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**IN THE FAMILY COURT
AT AUCKLAND**

**I TE KŌTI WHĀNAU
KI TĀMAKI MAKĀURAU**

**FAM 2020-004-000853
[2021] NZFC 7409**

IN THE MATTER OF	THE CHILD SUPPORT ACT 1991
BETWEEN	[MAYA TAYLOR] Applicant
AND	[NICHOLAS SYDNEY] Respondent
AND	[TRAVIS ANSEL] Second Respondent

Hearing: 18 February, 22 June 2021

Appearances: Applicant in person
R Connell for Respondent
No appearance by or for second respondent

Judgment: 28 July 2021

RESERVED JUDGMENT OF JUDGE A M MANUEL

[1] This case asks the question: “Should the estranged husband of the mother of a 15 year old girl be declared the step-father of the girl?”

Background

[2] The parties were in a relationship from October 2008 to June 2020.¹ Both of them had children from earlier relationships. The applicant, [Maya Taylor], had a daughter named [Caitlyn Ansel] who was two when the relationship began.

[3] The parties lived in separate households with their own children until 2014. They married in 2015. Miss [Taylor]'s older daughter, [Rose], said "We lived separately but the families were not kept separate." Mr [Sydney] on the other hand said that he had real concerns about starting a blended family so he ensured that their children only spent time together occasionally.² By the time the parties moved in together, Miss [Taylor]'s two older children had already left home and [Caitlyn] was the only child left with her.³

[4] Mr [Sydney] provided financial support to Miss [Taylor]. He also provided financial support to [Caitlyn]. Mr [Sydney] said: "I never directly assumed financial support of [Caitlyn] ... I provided for [Maya] which indirectly provided for [Caitlyn]"⁴ but Miss [Taylor] said that he provided for [Caitlyn] as a father: "we were in a marriage, we were married, and that was part of his supporting [Caitlyn] as her father."⁵

[5] Mr [Sydney] also discouraged Miss [Taylor] from seeking financial support from [Caitlyn]'s biological father, [Travis Ansel].⁶ [Witness A], a friend of Miss [Taylor] said:

In several instances when [Maya] tried to reach out for financial support from [Caitlyn]'s biological father, [Nick] got angry with her for doing so and demanded that he provide the financial support she was looking for, particularly in relation to schooling. He was adamant that [Caitlyn]'s biological father was not a part of their life and he did not want [Maya] to be contacting him in regards to [Caitlyn] and her financial needs.

¹ Bundle of Documents, at 18 and 71.

² Bundle of Documents, Affidavit of [Nicholas Sydney] in Reply, at 74.

³ Bundle of Documents, Affidavit of [Rose Taylor], at 64.

⁴ Bundle of Documents, Affidavit of [Nicholas Sydney] in Support of Notice of Defence, at 71.

⁵ Bundle of Documents, NOE, at 91.

⁶ Mr [Ansel] was served but took no steps in the proceedings.

[6] Mr [Sydney] did not deny this and said in response:

What annoyed me was that [Travis Ansel] was not a nice person and had no intention of helping [Maya] financially. I saw no point in [Maya] banging her head against a brick wall.

[7] Mr [Sydney] wanted to send [Caitlyn] to board at [school A] so that the parties would be able to spend more time together, but she was not accepted as a pupil.⁷ Living in [suburb deleted], the two high school options were [school B], the local state school, or [school C], which was a private school.⁸ [School C] was chosen. Mr [Sydney] paid the school fees so she could attend there.

[8] Mr [Sydney] also bought gifts for [Caitlyn]. [Rose] said:⁹

Mr [Sydney] absolutely spoilt [Caitlyn] – something I was a bit envious of. Not only did she live in a home with a swimming pool and tennis court, but Mr [Sydney] regularly took her shopping for expensive clothes and shoes, bought her Louis Vuitton handbags and loved her to have ‘name branded’ items. He paid for their regular holidays including to [overseas destinations deleted]. He also paid for [Caitlyn]’s private school fees at [School C], and her living expenses.

[9] Similarly, [Caitlyn]’s grandmother, [Lynn Taylor] said:¹⁰

The relationship between [Nick] and [Caitlyn] has been close, particularly since [Maya] and [Nick]’s marriage. [Nick] has purchased a trampoline, bikes, iphone. I was always amazed at his generosity toward her.

[10] Mr [Sydney] did not deny his largesse but replied that:

As I have said earlier I enjoy nice things to have. I buy nice things for my children too. The Louis Vuitton bag was second hand and I bought it on Trademe for [Caitlyn].

[11] Although Mr [Sydney] also paid for items for [Rose], this appears to have been of a more limited nature. He paid for a flight back from the United States and a car for her but while [Rose] was living with the parties after returning from the United States, Mr [Sydney] told her that she owed him \$7,000 for the trip and the car.¹¹

⁷ Bundle of Documents, NOE, at 90. It appears his own son was boarding at [school D].

⁸ Bundle of Documents, NOE, at 90; but see Bundle of Documents, NOE, at 100.

⁹ Bundle of Documents, Affidavit of [Rose Taylor], at 64.

¹⁰ Bundle of Documents, Affidavit of [Maya Taylor], at 60.

¹¹ Bundle of Documents, NOE, at 99–100.

[12] Mr [Sydney] was never declared to be a legal guardian of [Caitlyn]. There was some discussion about him adopting her but that never progressed.¹² When [Caitlyn] eventually considered changing her name in 2020, she was planning to change it to [Taylor] rather than [Sydney].¹³

[13] Mr [Sydney] was an additional parent contact for her school and doctor but he said:¹⁴

I never gave those institutions my contact details. This was [Maya]’s doing but I had no objection to being a contact in emergencies. It is the right thing to do.

[14] Mr [Sydney] noted that Miss [Taylor] never invited him to parent/teacher meetings for [Caitlyn].¹⁵

[15] [Caitlyn] usually called Mr [Sydney] “[Nick]”, not “Dad”, but text messages indicate they were close.¹⁶ For example, he wrote to Miss [Taylor]¹⁷:

The first person I care about [is] you and [Caitlyn] ...I sure will only up from here looking forward to you coming home love you and I miss you and [Caitlyn] and me going shopping tomorrow and having lunch. (sic)

[16] In a card to [Caitlyn] given in 2020, Mr [Sydney] signed himself as “Dad”.¹⁸ He framed a Father’s Day card he received from [Caitlyn] and hung it next to his bed.¹⁹ The card read:²⁰

To [Nick],
Happy Fathers day!
I love you so much.
No matter what happens I will always love you.
You are the best dad in the world.
Thank you for everything you do for me.
You are so special and mean so much to me.

¹² Bundle of Documents, Affidavit of [Nicholas Sydney] in Reply, at 78.

¹³ Bundle of Documents, Affidavit of [Nicholas Sydney] in Reply, at 75.

¹⁴ Bundle of Documents, Affidavit of [Nicholas Sydney] in Reply, at 77.

¹⁵ Bundle of Documents, Affidavit of [Nicholas Sydney] in Reply, at 75–76.

¹⁶ Bundle of Documents, Affidavit of [Nicholas Sydney] in Reply, at 77.

¹⁷ Bundle of Documents, Affidavit of [Maya Taylor], at 47 and 48.

¹⁸ Bundle of Documents, NOE, at 112.

¹⁹ Bundle of Documents, NOE, at 34.

²⁰ Bundle of Documents, Affidavit of [Maya Taylor], at 49.

You have helped me become who I am today.
I love you to the moon and back.
Love from [Caitlyn].

[17] Since the separation, Mr [Sydney] and [Caitlyn] have spent very little time together. This has been upsetting to them both.

[18] [Caitlyn]'s biological father has been off the scene for some time. There is no evidence about his current ability to provide financial or emotional support to his daughter. When the children were young, he provided Miss [Taylor] with \$17 a week. That stopped at some point prior to 2014.²¹ He also provided support to [Rose] for three years while she was studying at \$50 a week.²²

[19] [Caitlyn] has not seen her biological father since 2014.²³ He has made no effort to make contact.²⁴ Mr [Sydney] was content with [Caitlyn]'s biological father being an absent father.²⁵ [Caitlyn]'s grandmother, Mrs [Taylor], said that Mr [Sydney] sought to keep [Caitlyn] away from her biological father.²⁶

[Travis] lived [at location deleted – location A] for a while and [Nick] did not like to visit our beach house there in case [Caitlyn] saw [Travis]. This was a big concern of his as he wanted [Travis] to have nothing to do with [Caitlyn] – particularly when they married.

[20] In response, Mr [Sydney] said:²⁷

I had been warned by [Maya] that [Travis Ansel] was a particularly violent and unpredictable person and I did not want anyone, including me, to run into him [at location A].

[21] Finally, [Caitlyn] was named as a possible beneficiary in the parties' pre-nuptial agreement.²⁸ She was the only child of the parties to be named in that capacity in the agreement.

²¹ Bundle of Documents, NOE, at 83.

²² Bundle of Documents, NOE, at 99.

²³ Bundle of Documents, Affidavit of [Maya Taylor], at 62.

²⁴ Bundle of Documents, Affidavit of [Lynn Taylor], at 62.

²⁵ Bundle of Documents, Affidavit of [Rose Taylor], at 64.

²⁶ Bundle of Documents, Affidavit of [Maya Taylor], at 62.

²⁷ Bundle of Documents, Affidavit of [Nicholas Sydney] in Reply, at 77.

²⁸ Bundle of Documents, Affidavit of [Maya Taylor], at 25.

Submissions for the Applicant

[22] Miss [Taylor] submits that Mr [Sydney] assumed responsibility for the maintenance of [Caitlyn] at the end of 2014. This covered food, utilities, clothing, health, entertainment, holidays and private school fees.

[23] Miss [Taylor] acknowledges that [Caitlyn]'s biological father, Mr [Ansel], should be liable to maintain [Caitlyn] but says the reality is that he has not done so for many years.

[24] Miss [Taylor] submits that when she married Mr [Sydney], [Caitlyn] was treated as a child of their family. Although he was never appointed as a legal guardian, he acted as her guardian and would have been her guardian if Miss [Taylor] had died.

[25] Miss [Taylor] suggests that a step-parent declaration is necessary because she needs financial support to be able to continue sending her daughter to her present school.

Submissions for the Respondent

[26] Mr [Sydney] submits that he only provided for [Caitlyn] from 2014 to 2020 on the basis that he could not marry Miss [Taylor] without [Caitlyn] living under the same roof. Thus, he was financially supporting Miss [Taylor] which had the flow-on effect of supporting [Caitlyn]. Mr [Sydney] acknowledges he was generous to [Caitlyn] but he was also generous to [Caitlyn]'s sister [Rose] and gave to charitable causes.

[27] Miss [Taylor] has taken no steps to pursue [Caitlyn]'s biological father for child support. It is submitted that she should seek financial assistance from Mr [Ansel] before the present application is decided as he should have primary financial responsibility. Mr [Ansel] should be capable of paying something at least, and Miss [Taylor] has only chosen not to contact him because of his volatile nature.

[28] While Mr [Sydney] married Miss [Taylor], the marriage lasted only four years and two months.

[29] Mr [Sydney] was never appointed as a guardian and there is no reliable evidence that Miss [Taylor] named Mr [Sydney] a guardian under her will or intended will. Although Miss [Taylor] mentioned a draft will, no copy was produced.

[30] It is irrelevant whether or not the relationship is important for either [Caitlyn] or Mr [Sydney] because making “an emotionally satisfying declaration is not one of the objects of the Act.”

[31] Finally, it is submitted that if an order is made, it would establish a fictional and possibly destructive relationship and that an order may drive a further wedge between [Caitlyn] and Mr [Sydney].

The law

[32] The basis for declaring a person a step-parent is set out in s 99 of the Child Support Act 1991:

99 Declarations in respect of step-parents

- (1) A parent or carer of a child may apply to the Family Court for a declaration that a specified person is a step-parent of the child.
- (2) Any person who wishes to be declared to be a step-parent of a child for the purposes of this Act may apply to the Family Court for a declaration to that effect.
- (3) Subject to section 125, the parties to the proceeding are—
 - (a) the applicant for the declaration under this section; and
 - (b) the person whom the application seeks to be declared to be a step-parent of the child (if that person is not the applicant); and
 - (c) any other person who is a parent or carer of the child when the application is made.
- (4) In determining whether to grant a declaration that a person is a step-parent of a child, the court shall have regard to the following circumstances:
 - (a) the extent (if at all) to which that person has assumed responsibility for the maintenance of the child, and the basis on which that person assumed that responsibility, and the length of time during which that person has discharged that responsibility; and

- (b) whether that person assumed or discharged any responsibility for maintenance of the child knowing that that person was not the natural parent of the child; and
- (c) the liability of any other person to maintain the child; and
- (d) whether or not that person was ever living with a parent of the child in a marriage, civil union or de facto relationship; and
- (e) whether that person has at any time been a guardian of the child.

(5) For the purposes of subsection (4)(a), a person shall not be taken to have assumed responsibility for the maintenance of a child by reason only of meeting the child maintenance liabilities of another person who is wholly or partially maintained by him or her.

(6) When the Family Court makes a declaration under this section, the Commissioner shall, as soon as is practicable, take such action (if any) as is necessary to give effect to the decision.

[33] The High Court in *A v R* held that it would be inappropriate for a “welfare of the child” test to be imported into s 99(4).²⁹ This was in contrast to the High Court’s prior statements in *BPS v MNS*, which held that s 99(4)(a) was sufficiently wide to take into account child welfare considerations.³⁰ The Court in *A v R* appeared to accept an argument that a discretion beyond the s 99(4) factors could not be exercised because there is no catch-all subsection which enabled a court to consider other factors.³¹ However, the court in *A v R* also indicated that the grant of a declaration may be discretionary.³²

[34] In *BPS v MNS*, the Court held that the relevant date at which the status of step-parent is to be determined is the date of hearing, not the date of separation. Thus, the assumption of parental responsibilities early in a child’s life may be offset by other events since separation, including a lapse of time.³³

New Zealand Case Examples

[35] In *C v B*, the parties had fostered a child.³⁴ The husband subsequently left. The Family Court refused to make a step-parent declaration. While the husband had

²⁹ *A v R* (1999) 17 FRNZ 647 (HC) at [39]–[40]; see also *S v W* [2006] NZFLR 925 (FC) at [23].

³⁰ *BPS v MNS* [1998] NZFLR 289 (HC) at 294–295.

³¹ *A v R*, above n 29, at [37].

³² At [52].

³³ *BPS v MNS*, above n 30, at 294.

³⁴ *C v B* [2012] NZFC 7042.

supported the child for a little over four years, it was a relatively short time and the primary source of financial support for the child over that time was State assistance. The husband had exercised guardianship responsibilities for a year but had not done so for about five years before the application. It was relevant that while the wife wanted the husband to pay, she did not want him to have a role in the child's life.³⁵

[36] In *S v W*, the child was conceived through an affair of the wife which occurred during the parties' marriage.³⁶ The Family Court refused to make a step-parent declaration. The balancing exercise was "dominated" by the wife's infidelity, her deception for 3.5 years of the child's life, and the child's biological father's ability to accept full financial responsibility for the child. This was weighed against the husband's marriage to the mother, his guardianship role and close relationship with the child, and 13.5 years of financial support (10 years of which he was aware that he was not the child's father).³⁷ The Court stated in dicta:³⁸

[57] Today, if you enter into a relationship with a person who has dependent children and assume the responsibility for supporting that household but later abandon it, it is understandable that you could be held accountable for the financial consequences of your departure. Even more so, if there is no-one else to whom the mother or the State can look for the support of those children.

[37] *A v R* concerned three children conceived by artificial insemination to a gay woman.³⁹ Her partner had assumed material responsibility for the children from the time they were born for 9 years. She was fully aware of how the children were conceived. She nevertheless continued to support them. The sperm donors were not recognised as the fathers of the children. The parties had a de facto relationship which took the form of a marriage. The partner was appointed as a guardian for the children.⁴⁰ The High Court made a step-parent declaration.

³⁵ At [134].

³⁶ *S v W* FC Invercargill FAM-2005-025-000503, 14 June 2006.

³⁷ At [30] and [62]–[64].

³⁸ At [57].

³⁹ *A v R*, above n 29, at 647.

⁴⁰ At [41]–[51].

[38] In *BPS v MNS*, the husband had been unable to father children. With consent from the husband, a child was conceived as a result of the wife having sexual intercourse with a friend.⁴¹ The husband was named on the birth certificate and had supported the child as though he was his own, including after separation, until the estranged wife ended all contact. The High Court found that it would be unjust to make an order because the wife had made access to the child impossible for the husband, and she had also continued a relationship with the biological father.⁴²

[39] In *Tuck v Tuck*, a child's biological father died, and the mother remarried. The new husband provided financial support. He knew he was not the biological father. There was no one else to support the child. He was married to the child's mother for eight years, but he was never appointed guardian. Given these factors, the Family Court made a declaration that the husband was a step-father of the child.⁴³

[40] In summary, claims have failed as a result of the following factors:

- limited support for short duration (4 years) and applicant seeking financial support but not allowing contact; (*C v B*)
- infidelity and biological father's ability to pay; (*S v W*)
- the applicant seeking financial support but not allowing contact and continuing presence of biological father; (*BPS v MNS*)

Canadian case examples

[41] Additional guidance may be had from some of the Canadian decisions on this topic.

[42] Section 99(4)(a), which refers to the extent to which and the basis on which the person has assumed responsibility for the child, invites an analysis of the broader relationship between the person and the child.

⁴¹ *BPS v MNS*, above n 35, at 289.

⁴² At 292 and 294.

⁴³ *Tuck v Tuck* [1994] NZFLR 76 (FC) at 78–79.

[43] The Ontario Superior Court in *Proulx v Proulx* set out a list of factors relevant in assessing the nature of the relationship.⁴⁴ These were gleaned from an earlier decision of the Canadian Supreme Court, *Chartier v Chartier*, and an academic article by Carol Rogerson.⁴⁵ The Court stated:⁴⁶

[26] Noting that “every case must be determined on its own facts” the Court provided a non-exhaustive list of factors for consideration. They include the following: intention, expressed formally and inferred from the circumstances, the fact of forming a new family, the child participating in extended family as a biological child would, financial provision, exercise of discipline, representations made by step-parent to the child, family and others about the relationship, the nature and/or existence of the child's relationship to biological parent.

[27] Professor Carol Rogerson ... provides a list of additional factors that can be considered by a court including: minimal involvement by the biological father, deliberate behaviour to exclude biological parent, reference to step-father as Dad and any changes in surname, good relationship between child and step-parent, joint participation in family activities, birth of one or more children to spouses during relationship, adoption proceedings or discussion of doing so, and the exercise of access after separation. The learned author goes on to identify several factors that tend to demonstrate an individual has not stood in the place of a parent: poor relationship between child and step-parent prior to separation, children are older when spousal relationship begins, involved biological parent, potential payor is step-mother rather than step-father.

[44] The Court in *Chartier* discussed the concern that a child might collect support from both the biological parent and the step-parent but did not accept that as a valid concern, stating that the obligations of parents are joint and several.⁴⁷

[45] In contrast in New Zealand, s 99(4)(c) includes “the liability of any other person to maintain the child” as a relevant factor in assessing whether to grant a step-parent declaration. However, this factor should not be treated as determinative if there is the possibility of both the step-father and biological father contributing financially.

⁴⁴ *Proulx v Proulx* Ontario Superior Court of Justice 896/06, 4 April 2009.

⁴⁵ *Chartier v Chartier* [1999] 1 SCR 242 at [39]; and Carol Rogerson “The Child Support Obligation of Step-Parents” (2001) 18 Can J Fam L 9 at 41.

⁴⁶ *Proulx v Proulx*, above n 44, at [26]-[27].

⁴⁷ *Chartier v Chartier*, above n 49, at [42].

Discussion

[46] The five elements of s 99(4) are discussed below:

Section 99(4)(a) – assumption of responsibility for maintenance

[47] Section 99(4)(a) lays out three factors to be considered:

- (a) the extent;
- (b) the basis; and
- (c) the length of time which the person has assumed responsibility for the maintenance of the child.

[48] The extent of Mr [Sydney]'s support was significant. He provided for all [Caitlyn]'s needs. There is no suggestion from the parties' evidence that the extent of his financial support was qualified in any way.

[49] He began providing support to [Caitlyn] at the end of 2014.⁴⁸ He stopped providing support in 2020, so Mr [Sydney] supported [Caitlyn] for almost six years. This is longer than the four years of partial support in *C v B*, but shorter than the 8 years of support in *Tuck v Tuck*.

[50] Ascertaining the basis for that support is a little more difficult. Mr [Sydney] insists that he only supported [Caitlyn] because he had to do so for the sake of the marriage. Initially he wanted to send [Caitlyn] to boarding school. He had already sent his own son to board at [school D]. His position at this point is consistent with his claim that he only supported [Caitlyn] because of Miss [Taylor].

[51] However I find that his support for [Caitlyn] subsequently became more paternal. Even if he was equivocal at the beginning of the marriage, she became part of his life and a father-daughter style relationship developed. This is illustrated by the frequent and generous gifts he gave her, the affectionate language he used when

⁴⁸ Final Submission of the Applicant, 14 June 2021, at 6.

speaking of her to Miss [Taylor], the images of them together submitted by Miss [Taylor], the language used in cards they exchanged, and the fact that [Caitlyn] has been so upset at losing him as a father figure.

[52] Turning to the *Proulx* factors, [Caitlyn] did not have a relationship with her biological father, and Mr [Sydney] sought to ensure that she did not develop a relationship with him. That he saw himself as a father figure who had replaced her biological father is illustrated by a text sent by him in May 2020 to Miss [Taylor]:⁴⁹

Had a lovely conversation with [Caitlyn] she's all good all the dogs but don't call her she's fine and I'm going to bed ... Even on a bad day I'm sure 90% better than [Caitlyn]'s bro father (sic).

[53] Given the context it appears that he meant to indicate that he was a far better father figure to [Caitlyn] than her real father ever had been.

[54] [Caitlyn] felt comfortable referring to Mr [Sydney] as “Dad” on occasion, and Mr [Sydney] felt comfortable signing a card to her as “Dad”. There is no evidence of this being a regular occurrence, but it happened at least twice, once each way. This indicates that even though [Caitlyn] was more comfortable calling Mr [Sydney] “[Nick]”, she still saw him as her father. Likewise, Mr [Sydney] saw himself as her father. The fact that he framed and hung up the card in which she called him Dad showed that he appreciated being treated as her father.

[55] It is unclear how far discussions went, but the idea of adoption was at least broached.

[56] The strength of the relationship prior to the parties' separation is illustrated by the fact that both [Caitlyn] and Mr [Sydney] wished to stay in contact to some degree. While contact has been very limited and quite fraught, there appears to be a mutual desire to maintain the relationship.

[57] None of the negative factors outlined in *Proulx* are relevant. Miss [Taylor]'s application would have been stronger, however, if she could have established other

⁴⁹ Bundle of Documents, Affidavit of [Maya Taylor], at 37.

facts. By way of example, there is no evidence about [Caitlyn]'s relationship with Mr [Sydney]'s parents or her relationship with his sons and there is little evidence about what role Mr [Sydney] played in practically parenting [Caitlyn].

[58] When all these factors are taken into account a tolerably clear picture emerges. Although the basis for Mr [Sydney]'s support may have at first been non-paternal, he assumed an emotional role as her father figure. Ultimately the basis of Mr [Sydney]'s support for [Caitlyn] was due to his role as a father figure.

Section 99(4)(b) – knowledge that the maintainer was not the actual parent

[59] Obviously, Mr [Sydney] knew [Caitlyn] was not his child.

Section 99(4)(c) – liability of any other person to maintain the child

[60] [Caitlyn]'s biological father is alive and well. His financial status is uncertain, but he can probably afford to make some payment to support his daughter. In the last ten years, he could afford to pay \$50 per week to support [Caitlyn]'s sister, [Rose], while she was at University.

[61] In the overall scheme of things that is perhaps not very much. Miss [Taylor] wishes to keep sending [Caitlyn] to [School C], which costs about \$24,000 a year. \$50 a week would barely begin to cover [Caitlyn]'s school fees. Of course, financial support from Mr [Ansel] would help, but it would likely to do little to mitigate Miss [Taylor]'s liability.

[62] Section 99(4)(c) does not rule out a step-parent declaration where another person has liability to maintain the child. Thus, in this case, even if Mr [Ansel] is liable to support [Caitlyn], that does not rule out a step-parent declaration being made in respect of Mr [Sydney]. Mr [Ansel]'s liability merely is a factor which may weigh against a step-parent declaration being made.

[63] It is relevant that Mr [Sydney] discouraged Miss [Taylor] from seeking maintenance for [Caitlyn] from Mr [Ansel]. It is possible that Mr [Ansel] might have

been able to provide at least some maintenance from 2014 and would have done so had Mr [Sydney] not discouraged Miss [Taylor] from seeking it.

Section 99(4)(d) – the prior relationship status of the parties

[64] Mr [Sydney] was in a relationship with Miss [Taylor] from 2008. The relationship became a de facto relationship in about 2014, prior to their marriage.

Section 99(4)(e) – guardianship

[65] Mr [Sydney] was not a guardian of [Caitlyn], but he was involved in decision making for [Caitlyn], including in relation to which school she attended.

Summary

[66] Mr [Sydney] wholly provided for [Caitlyn] for about six years. He made a substantial contribution to the cost of her upbringing. He did so at first because she came as part of a package with Miss [Taylor]. However, as time went by, he developed a genuine relationship with her and became a father figure. He provided this support knowing that she was not his biological daughter. These factors weigh in favour of a step-declaration being made.

[67] Mr [Ansel] may also be liable for [Caitlyn]’s care, and Mr [Sydney] was never declared a guardian. These factors weight against a step-parent declaration being made. Nevertheless, Mr [Sydney] chose to ensure that Mr [Ansel] did not contribute to [Caitlyn]’s care, and although Mr [Sydney] was not declared a guardian, he saw himself as a father figure, supporting and caring for [Caitlyn].

[68] Balancing these factors, I find that a step-parent declaration should be made.

[Caitlyn]’s Best Interests

[69] In terms of [Caitlyn]’s desire for contact, the High Court’s finding in *A v R*, that the “welfare of the child” is not a relevant factor, is apposite.⁵⁰ While it may be

⁵⁰ *A v R*, above n 29, at [39]–[40].

in [Caitlyn]'s best interests for her to continue a relationship with Mr [Sydney], that factor is not relevant in determining whether the court should make a step-parent declaration. As submitted by counsel for Mr [Sydney], the purpose of making a step-parent declaration is financial and does not entail emotional responsibilities.

Conclusion

[70] A declaration is made that Mr [Sydney] is a step-father of [Caitlyn].

Dated at Auckland this day of

A M Manuel
Family Court Judge