

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

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**IN THE FAMILY COURT  
AT WHANGANUI**

**I TE KŌTI WHĀNAU  
KI WHANGANUI**

**FAM-2014-083-000287  
[2021] NZFC 7723**

IN THE MATTER OF	THE STATUS OF CHILDREN ACT 1969
BETWEEN	[KIM THORPE] Applicant
AND	[SADIE GREENE] Respondent
AND	[HELEN GREENE] Second Respondent

Hearing: 2 August 2021

Appearances: P Brosnahan for the Applicant  
G Paine for the First and Second Respondent (via telephone)

Judgment: 2 August 2021

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**ORAL JUDGMENT OF JUDGE D G MATHESON**

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**Introduction**

[1] The applicant seeks a declaration pursuant to s 10 of the Status of Children Act 1969 that the late [Dominic Greene] is the father of [Lawrence Thorpe] who was born on [date deleted] 2012. The first and second respondents both

filed defences to the application, they being the administrator of the alleged father's estate and, in turn, the administrator of the alleged father's father's estate.

[2] Counsel for them advises that the defences are no longer maintained and that the declaration sought is no longer opposed but he is not in a position to sign off on a consent. I take no umbrage with that.

[3] As a result, the matter was set down for formal proof hearing before me today. I have had the applicant sworn in and she has confirmed her affidavits of December 2019 and July 2020. She has also been able to confirm that eventually DNA testing was conducted and that a test result was filed with the Court. I note that that test result identified what she was alleging had some considerable validity.

### **The Law**

[4] The application is brought pursuant to s 10 of Status of Children Act 1969. The Court is able to make a declaration if an eligible person applies for a declaration and it is proved to the Court's satisfaction that the relationship exists. The applicant, being a woman who alleges the named person is the father of her child is such an eligible person.

[5] If an application is made, the provisions of the Family Proceedings Act 1980 concerning paternity orders, except for s 47 to s 50, apply. Relevant sections identify that if the mother gives evidence, no corroboration of her evidence shall be necessary and the standard of proof is on the balance of probabilities.

### **Discussion**

[6] The applicant's evidence is that in 2011 she was living in [Australia] and during that time was in a relationship with a [Mark Nazario]. She returned to New Zealand [in late 2011]. Her relationship had come to an end and a few days after she came to New Zealand, she met up with [Dominic Greene]. She and he had known each other from years gone by and they spent New Year's Eve together and engaged in sexual

intercourse on several occasions prior to her returning to Australia in early 2012. There was no contraception used during those engagements.

[7] She gave evidence that she ceased her sexual relationship with Mr [Nazario] early December 2011. She did acknowledge casual sexual engagement with a gentleman by the name of [Evan Reynold] as well.

[8] The child was born full term on [date deleted] 2012 which she says was in accordance with estimated full-term dates of between [date range deleted] which she gained from medical examination and scanning. Those dates are consistent with a conception date of the last week of December, first week of January or thereabouts.

[9] DNA testing of [Nazario] and [Reynold] produced negative results. Hearsay material from the respondent suggesting other options of paternity was disputed and I disregard it as not being substantiated in any way. In any event, I note that opposition to the application is no longer pursued.

[10] On 2 October 2014, the deceased, [Dominic Greene], made application to the Family Court at Whanganui for a declaration as to paternity on the grounds he was the father of the child and that he was in a sexual relationship with the respondent at the time of conception.

[11] In an accompanying affidavit, he noted that he and the applicant had been in a sexual relationship from some years previously. He noted he had been told he was the father and that a week or two after the child's birth, he had been contacted to come around and meet his son. He indicated that his proceedings were filed because Mother had suggested he may not be the father and he wanted to undergo DNA testing. No defence to his application was filed by this applicant but eventually the deceased himself disengaged with the process and I struck out his proceedings.

[12] Attached to her affidavit material, the applicant included photographs of the child engaging with the deceased with comments from the deceased such as: "Treat time with Dad." There is also material that identifies Facebook postings from one of

the respondents, identifying that the child appeared to like speed just like his father, referring to the deceased in so doing.

[13] At the deceased's funeral the child was permitted to write on the coffin.

[14] Photographs of the deceased and the child identify, according to counsel for the applicant, marked similarities and there seems some merit in that; although, I do not rank that highly in terms of overall proof issues.

[15] Finally and significantly though, the second respondent agreed to DNA testing and this was conducted in May 2021. The DNA relationship testing report identified that: "These results very strongly support that a son of [Helen Greene] is the biological father of [Lawrence Thorpe]". [Dominic Greene] was her son.

[16] Putting all of that material together, I am satisfied to the appropriate level of proof needed that [Dominic Greene] is the father of the child.

[17] At the earliest juncture, the applicant raised the issue of costs.

[18] A comprehensive memorandum has been filed by the applicant's counsel in support of an award of costs. Leave is now reserved by me to the first and second respondents to file material in relation to costs within 21 days. Mr Brosnahan may have 21 days thereafter to respond and the matter can be referred to me. At that point, the file is to be referred to me in chambers for determination.

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Judge DG Matheson  
Family Court Judge

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