

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 HAMILTON**

**I TE KŌTI WHĀNAU
KI KIRIKIROA**

**FAM-2012-004-001916
[2022] NZFC 3051**

IN THE MATTER OF	THE ADOPTION ACT 1955
BETWEEN	[GARY HESS] Applicant
AND	ADOPTION UNIT Social Worker

Hearing: 5 April 2022
Appearances: C Tataru for the Applicant
Judgment: 5 April 2022

ORAL JUDGMENT OF JUDGE R H PAUL

[1] I have had the privilege, Mr [Hess], of reading about your life and I have taken that responsibility very seriously. You have provided to me intimate details of your life as a young boy, a young man, and an older man, and I thank you for that privilege.

[2] Your mother, [Debbie Hess] née [Barton], must have been a strong woman and must have loved you very much. In a time where unmarried women did not keep their children and retain them out of wedlock, she kept you.

[3] I am saddened to hear your evidence about the prejudice and degradation that your mother suffered as a solo mother in that time. It may well have been the pressure of that prejudice that led her to accept the marriage with Mr [Colin Hess], he being only 21 at the time of your adoption, which was granted on 20 August 1957.

[4] To discharge an adoption order is a serious act, and one of the most serious the Family Court can undertake. I considered your application when it came before me last year in July. You wanted the adoption discharged and filed your application on 3 December 2020.

[5] I considered your two arguments at that time, and thought that the second line of your argument, that being: "He was not a fit and proper person", therefore misrepresenting himself to the Court, and that had the Court known that he was not a fit and proper person would not have granted the adoption order. I accepted that that was an argument that had a good foundation, but it did not have the evidence that was needed for me to make that decision.

[6] I accepted that your application had been served on [Colin Hess], that he had taken no steps in the proceedings, and I offered an opportunity for you to file more specific information about your allegation of physical and psychological abuse to both you and to your mother to which you were directly exposed.

[7] I have received and read your affidavit filed in support of your application providing those specifics. I do not intend to traverse all of the violence that you have deposed, but I accept your evidence on the papers. Your mother is sadly no longer with us to confirm this information, and Mr [Colin Hess] has taken no steps to defend the accusations placed in your original application and affidavit, suffice to say that you were the subject of bullying, intimidation, intimidation of a sexual nature, physical threats, and physical abuse, and in my view also a lack of any emotional attachment from that man to you of a warm or caring nature.

[8] Your evidence would indicate that you were used as free labour on the farm in which you were brought up with your mother, that you were exposed to frequent bouts

of physical violence meted out by Mr [Colin Hess] towards your beloved mother, memories which you say have stayed in your mind.

[9] There is a plethora of research telling us that children exposed to violence are affected psychologically and developmentally, it affects mental stability, it affects education, it affects psychological development, and your evidence indicates that you were severely affected by the abuse to which you were exposed and suffered.

[10] The law in New Zealand is clear, both in the Family Violence Act 2018 which defines family violence, and the Care of Children Act 2004 with its one mandatory principle, children must be kept safe, in particular from all forms of violence, pursuant to s 5(a) of the Care of Children Act. You were not afforded that protection, and from the evidence you have provided I am satisfied that you were the subject of abusive behaviour and exposed to abusive behaviour, family violence which has shadowed you throughout your life.

[11] The next thing I needed to consider, was whether I was satisfied that I could discharge the adoption order where there was no evidence that the Court was deliberately misled by Mr [Hess] or your mother when making the application and signing that he was fit and proper, that there was any clear evidence that he was a violent man, or that he suffered from addiction to alcohol which also was a driving factor of his violence within the family.

[12] Your lawyer has provided to me excellent submissions, and I have been referred to the case of *Edwards v Houghton* where Judge Black determined that an adoption order could be discharged where there was abuse by the father, and it was accepted it was a material misrepresentation that the adoptive father was a fit and proper person¹. There was no clarity in that case that the Court should have known or was deliberately misled when it made the order in 1971.

[13] But a further case of *SFD v JEL* at para 19 assists me greatly where Judge Moss stated²:

¹ *Edwards v Houghton* [2018] NZFC 2716.

² *SFD v JEL* [2005] NZFLR 1057, (2005) 24 FRNZ 909.

[19] There is no suggestion that the applicant was abused prior to his adoption and therefore, in my view, it cannot be said that any information was withheld from the Court that made the adoption order. Nonetheless there has been a misrepresentation to the Court as to the adoptive father's ability to care for a child bearing in mind his later actions when carrying out his parental responsibilities. The adoptive father's actions were inconsistent with his written representations; he permitted a material misrepresentation to occur as to his ability to care for the applicant. In my opinion this is sufficient to meet the grounds of s 20(3).

[14] That statement of his Honour Judge Moss is a perfect reflection of what happened to you, Mr [Hess].

[15] I am satisfied then that both the legislation, the case law, and the evidence which you have provided, meets the statutory requirements for the making of an order to discharge the adoption order made in respect of you on 20 August 1957.

[16] Now that I have discharged that order I can give you a new name, and Mr [Hess], this is the last time I will refer to you in that way. From this point on, I refer to you as "Mr [Gary Compton]". I am privileged to be the first person to call you "Mr [Compton]".

[17] You also asked of this Court for a declaration that Mr [Wilfred Compton] be registered as your father on your birth certificate. Your lawyer is correct when she says that a declaration can only be made if the Court has discharged the adoption order, so I am now able to do that. You are person who wishes to have it determined whether there is a relationship of father and child between yourself and Mr [Wilfred Compton] as required at s 10 of the Status of Children Act 1969.

[18] When I first considered this application I had not had the benefit of checking through the legislation and I was unsure if such an order could be made where the putative father was deceased, but in fact the Act provides specifically for this Court to do exactly that at sub para 4 of the section.

[19] Further, I have received from your lawyer two cases this morning which confirm that the Family Court has jurisdiction to make that order. I am referred by the legislation to s 7, and that is whether there has been any recognition of paternity,

effectively what is the evidence that I have before me to say that Mr [Wilfred Compton] was your dad?

[20] In your evidence, you refer to – and your lawyer summarizes it at para 50 of her submissions – that you were taken on a trip by your mother to visit your real father, that you have been acknowledged by your half-sisters as their brother. More specifically, – and I was, I have to say, impressed by this – your half-sisters must be very supportive of you in that they provided their DNA to be tested to see if you were their half-brother. That is a great show of generosity and of acceptance of you as part of the [Compton] family.

[21] The evidence provided showed that it was 4,500 times more likely that you were related to [Gail Compton] and [Sheri Saunders], they being also the children of Mr [Compton]. It is the best evidence of a scientific nature that you would be able to provide, given that your father is deceased.

[22] When I first, again, considered your application, I considered the need for service, and I directed, on the basis of the legislation and case law, that your adoptive father, Mr [Colin Hess], needed to be served with your application. Your lawyer undertook that service, however what has been received is an affidavit suggesting that Mr [Hess] has in fact passed away. I also directed that the children of Mr [Wilfred Compton] be served as interested parties in your application. They have all been served, and I have received the affidavits of service from your lawyer's offices.

[23] I am satisfied that everyone that needs to have been served has been served, no one has taken any steps to defend your application, and therefore I may proceed by way of formal proof, that is, on your evidence alone. Your evidence is not contested, the evidence is scientifically the best that it could be, and there is a reference to your mother's acknowledgement that this man was your birth father.

[24] Against that background then, I am satisfied that the statutory requirements for the making of a declaration that Mr [Wilfred Compton] is your biological father have been met, so on that basis then, I make the following orders:

- (a) I discharge the 1957 adoption order made in respect of you on 20 August 1957.
- (b) I grant an order that you from this point on have the name of “[Gary Compton]”.
- (c) I grant you a declaration as to paternity confirming that the late [Wilfred Compton] is your father and can be recorded as such on the birth registration certificate and on your birth certificate.

[25] Congratulations Mr [Compton]. This has been a very, very, long journey for you. Your first application to this Court was to get your adoption records, and that was made in 2019. You made an application then in 2020 to discharge your adoption order, and then an application under the Status of Children Act a year later. That was just the end part of your journey. I am privileged to be part of your journey, Mr [Compton].

[26] I would like to thank you, Ms Tataru, for your excellent submissions and the cases you have provided.

[27] I know this has come late in your life, Mr [Compton], but I hope that in some way the Family Court has lifted from you today some weight of your past, and I wish you all the very best for your future.

[28] This file shall remain open for the next three months to allow counsel for Mr [Compton], Ms Tataru, to make any further submissions or applications for the purpose of clarity and implementation in respect of the orders that I have made today.

Judge R Paul
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 07/04/2022