

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/](https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/)**

**IN THE FAMILY COURT  
AT CHRISTCHURCH**

**I TE KŌTI WHĀNAU  
KI ŌTAUTAHI**

**FAM-2020-009-001863  
[2022] NZFC 4344**

IN THE MATTER OF	THE ADOPTION ACT 1955
BETWEEN	[GARY BERNIE] [ARLEEN BERNIE] Applicants
AND	CHIEF EXECUTIVE FOR ORANGA TAMARIKI–MINISTRY FOR CHILDREN [MEGHAN POLLY] Respondents

Hearing: 10 May 2022

Appearances: T Gwaze-Musesengwa with and for the Applicants  
M Rainbow for the Chief Executive  
Respondent [Polly] appears in Person  
F Boyd as Lawyer for the Child  
H Wall as Social Worker

Judgment: 10 May 2022

---

**ORAL JUDGMENT OF JUDGE P W SHEARER**

---

[1] This is an application by [Arleen] and [Gary Bernie], a married couple, aged 33 and 32 years old respectively, to adopt [Cecilia Bernie], who is now [3 years old].

## **Background**

[2] Mrs [Bernie] is the older sister of [Cecilia]’s birth mother, [Meghan Polly]. Ms [Polly] signed a formal consent to an adoption order with an independent solicitor on 19 November 2020, and a supporting affidavit the same day, stating amongst other things that:

- (a) She does not know the identity of [Cecilia]’s father. She said [Cecilia] was conceived as a result of a one night stand and she did not know the man’s name.
- (b) Following [Cecilia]’s birth on [date deleted] 2018 her sister [Arleen] and [Arleen]’s husband [Gary] have taken care of [Cecilia] with her full permission and agreement.
- (c) She had supported [Arleen] and [Gary]’s applications under the Care of Children Act when they obtained a parenting order and an additional guardianship order from the Christchurch Family Court on 9 April 2019, and she also supports them legally adopting [Cecilia].
- (d) She had discussed the matter of adoption with her whānau and on more than one occasion.

[3] Mr and Mrs [Bernie]’s application and affidavit is dated 17 December 2020. They have been married since November 2015. Mr [Bernie] is a [job deleted] and Mrs [Bernie] is described as a [job deleted]. They own their own home and do not have any other children of their own, although Mr [Bernie] has an older child from a previous relationship - a daughter, [Casey], who is now 12 but with whom Mr [Bernie] has not had any contact since [Casey] was two.

## **Social worker’s report**

[4] The Court requested and obtained a report from an Oranga Tamariki adoptions social worker, as is standard practice, and the report from social worker, Hayley Wall, is dated 30 August 2021. That report concludes that “Mr and Mrs [Bernie] have been

assessed as fit and proper applicants.” The report states “there is no evidence to believe that [Cecilia] is in need of an adoption, as her care is already legally secured and her family intact. In saying this, the adoption proposal appears to be a decision made within the immediate family prior to [Cecilia]’s birth.” Ms Wall went on to state that “issues for the Judge to consider include:

- There have not been any concerns for [Cecilia]’s care since her placement with Mr and Ms [Bernie] upon birth;
- There is a significant history with Oranga Tamariki and the New Zealand Police in respect of Mr [Bernie]. There have not been any concerns however, since he entered a relationship with Mrs [Bernie];
- [Cecilia]’s care is already legally secure under the Care of Children Act 2004. Mr and Mrs [Bernie] have been granted parenting orders and additional guardianship of [Cecilia];
- [Cecilia] has frequent contact with her birth mother and other extended birth family members. There is no secrecy regarding her birth story;
- This adoption application was a proposal made within the immediate family, prior to [Cecilia]’s birth;
- [Cecilia] is not an age whereby her views can be fully explored in regards to changing her legal identity through adoption;
- [Cecilia] is thriving in the care of Mr and Mrs [Bernie]. I have no doubt she is securely attached, and the decisions they make as parents ensure that [Cecilia] is always their priority;
- As [Cecilia] has remained within her birth family, her iwi connection remains intact and her Māori culture is well entrenched by Mr and Mrs [Bernie];

- [Casey], [Cecilia]’s potential half-sister has not been able to be contacted regarding this adoption proposal;
- In the event that an adoption order is declined, I have no doubt that Mr and Mrs [Bernie]’s bond with [Cecilia], and their love and support of her would certainly continue.”

### **Cultural report**

[5] At the same time the Court obtained a cultural report which is also dated 30 August 2021. The report writer noted that the appropriate Māori cultural process of whāngai is not recognised in law but is, in Māori law. The Adoption Act 1955 is, unfortunately, one of our oldest statutes and is in need of updating. The report writer noted that Mr and Mrs [Bernie] are supported in their application for adoption of [Cecilia] by her birth mother and both of Mr and Mrs [Bernie]’s extended whanau. The report noted concern for Mr [Bernie]’s then 11-year-old [Casey] and stated:

To follow due process, she also needs to be consulted and informed by her father, particularly, because from a cultural perspective, these children are whānau, potentially siblings. If they become known to each other through social media, wider family or the community, the impact of discovery will be huge and could have far reaching affects...

[6] I understand from Mr [Bernie] that he has not had contact with his daughter since she was two years old. The report also recommended that [Cecilia] be registered on the [iwi deleted] beneficiary roll, so she can access resources within her iwi and hapū. Mr and Mrs [Bernie] have since confirmed by way of affidavit that they have attended to that.

### **Report of lawyer to assist the Court**

[7] The Court then appointed counsel to assist the Court who is Ms Boyd. Ms Boyd filed a helpful report dated 10 November 2021 and at paragraph [28] of her report identified various areas and queries where further information might assist the Court. In particular she suggested further information about:

- (a) Why the existing orders are not considered sufficient;

- (b) Addressing the proposal for an adoption order, rather than a whāngai agreement, with reference to [iwi deleted] and tikanga;
- (c) The extent of consultation with wider maternal whanau;
- (d) Identification of Ms [Polly]’s paternal whanau;
- (e) Whether due process with Mr [Bernie]’s older daughter requires her consent, or just for her to be informed.

### **Further evidence**

[8] Mr and Mrs [Bernie] have since filed a further affidavit dated 2 February 2022 and have advised that they would like the Court to make an adoption order in their favour due to the care they are providing [Cecilia] which is not provided by her parents and which will provide [Cecilia] with a permanent life. They do not consider the existing Care of Children Act orders to be sufficient because they do not give full responsibility and rights that come with being adoptive parents.

[9] They said that [Cecilia]’s mother does not wish to be involved in or make any decisions pertaining to [Cecilia] and her biological father is unknown. They described Mrs [Bernie] as “half Pakeha and half Māori.” Mrs [Bernie] acknowledges her Māori heritage but also acknowledged her Pakeha heritage. Mr [Bernie] is Pakeha.

[10] I am advised that there is little contact with Mrs [Bernie]’s extended family. Her immediate family, and in particular Mrs [Bernie]’s mother and her sister, who is the birth mother, support an adoption order. Mr [Bernie]’s family, who are all Pakeha, support an adoption order. There is no objection from anyone to an adoption order. They note that [Cecilia]’s mother, Ms [Polly], was never raised by her father. He is Pakeha and not Māori. It is Mrs [Bernie]’s and Ms [Polly]’s mother who is Māori, and she supports the proposed adoption.

[11] Mr [Bernie] told me that he is endeavouring to reconnect with his older daughter, [Casey], but there is a difficult relationship with [Casey]’s mother and he expects that process will take time. In response to Ms Boyd’s query within her report,

they suggest that it is an “inform” process with respect to [Casey] and the adoption. rather than a “consult” process. I think that is right.

[12] Mr and Ms [Bernie] concluded as follows at paragraphs [12] and [13] of their affidavit:

We confirm that we are fit and proper people to have the role of providing day-to-day care for [Cecilia] and sufficient ability to bring up, maintain and educate [Cecilia]. We also confirm that [Cecilia]’s interests and welfare will be promoted by the adoption. [Cecilia] is too young to understand what is taking place, however we believe that we are in the best position to care for her and ensure that her needs are met whilst providing her with a forever family home.

[13] In court today I have spoken to Ms [Polly], [Cecilia]’s birth mother, and to Mr and Mrs [Bernie], as well as Ms Wall the adoptions social worker and counsel who are all present.

[14] Ms [Polly], for her part, is very clear that she supports an adoption order and wants the Court to make an adoption order. I asked her on a scale of one to 100 to tell me how certain she is about an adoption order being the appropriate outcome. She was very prompt and very clear that the answer is 100, being 100 per cent certain, and that this has always been her position.

[15] Likewise, Mr and Mrs [Bernie] are clear that they want an adoption order over and above a parenting order. From Mr [Bernie]’s point of view, he wishes to be legally and formally recognised as [Cecilia]’s father and for [Cecilia] to be recognised as his daughter. They seek, they said, the security that an adoption order will provide them. That said, both Mr and Mrs [Bernie] and Ms [Polly] are also clear that Ms [Polly] will continue to have an ongoing relationship with [Cecilia], which she already has. Currently [Cecilia] refers to Ms [Polly] as “Aunty” and I am advised that will continue. Ms [Polly] is Mrs [Bernie]’s sister, and therefore will always be [Cecilia]’s aunty. This is not an adoption by strangers.

[16] Currently Ms [Polly] sees [Cecilia] three days’ a week, which are usually Tuesday, Wednesday and Friday when her mother cares for [Cecilia] whilst

Mrs [Bernie] works. Again, I am advised that relationship and contact will continue in the future.

[17] [Cecilia] has already been told that she came from Aunty's tummy and no doubt when she is older and better able to understand, it can be explained, in appropriate language, what an adoption means and why that happened when [she] was [3 years old] .

### **Analysis**

[18] As Ms Boyd has submitted in her report, the primary issue for the Court is whether the making of an adoption order will promote [Cecilia]'s welfare and best interests. In my view it will. It will confirm and finalise [Cecilia]'s position in Mr and Mrs [Bernie]'s family, and their extended families, which is where [Cecilia] has lived since she was born. It will confirm that Mr and Mrs [Bernie] have sole decision-making responsibility for [Cecilia] and sole responsibility for her financial support. That is what they want and is also what Ms [Polly] wants.

[19] I consider that a legal adoption will still preserve [Cecilia]'s whakapapa and cultural heritage. Mr and Mrs [Bernie] are clear that [Cecilia] will know that Mr and Ms [Bernie] are not her biological parents and that she will always have contact with her birth mother, who as I have noted, is going to be [Cecilia]'s aunty in any event. Mrs [Bernie] and Ms [Polly] obviously share the same maternal family, which is the Maori side of [Cecilia]'s family, so [Cecilia] does not lose any of that whakapapa or culture as a result of an adoption. Whilst an adoption technically severs the relationship with the birth parents and their families, [Cecilia]'s father is unknown and Ms [Polly] does not have a relationship with her own paternal family who are Pakeha. What [Cecilia] gains by virtue of an adoption, is extended whanau and support in the form of Mrs [Bernie]'s paternal family, who are Maori, and both sides of Mr [Bernie]'s family.

[20] The only alternative to an adoption order is to continue the existing Care of Children Act orders, but that is not what Mr and Mrs [Bernie] want and it is not what Ms [Polly] wants either. In my view, the additional security of care for [Cecilia] and for Mr and Mrs [Bernie], and the recognition of Mr and Mrs [Bernie]'s role and the

role of their extended families in [Cecilia]’s life, are the key reasons that an adoption order is appropriate. I consider that an adoption will also provide peace of mind for Ms [Polly]. She said she is 100% certain about the adoption.

### **Decision**

[21] As I have discussed with counsel and Ms Wall prior to giving this decision, I am going to make a final adoption order now, rather than an interim order. This application has already been before the Court for almost 18 months. I consider that it is time to bring this process to an end, so that everyone has some certainty and can move on.

[22] So, congratulations Mr and Mrs [Bernie]. I make a final adoption order in your favour.

[23] The file can now be closed.

---

Judge P W Shearer  
Family Court Judge | Kaiwhakawā o te Kōti Whānau  
Date of authentication | Rā motuhēhēnga: 16/05/2022