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**IN THE FAMILY COURT  
AT BLENHEIM**

**I TE KŌTI WHĀNAU  
KI TE WAIHARA KEKE**

**FAM-2021-006-000034  
[2022] NZFC 10201**

IN THE MATTER OF	THE ADOPTION ACT 1955
BETWEEN	[TORY CRAWFORD]
	Applicants
AND	[ALANI MURPHY-ELLIS] Child or Young Person the application is about
AND	CHIEF EXECUTIVE OF ORANGA TAMARIKI—MINISTRY FOR CHILDREN Other Party

Hearing: 6 October 2022

Appearances: J G Holdaway and S Jessop for the Applicants  
S Stewart for the Chief Executive

Judgment: 6 October 2022

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**ORAL JUDGMENT OF JUDGE R J RUSSELL  
[as to an adoption order made under s 3 of the Adoption Act 1955]**

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## **Introduction**

[1] [Elias] and [Tory Crawford] have applied under s 3 of the Adoption Act 1955 to adopt Mrs [Crawford]'s child, [Alani Murphy-Ellis], who is aged [under 10].

## **Brief background**

[2] [Alani] is the youngest child of Mrs [Crawford]'s previous marriage to [Norm Ellis]. There are four older children of that marriage: [Shelly], aged 20; [Lorin], aged 18; [Paige], aged 17; and [Bethanie], aged 13.

[3] Mrs [Crawford] and Mr [Ellis] separated from each other and the children then lived in the day-to-day care of Mrs [Crawford]. Mr [Ellis] died of cancer on [detail deleted] 2020 when [Alani] was approximately three years of age.

[4] Mr and Mrs [Crawford] began their relationship in mid-2018 and married on [detail deleted] 2020. Mr [Crawford] was employed as a [job deleted] at the time and the family unit lived in [location A]. More recently Mr and Mrs [Crawford] have owned and operated a [business] in [location A].

[5] Because of Mr [Ellis]'s death, Mrs [Crawford] is now [Alani]'s only legal guardian.

[6] This application for an adoption order was filed on 30 March 2021 and was referred for a social worker's report under s 23 of the Adoption Act. Enquiries were commenced by the social worker, Ms Bowden, and four interviews took place. In her report of 25 November 2021 Ms Bowden recommended the adoption order not be made. Her primary concern was how an adoption order would legally impact on [Alani]'s relationship with her older siblings, [Shelly], [Lorin], [Paige] and [Bethanie].

[7] Mr and Mrs [Crawford] initially represented themselves but, following the release of Ms Bowden's report, they have engaged counsel. Further affidavit evidence was filed from Mr and Mrs [Crawford] and from [Alani]'s older siblings, [Shelly] and [Lorin]. Timetabling directions were then made tracking the case towards a hearing today.

## **The affidavit evidence**

[8] Mr and Mrs [Crawford] filed affidavit evidence setting out their personal situation and background.

[9] Mrs [Crawford] outlined the difficulties in her 18 year relationship with Mr [Ellis] which she described as having been violent and abusive. A protection order was made and was breached by Mr [Ellis] several times. She said there was a poor relationship between the children and Mr [Ellis].

[10] Mrs [Crawford] went on to describe the positive relationship [Alani] has developed and continues to have with Mr [Crawford]. She had discussed [Alani]'s adoption with her four older siblings as well as Mr [Crawford]'s children, [Rebecca] and [Casey], their wider families, and [Alani]'s teachers. All were supportive of Mr [Crawford]'s role as [Alani]'s father.

[11] Mrs [Crawford]'s evidence is that when the time is right she will tell [Alani] more about her biological father, Mr [Ellis]. She said [Alani] is loved and cared for, and is having what she described as a great, safe life.

[12] In his evidence, Mr [Crawford] confirmed his good relationship with [Alani] and outlined the activities he had involved himself with her in. He confirmed his own two children were in support of the adoption application.

[13] Mr and Mrs [Crawford] jointly deposed they considered the adoption is in the best interests of [Alani], contending it would legally secure and formalise their relationship with her. They say [Alani] has repeatedly expressed her desire to be adopted and identifies them as her parents. They have considered the alternatives to adoption, but consider adoption is the best way to provide security for [Alani]. They also say an adoption order would provide [Alani] with the psychological benefits of having Mr [Crawford] as her legal father and there would be a sense of completeness for her. They do not agree that the adoption of [Alani] would cause any problems or rifts within their blended family unit.

[14] As I have noted, affidavit evidence from [Alani]'s older siblings, [Lorin] and [Shelly], were filed. They both confirmed their support for the adoption application. Interestingly, they confirm they have never had anything to do with their biological father's wider family and have had no contact from them. They speak positively of Mr [Crawford] and the support he is able to provide to their mother and younger sister, [Alani]. They say an adoption order will not change the way they will regard their sister, [Alani], in the future.

[15] Mr and Mrs [Crawford] were individually cross-examined by Ms Stewart, counsel for Oranga Tamariki, at the hearing. They accepted that prior to the filing of the adoption application [Alani] did not know Mr [Crawford] was not her biological father. She has now been told this and now understands someone else is responsible for her birth.

[16] They emphasised that while they understood the Care of Children Act 2004 options of obtaining a parenting order and/or an additional guardianship order and Mrs [Crawford] had the ability to appoint Mr [Crawford] as a testamentary guardian in her Will, this was not an option they wanted to pursue, principally because they sought the sense of the permanency and completion which an adoption order would provide.

[17] Mr and Mrs [Crawford] confirmed their relationship remains stable and they continue to have a close knit family unit around them and neither accepted Ms Stewart's suggestion that an adoption order could cause a rift in the sibling relationships.

[18] Mrs [Crawford] confirmed that upon an adoption order being made that she wished to have [Alani]'s surname noted as -[Murphy-Crawford] and did not want the words "adoptive parent" noted on any amended birth certificate.

[19] Mrs [Crawford] also confirmed my enquiries into the background of the court proceedings which occurred between herself and Mr [Ellis]. There was a dispute between guardians filed in 2019. A parenting order was made by consent in February 2019. A police safety order had been made in the criminal jurisdiction and a temporary protection order was made against Mr [Ellis] in July 2018. A final

protection order was made on 6 October 2018. This confirms the family violence evidence Mrs [Crawford] had provided in her affidavit.

[20] Mrs [Crawford]'s evidence is she will not, what she describes as, "sugar coat" the problems which existed in her earlier relationship with Mr [Ellis], but neither would she stand in the way or deny or resist any attempts by [Alani] to contact any wider paternal family members in the future if this is something [Alani] wanted to do.

### **The social work report**

[21] Ms Tina Bowden is a senior and experienced social worker in the adoption unit of Oranga Tamariki who has written a number of reports for the Court over the 18 years she has been employed as a social worker.

[22] In her report, which predates the second affidavit of Mr and Mrs [Crawford] and the affidavits of [Shelly] and [Lorin], Ms Bowden outlined the results of her interviews with the parties, her enquiries of the police and Oranga Tamariki, and the vetting enquiries which she has made.

[23] She outlined Mr [Crawford]'s background, including the circumstances of his wider family which consists of his parents, four sisters and one brother. She confirmed his employment circumstances which began with life on a farm before moving to work in [details deleted] and then to a [business] which he and Mrs [Crawford] now own and operate in [location A].

[24] Ms Bowden made enquiries about the circumstances of the commencement of Mr and Mrs [Crawford]'s relationship and noted there is a high level of trust between them. [Alani] was observed as being affectionate towards Mr [Crawford] appearing to have a very easy and natural relationship.

[25] Mrs [Crawford]'s own background, including the dysfunctional circumstances of her relationship with Mr [Ellis], were canvassed in the report. Mrs [Crawford] was described as being open and honest with the report writer.

[26] Ms Bowden reported on her interview with [Alani]. She understood she had an “old dad” and a “new dad”. She knew her first dad had died and Mr [Crawford] was her dad now. When Ms Bowden explained in simple terms the adoption process which required the Court’s permission for Mr [Crawford] to be her father, [Alani]’s response was that she would like this and a huge grin came on her face as she said this. Ms Bowden reported [Alani] has no memory of who her biological father, Mr [Ellis], was.

[27] Ms Bowden raised the concern that an adoption order could potentially create rifts among [Alani]’s older siblings and [Alani] and affect their relationship with each other as they all grow older and mature. Mrs [Crawford]’s response was she had talked to her older children and if there had not been full support received from them to what was proposed, then this adoption application would not have been filed.

[28] Ms Bowden said she had raised the alternative legal options of Mr [Crawford] being appointed as an additional guardian, which could bring legal security and inclusion into their family unit without altering [Alani]’s legal relationship with her siblings. Mrs [Crawford] was adamant it was an adoption which they were wanting to occur.

[29] Ms Bowden spoke to the siblings separately. All described [Alani]’s relationship with Mr [Crawford] as being very positive and thought the adoption was a good idea for their younger sister, [Alani]. Ms Bowden reported the children did not appear to have an understanding of the impact of any legal severing of their legal relationship with [Alani] which an adoption order would bring.

[30] Ms Bowden did not challenge that Mr and Mrs [Crawford] were fit and proper applicants. She pointed to [Alani]’s young age as meaning she only had a very basic understanding of what adoption would mean for her which did raise a question as to how much weight could be given to her views.

[31] Ms Bowden’s primary concern was the impact of the severance of the legal relationship between [Alani] and her four siblings and the future impact this may have on all of them. It is for this reason she did not consider the adoption would be in [Alani]’s best interests and recommended an order not be made. She contended an

additional guardianship order could provide the security for [Alani] as an alternative to the adoption order.

[32] Ms Bowden was cross-examined at the hearing by Mr Holdaway, counsel for Mr and Mrs [Crawford], and also answered a number of questions from me.

[33] She confirmed there was no “blanket” Oranga Tamariki policy against step-parent adoptions and accepted each case needed to be assessed on its merits.

[34] She reiterated her primary concern was the potential for there to be a rift created between [Alani] and her older siblings caused by the adoption, and also the potential for the loss of any future relationship with wider family members caused by the change of their status from full siblings to half-siblings.

[35] Ms Bowden had not made any further enquiries of wider paternal family members to support the concern that an adoption would extinguish [Alani]’s right to have a relationship with them.

[36] The only evidence I have about wider paternal family members of Mr [Ellis] is contained on page 8 of the social work report which is as follows:

[Alani] and her siblings have had very little contact over the years with their paternal contact and this was a decision that was made by Mr [Ellis] and Mrs [Crawford] many years ago when they first started to have children. Mr [Ellis] was said to have experienced severe physical abuse from his father as a child and Mrs [Crawford] shared that she had been told by him that his father was also a convicted paedophile. Further information provided by Mrs [Crawford] was that when Mr [Ellis] was a teenager, he was sent to live with his aunt and uncle on the coast, who were ‘raging alcoholics’ and it is for these reasons they did not feel able to maintain contact with Mr [Ellis]’s family.

[37] Mrs [Crawford] and the children only have contact with one of Mr [Ellis]’s cousins. Mrs [Crawford]’s view is this cousin is the only “normal” person in Mr [Ellis]’s family. No further or additional enquiries had been made by Oranga Tamariki about these family members in terms of whether they are alive, or where they live and what their current circumstances are. This means the only evidence on this issue which I am able to consider is what I have just recorded from the social work report.

[38] Ms Bowden reconfirmed her view that the sense of permanence and security Mr and Mrs [Crawford] seek is able to be obtained by Care of Children Act orders and via the appointment of Mr [Crawford] as a testamentary guardian in Mrs [Crawford]'s Will. She accepted this is not something the [Crawford]s could be forced to do. She maintained her opposition to the adoption order being made.

### **Submissions**

[39] In advance of the hearing Mr Holdaway and Ms Stewart provided written submissions summarising the background and addressing the factual and legal issues. They each referred to case authority in support of the outcomes they seek. Mr Holdaway sought a final adoption order. Ms Stewart sought the application be refused.

### **The law – analysis**

[40] Counsel were agreed there are four issues to be addressed.

1. *Does the Court have jurisdiction to make the order?*

[41] It was common ground Mr and Mrs [Crawford] were eligible persons and able to bring this application under s 3 and were not precluded by any other provisions of the Act from having an order made in their favour. There is therefore jurisdiction to make the adoption order which is sought.

2. *Are Mr and Mrs [Crawford] fit and proper people to bring up [Alani]?*

[42] Section 11(a) of the Act provides:

That every person who is applying for the order is a fit and proper person to have the role of providing day-to-day care for the child and of sufficient ability to bring up, maintain, and educate the child.

[43] It is accepted Mr [Crawford] has been a father figure in [Alani]'s life since she was two years of age. [Alani] does not remember her biological father, Mr [Ellis], and does not have any connection with his wider family members. All of the evidence I have read and heard points to Mr [Crawford]'s commitment as a consistent father



figure in [Alani]'s life. It was accepted Mr and Mrs [Crawford] meet the fit and proper person test required before an adoption order can be made. I completely agree with this assessment and find they are fit and proper persons to bring the application and have the adoption order made as they seek. The provisions of s 11(a) are therefore met.

3. *Is [Alani] being adopted by Mr and Mrs [Crawford] in her best interests and welfare?*

[44] Section 11(b) of the Act provides:

That the welfare and interests of the child will be promoted by the adoption, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child.

[45] Counsel have referred me to a number of case authorities about step-parent adoptions and the approach the Court should take. They accept a case-specific enquiry is required in each case.

[46] Guiding principles are provided by, in particular, the Court of Appeal in the decision of *B v G*.<sup>1</sup> It provides relevant guidance when reviewing the s 11(b) requirement in this way:

The Court's inquiry at this stage under s 11(b) will be a broad-based one, taking into account the alternatives to adoption. The Court must come to the view that adoption by those particular adoptive parents will promote the welfare and interests of the child as compared to any available alternatives. This approach is consistent with the United Nations Convention on the Rights of the Child and modern thinking.

[47] Other cases note the following principles. In *Re Application by SJKB*, Judge O'Dwyer noted the difference in the wording of the welfare and best interest test between this Act and the Care of Children Act.<sup>2</sup> She said:

Under s 11(b) of the Act the Court must be satisfied that the welfare and interests of the child will be promoted by the adoption. The Court is not required to treat the welfare and best interests of the child as paramount.

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<sup>1</sup> *B v G* [2002] 3 NZLR 233; [2002] NZFLR 961 (CA).

<sup>2</sup> *Re SJKB* FC Dunedin FAM-2009-009-3958, 24 November 2010.

[48] And further:

... the need for each adoption application must be considered on its own facts ...

and:

... the Courts have emphasised a generalised attitude towards step-family adoptions should not be elevated to a presumption for or against step-family adoption.

[49] The Court in *Re JAN* agreed with this approach. In this case Judge A Walsh noted in para [33]:<sup>3</sup>

Different considerations will apply where, for example a child is aged 12 years and has established strong attachments with the extended family of each parent, as opposed to a young child who has no knowledge of one of his/her biological parents and their extended family. In each situation different considerations have to be weighed under the overarching concept of the “*welfare and best interests*” of the child.

[50] And further:

I consider, however, different considerations arise where the child is very young and has no knowledge of and contact with a parent and the extended family of that parent. In this situation there are no attachments between the child and the parents and that parent’s extended family. The attachments the child develops with the adopting biological parent and step-parent will be pivotal to enhancing the welfare and best interests of that child. An adoption in these circumstances should not prevent the child from learning about the other biological parent and extended family of that parent. The fact the child will have a different genetic heritage from the adopting step-parent is a consequence of adoption, but is only one of the factors that must be considered by the Court.

[51] There is the decision of Judge Strettell in *T v C* where a step-parent adoption order was declined.<sup>4</sup> Judge Strettell noted in para [24]:

There is little doubt that E and her sister are well loved and cared for by Mr and Mrs T. Mr T has slotted easily into the role of the primary male figure in E’s life and E has accepted him in that role. Together Mr and Mrs T are able to meet all of the day to day needs of E. At school E is achieving to a high standard and there is no indication of emotional upset of any kind. She is settled and content in the care of her mother and step-father.

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<sup>3</sup> *Re JAN* [2013] NZFC 3188 at [33].

<sup>4</sup> *T v C (Adoption)* [2008] NZFLR 843 (FC) at [24].

[52] The Ministry submit the adoption of a child by family members can create genealogical distortions which may be confusing for the child as a result of the severance of the child's relationship with some family members. Family members who have the care of the child and who want to have their status recognised in law may be encouraged to consider additional guardianship rather than adoption. This may give them the legal rights and status necessary for the child security and upbringing, thus avoiding the severance and distortion of kinship relationships which adoption entails.

### *Discussion*

[53] Applying the relevant principles under s 11(b) to the circumstances of this case does, as I have said, require a fact-specific enquiry to be undertaken.

[54] [Alani] at the age of six years has expressed her views consistently to all who have spoken to her about the issue of adoption. She has no memory of her biological father, unlike some children in similar step-parent adoption applications. She has a good relationship with Mr [Crawford] who she regards as her father and he is the only father she has effectively known. She knows him as her dad and wants him to have this role in her life. She wants the adoption to occur, but I accept the submission that at her young age she cannot foresee any wider consequences of her views. This necessarily limits the weight which can be put on her views in the assessments I am required to make.

[55] A number of family members have been spoken to by Ms Bowden in the course of preparing her report. As I have recorded, two of [Alani]'s siblings have filed affidavits in support of the application, setting out their support. No challenge has been made to their affidavit evidence which I must accept as written. There appears to me there is unanimous support amongst all of [Alani]'s family for the adoption to proceed.

[56] There appears to be no pre-existing relationship that [Alani] and her four siblings have with Mr [Ellis]'s extended family, nor on the evidence I have seen does this seem likely to develop in the short, medium or longer term. Obviously, there can be no ongoing relationship any of these children have with their father because he has

died. The making of an adoption order will therefore not extinguish any continuing or existing relationships with any members of [Alani]'s wider paternal biological family.

[57] In terms of legal relationships, the making of an adoption order will give [Alani] some newly created legal rights in respect of her father/daughter relationship with Mr [Crawford]. She will become an eligible child under s 3 of the Family Protection Act 1955 and become entitled to claim provision from his estate in the event she is disentitled. Having said this, I record that I have heard evidence all seven children are included in Mr and Mrs [Crawford]'s Wills as equal beneficiaries.

[58] I hasten to add [Alani]'s older sibling, [Bethanie], will also be an eligible claimant under s 3 of the Family Protection Act, but this will only continue until she attains the age of 16 years and while she continues to be dependent on Mr [Crawford].

[59] [Alani] will be Mr [Crawford]'s legal child for the purposes of the Child Support Act 1991, although I accept being a step-parent, which he now is, will have the same legal effect.

[60] I have taken care during the course of the hearing to ensure Mr [Crawford] understands the legal implications of these matters and other factors which will impact on him if an adoption order is made, and I am satisfied he understands this.

[61] The making of the adoption order will not extinguish any legal rights [Alani] would have with her biological father, Mr [Ellis], or to his estate because he has predeceased her, and presumably any estate which he had will have been distributed. Alternatively, if it has not been distributed, [Alani] will still have the pre-existing legal right to make a claim against his estate.

[62] If an adoption order is not made, then the making of an additional guardianship order under s 27 can give legal authority to Mr [Crawford] to make guardianship decisions for [Alani], and I accept he could be appointed as a testamentary guardian in Mrs [Crawford]'s Will. I accept [Alani]'s name can be changed on her birth certificate by deed poll filed with the Registrar-General.

[63] Three points can be made about this:

- (a) Additional guardianship applications must be made by a willing applicant and testamentary guardianship appointments in a Will must be made by a willing testatrix. In this case Mr and Mrs [Crawford]'s evidence is they have not done this and would prefer this not to be the outcome for themselves or [Alani]. Their views must be considered and respected. They want the adoption order to occur for the reasons they have outlined in their evidence which I have summarised and I accept their reasons are genuinely held by them.
- (b) Additional guardianship orders and parenting orders, if made, expire at the age of 16 years for a parenting order and 18 years for an additional guardianship order. These orders can be varied or discharged at any time prior to that age. Testamentary guardianship provisions can be changed by making a subsequent Will. This means these orders are less permanent than would be the case if an adoption order is made.
- (c) If an adoption order is not made then a change of name can be effected on a child's birth certificate. The name of the child's biological father will remain on the certificate. If an adoption order is made, then it will be Mr [Crawford]'s name which will appear on the new birth certificate without the words "adoptive parent". This means if an adoption order is not made it will be Mr [Ellis]'s name which remains on the birth certificate. If an adoption order is made it will be Mr [Crawford]'s name recorded as [Alani]'s father on the birth certificate. As I have recorded, [Alani] has no knowledge, or understanding, of anything about Mr [Ellis] but can relate to Mr [Crawford] as the only father she has known.

[64] I accept the making of an adoption order will mean [Alani]'s legal status in relation to her siblings will change, but it will only change to the extent they will not be full siblings but half-siblings. For practical purposes, I consider there is little difference. [Alani] and her elder siblings will always remain biological brothers and

sisters having the same birth parents. They will know that. They will all still have the same biological mother, Mrs [Crawford], whose status in their lives will not change. No siblings will have any legal rights against the other extinguished because there were none to begin with.

[65] The evidence shows there is and remains a good relationship between all of the siblings and their mother. Undoubtedly there will be family gatherings on special days, and there will be other functions and special occasions which the children will continue to attend. In addition, if an adoption order is made [Alani] will gain a legal relationship with Mr [Crawford]'s older children, Jessie and [Rebecca] and other members of his extended family.

[66] As to the issue of surname, I accept [Alani]'s surname will change following the making of an adoption order and she will have a slightly different surname than her older siblings. It will be a hyphenated name, [Murphy-Crawford], changing from the existing name of -[Murphy-Ellis]. There will be some continuity in surname between [Alani] and her older siblings reflected in the first part of their surname of [Murphy]. It will only be the last part of [Alani]'s surname which will change.

[67] From all of the evidence I have heard, I consider there is little, if any, risk of [Alani] being disadvantaged or ostracised if this adoption order is made. As I have noted, all family members are supportive of the application.

[68] This is a case where no relationship with any of wider members of Mr [Ellis]'s family will be extinguished because none exist, or are likely to exist, and an adoption would mean [Alani] will gain a number of legal relationships with extended members of Mr [Crawford]'s family, many of whom she will already know.

[69] I accept the position would have been different had Mr [Ellis] been still alive and was playing a role in [Alani]'s life, or if there were other members of the [Ellis] family who were taking an active interest in [Alani]'s upbringing and development. The absence of any such paternal family members and Mr [Ellis] himself is a distinguishing factor in this case. No counsel have been able to point me to an already decided case with factual circumstances similar to this.

[70] Finally, and just as importantly, I have looked at the psychological security an adoption order will bring to all concerned. Mr [Crawford] will regard [Alani] as his daughter in all respects. [Alani] will regard him as her father and her dad in all respects. The legal relationships the adoption order will create are permanent and will not be able to be changed. I consider this permanent psychological security is an important factor to consider in the circumstances of this case.

[71] Following my review of the legal principles I have referred to and the evidence I have heard, I conclude the provisions of s 11(b) have been met and the welfare and best interests of [Alani] will be promoted by the adoption.

[72] In terms of s 11(c) there are no religious conditions or restrictions sought in the circumstances of this case and so this issue does not need to be considered further.

4. *Is an interim or final order required?*

[73] I am satisfied in the circumstances of this case the provisions of s 5 of the Act can be met. Special circumstances are shown. Mrs [Crawford] is [Alani]'s biological mother. Her relationship with Mr [Crawford] is stable. Mr [Ellis] has died. Mr Holdaway, on their behalf, seeks a final order being made today.

[74] I consider it highly unlikely either party would want to change their minds about a final adoption order being made in the next six month period for which an interim order must run. For these reasons, I consider the grounds in s 5(b) have been met.

**Conclusion**

[75] For the reasons I have outlined, I am satisfied the statutory criteria set out by the Act can be met and a final adoption order can be now made.

[76] I have understood and addressed the concerns which have been quite rightly raised by Ms Bowden and Ms Stewart from Oranga Tamariki. I consider those concerns, however, have been satisfactorily addressed by Mr and Mrs [Crawford] in their evidence and the submissions which I have heard.

[77] For these reasons, I have reached the view a final adoption order can be made.

### **Outcomes and orders**

[78] Having now met [Alani], as I am required to do by the Act, I make the following orders and directions:

- (a) I grant Mr and Mrs [Crawford]'s application. A final adoption order for [Alani] is made under s 3 of the Act.
- (b) Her name on any amended birth certificate is to read [Alani Murphy-Crawford].
- (c) The words "adoptive parents" are not to appear on any amended birth certificate which is obtained from the Registrar-General.

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Judge RJ Russell

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 01/11/22