20] [Iosefa] started having hormone treatment in August 2019 and legally changed his name, to [Iosefa], that occurring in 2019. Although there is no evidence from a psychotherapist as how [Iosefa] is coping with living as a member of the male sex, he underwent a full psychiatric evaluation in June 2019 prior to commencing hormonal treatment. It is evidence from Dr Keyter's report that [Iosefa] is an intelligent and grounded young man and there seems to be no dispute about him not wanting and coping psychologically with the changes that have been made.

[21] There is also evidence of Dr Paul Tomlinson consultant paediatrician who in his letter dated 1 September 2020 attached his exhibit B to the first affidavit. By that time, [Iosefa] was openly living as a male and had been on hormone treatment for little over a year. Dr Tomlinson states:

The applicant specifically wants to reassign the gender of birth to that of male, as per his preference. [Iosefa] has had a full psychiatric evaluation and is considered cognitively capable and mentally stable to suggest this is a reasonable request. I have known him for some time now and he is resolute in his desire to seek a male gender.

[22] I accept that submission of counsel to assist, that the medical evidence provided by Dr Tomlinson, together with the other medical evidence and the evidence of [Iosefa] himself and his parents, is sufficient to support the psychological assumption by [Iosefa] of a male gender identity.

[23] The second test relates to [Iosefa]'s adoption of a physical conformation that accords with male gender identity as a result of medical treatment. This is s 23(3)(c)(i)(B). Medical treatment includes both psychological and surgical treatment. There are medical reports attached to [Iosefa]'s affidavits and they confirm that, a) testosterone injections commenced on 2 August 2019, and these have occurred consistently since then - [Iosefa] has told me these continue and he is receiving those on a three-weekly basis; and b) that [Iosefa] has been seen by Dr Will McMillan, a plastic and reconstructive surgeon, to assess his readiness for chest surgery. Mr McMillan reports such surgery has been planned for the end of the year. He confirms that [Iosefa] has been on consistent hormonal treatment since August 2019. [Iosefa] has told me today that he is expecting that he will have the operation in November or December of this year.

[24] It is also evident from Dr Keyter's report on 12 June that he underwent a psychiatric assessment before trans-gendering treatment began.

[25] In summary in terms of the medical treatment, he underwent a psychiatric evaluation with Dr Keyter prior to commencing with gender transition, he has been undergoing hormonal treatment for two years which is confirmed by [Doctor A] and Mr McMillan, he has chest surgery planned for the end of the year if confirmed by Mr McMillan.

[26] The purpose of [Iosefa] starting testosterone therapy was to enable him to acquire a physical conformation that is in alignment with the male gender identity.

[27] [Doctor A]'s evidence confirms that physical changes in [Iosefa]'s body has occurred as a result of the hormone treatment that will align with this new gender identity.

[28] It is noted that full gender reassignment surgery is not required in order for an applicant to meet the test in s 28(3)(c)(i), and that was noted in the decision of *Michael* at page 72.

[29] The section 23(3)(c)(i)(C) is the third test that relates to the permanence of the physical change brought about by the medical treatment undertaken, and this was a question that I talked to [Iosefa] about in terms of this test. The answers he gave me reassured me that there has been a physical change which is permanent.

[30] [Doctor A] in his letter dated 21 June 2021, confirms that the testosterone therapy has resulted in physical changes in [Iosefa]'s body that conform with the male gender, including facial hair, fat redistribution, muscle mass and cessation of menses and voice change. He notes that some of these changes will be permanent, for example, voice deepening.

[31] When I spoke to [Iosefa] about that, he said he was having a three-monthly injection into the fat in his stomach, and three-weekly injections into his leg muscles. And the medical reports do confirm the permanence of his physical changes as a result of the masculinising hormone treatment, and the fact that [Iosefa] wishes to have a mastectomy which will be permanent and which he is looking forward to having that to change his appearance.

[32] Having regard to the medical evidence, I accept the submission of counsel to assist that the three steps are met as set out in s 28(3)(c)(i).

[33] In conclusion having regard to all the evidence that has been placed before me and the submissions of counsel to assist, and speaking with [Iosefa] directly with him being under oath, I am satisfied that I can make the declaration sought that [Iosefa]'s record of gender on his birth certificate be altered from female to male.

[34] The declaration is made accordingly.

[35] I thank Ms Williams for her assistance in this case.

[36] I wish [Iosefa] all the best for his future.

Judge A E Somerville
Family Court Judge

Date of authentication: 06/08/2021
In an electronic form, authenticated electronically.