

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

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**IN THE FAMILY COURT  
AT AUCKLAND**

**I TE KŌTI WHĀNAU  
KI TĀMAKI MAKĀURAU**

**FAM-2019-004-000459  
[2020] NZFC 3378**

IN THE MATTER OF	THE ADOPTION ACT 1955
BETWEEN	[IULIA SIULAI] [GLENN SIULAI] Applicants
AND	[MALIE SALESA] Child or Young Person the application is about

Hearing: 20 May 2020  
Appearances: K Tafuna for the Applicants  
Judgment: 20 May 2020

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**ORAL JUDGMENT OF JUDGE K MUIR**

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[1] This is an adoption application by [Glenn Siulai] and [Iulia Siulai]. They are applying to adopt a 13 year old daughter [Malie Salesa]. [Malie] was born on [date deleted] 2007 in Auckland. Mr and Mrs [Siulai] have been married for 13 years. They are New Zealand citizens and [Malie] has been in their care since she was six months old. [Malie] is the daughter of [Pili Salesa] who is the first cousin of Mrs [Siulai] and of Mrs [Sandra Salesa]. Her birth parents have seven children including [Malie]. [Malie] has lived with Mr and Mrs [Siulai] as their child for all of that time along with her two younger siblings [Heidi] and [Leona] who are aged 10 and 9. Although they are the applicants' natural children all three are very much the children of this family and [Malie] has only ever known her siblings as her siblings.

[2] Until very recently [Malie] did not know that she was adopted but she has nonetheless always maintained a close relationship with her birth parents, Mr and Mrs [Salesa], and their six children as part of the wider family. It is a relationship which appears to have been pursued with renewed interest by [Malie] since she learned that she was their birth child.

[3] I know from the social worker's report dated 16 January 2020 that [Malie] was initially confused and perhaps a little concerned when she learned about her birth status but it is clear from the social worker's report that she is now very supportive of the adoption process. As the social worker said at page 7:

[Malie] clearly said that she wants to be adopted by Mr and Mrs [Siulai]. She says, "I've been raised by them and they've provided everything for me like feeding and changing nappies. If they're getting older I want to look after them." [Malie] added that the applicants have treated her like their biological child and she wants them to continue to love her.

[4] It is clear that [Malie] is doing well in life and at school. From the social worker's report at page 6 it is noted that [Malie] attends [school name deleted] Intermediate in year 7. You are a singer in the school band, [Malie], you are a member of the school choir and you played netball when you were in primary school. It is clear that Mr and Mrs [Siulai] are supportive of you doing activities that you are interested in. Here is what your recent school report said:

[Malie] continues to be a role model for our years 7s and is completing all her work to a high level. She manages her time reasonably well and is excellent at following instructions. She does need to work on managing who she sits

next to as she can be easily distracted by her friends, however this is easily solved.

and Mr and Mrs [Siulai] are clearly right when they describe you as loving and caring, [Malie]. They say you love to help someone in need and are willing to share what you have. It is apparent to me from reading all this that Mrs [Siulai] are also determined to share what they have and willing to help people in need.

[5] Mr and Mrs [Siulai] are clearly right when they describe you as loving and caring, [Malie]. They say you love to help someone in need and are willing to share what you have. It is apparent to me from reading all this that Mrs [Siulai] are also determined to share what they have and are willing to help people in need.

[6] The social worker is supportive of this adoption and she describes your home and your parenting of [Malie] in very glowing terms. She is satisfied and I am satisfied that you have sufficient income and resources to continue to support [Malie] well.

[7] Ms Tafuna filed submissions dated 14 May which were very helpful and she is asking me to make a final order rather than an interim order today. In order to make an adoption order, there are a number of matters which must be considered first:

- (a) The first thing to consider is whether there is consent from the biological parents and there is. Mr and Mrs [Salesa] are very supportive of this adoption application.
- (b) The next issue is whether this adoption is regulated by the Adoption into Country Act 1997 or not. It is not, because everyone involved here are New Zealand residents or citizens and [Malie] was born in New Zealand.
- (c) I must be satisfied that the requirements of the Adoption Act 1955 are met:
  - (i) Section 3 enables Mr and Mrs [Siulai] to make this application for the adoption of [Malie] jointly. They are spouses and there are no questions about their place of domicile.

- (ii) Section 4 of the Act is satisfied. You are over the age of 25 years and you are both at least 20 years older than [Malie] and [Malie] at the age of 13 is a child as defined in the Act.
  
- (d) Turning to s 11 of the Adoption Act, I have to be satisfied that Mr and Mrs [Siulai] are fit and proper persons to have the role of providing the day-to-day care of the child and that they have sufficient ability to bring her up, maintain her and educate her. It is clear from the social worker's report and the evidence that I have read that you are both resourceful and hardworking people and I have no doubt that you will have the ability to care for [Malie] well and that you will make sure that there are sufficient resources available for the support of your family and others.
  
- (e) I must next be satisfied that [Malie]'s welfare and interests will be promoted by the adoption with due consideration being given to what [Malie] wants having regard to her age and understanding. [Malie] is of an age where she does understand perfectly what is happening here and I can and should give considerable weight to her wishes. From the social worker's report and the evidence that I have read, [Malie] is clear in her wish that she wants to have her relationship with the two people that she only knows as her parents formalised.

[8] I must also be satisfied that if any conditions as have been imposed as to religious denominational practices they will be complied with. No conditions have been proposed but it is clear that Mr and Mrs [Siulai] will be raising [Malie] with an appropriate level of involvement in their church. The adoption order that is being sought today is simply to make what has happened in reality legal. However I have to consider whether this order should be an interim order or final order. I can only make the order final today if there are special circumstances made out. Judge Pidwell in a case called *Re [T]* described the purpose of an interim order as:<sup>1</sup>

To test the bonding and establishment of a relationship with a child and to enable the social worker to provide ongoing monitoring.

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<sup>1</sup> *Re [T]* [2015] NZFC 2319.

[9] A final adoption order is usually made by the Court registrar after a further social worker's report has been filed and after six months have elapsed from the date of the interim order.

[10] The social worker in this case recommends that an interim order be made rather than a final order. The social worker in making that recommendation notes that Mr and Mrs [Siulai]'s biological children, [Malie]'s younger siblings, currently do not know about [Malie]'s adoption and that this has prevented [Malie] from openly talking about her adoption in the family. She suggests that the need to know about the adoption and the further conversation necessary to support them in having discussions with their children about [Malie]'s birth heritage indicates that there should be a time of education and monitoring so that the family are supported with these discussions. Those are valid concerns

[11] Those are valid concerns which I am going to bear in mind and I note from another reported adoption case, *Adoption application by B*, that in making the decision whether to make a final order or an interim order the court is essentially engaged in a balancing exercise where the matters to be considered include providing a sense of permanency and the stress that is associated with uncertainty which are to be weighed against the benefits of the social work overview that can occur during the interim period.<sup>2</sup>

[12] In the end, the primary purpose of an interim order is generally to test the bonding and establishment of the relationship with the child. It seems to me that all of the testing and bonding that is necessary has been done here. [Malie] has been raised by Mr and Mrs [Siulai] since she was three months old. She is effectively a child of the family. The length of time she has been with her family, the fact that she was raised by them since infancy, her age and her clearly expressed wishes as well as the extensive relationship she can continue to have with the [Salesa] family all weigh in favour of removing uncertainty and proceeding to a final order today.

[13] Accordingly, I am making a final adoption order.

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<sup>2</sup> *Re BH* [2007] NZFLR 399.

[14] Mr and Mrs [Siulai] do not want the words “adoptive child” to appear on [Malie]’s birth certificate and I order that it will not appear.

[15] [Malie]’s name following this adoption order will be [Malie Siulai].

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Judge K Muir  
Family Court Judge

Date of authentication: 21/05/2020  
In an electronic form, authenticated pursuant to Rule 206A Family Court Rules 2002.