

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 WAITAKERE**

**I TE KŌTI WHĀNAU
KI WAITĀKERE**

**FAM-2021-090-000339
[2021] NZFC 8755**

IN THE MATTER OF THE ADOPTION ACT 1995

AND AN APPLICATION BY

AND [LOIS CALDWELL]
[STEPHEN CALDWELL]
Applicants

To adopt a child

Hearing: 1 September 2021

Appearances: S Dalley for the Applicants

Judgment: 1 September 2021

ORAL JUDGMENT OF JUDGE B R PIDWELL

[1] This is an adoption application filed by [Lois] and [Stephen Caldwell] to adopt their biological child, [Carla], born on [date deleted] 2021. She was born by way of surrogacy arrangement with [Tanya Barron] who carried the embryo to birth and gave birth to this beautiful little girl who is appearing virtually before me today.

[2] Mr Dalley appears for the applicants and is asking for the Court to make a final adoption order at the first instance.

[3] This process is not unknown to the parties. They have gone through it before with [Arnold] who is also appearing virtually today. He is [Carla]'s full biological brother and was also carried by the same surrogate two and a half years ago and an adoption order was made by this Court to secure that legal relationship.

[4] We have a s 10 report from the same social worker, another glowing report. It is effectively second time around for this family to secure or untangle the legal presumptions which the law has at this stage under the Status of Children Act 1969 and actually create the proper relationship to secure this child, [Carla], into her biological family.

[5] I have the consents from the surrogate and her husband which are in the approved form. There is an affidavit as well confirming the arrangement which was undertaken through Fertility Associates, including the process through the ethics committee. The affidavit as I see it explains that process and the consent is in the proper form, validated and certified.

[6] In order for me to make an adoption order I need to be satisfied of a number things, as required under the Adoption Act 1955. I need to be satisfied that the consents have been filed. They have been, including the consent of the surrogate's husband who is the presumptive father under the Status of Children Act.

[7] I also need to be satisfied that the applicants are able to file this application under the Adoption Act. They are. They are New Zealand citizens, they are married and [Carla] is obviously a child, being a new born almost, born on [date deleted] this year.

[8] I need to be satisfied that the applicants are fit and proper people to be parents of this little girl. The Court always directs a report from a social worker to ensure that there is independent oversight and inquiry into whether the applicants are fit and proper people. I have that report as I have said from the same social worker, Ms Berry Smith, who prepared the report last time. It is glowing. There is no issue with the applicants in any way, shape or form. They are healthy, they are financially secure, they have no criminal history.

[9] They are now experienced parents, having had two and a half years with [Arnold]. They are doing the hard yards in Level 4 lockdown at the moment, juggling a toddler and a baby, but all is going well. There is absolutely no issue with their eligibility, and I have no hesitation in concurring with the view of the social worker that they are fit and proper people. It is a lovely report and will be released to the applicants to be able to be provided to [Carla] when she is older, as part of her birth story.

[10] It also recommends that a final order should issue at the first instance. It is clear from the report that there is no need for there to be an interim order. In my view, that surrogacy process creates of itself a special circumstance where no further monitoring is required. There is a clear process through the ethics committee. There is a clear report that the applicants are fit and proper people. There is no need for any bonding to occur, that has already occurred. There is no need for any further oversight from a social worker.

[11] I also need to be satisfied that the order is in [Carla]'s best interests and welfare. It clearly is. She is the biological child of the applicants and the orders that I will make will simply secure that legal relationship.

[12] In those circumstances I am fully satisfied that [Carla] should be confirmed by way of adoption as the legal child of the applicants. I am also satisfied that special circumstances exist for the order to be made final in the first instance.

[13] There does need to be a name change on the birth certificate and I direct that [Carla]'s birth certificate issue with her name now being [Carla Caldwell], and the birth certificate should issue without the words 'adoptive parents' on them.

[14] In addition, the social worker's report can be released to the applicants to form part of [Carla]'s birth story.

Judge B R Pidwell

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 06/09/2021