

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

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**IN THE FAMILY COURT
AT HAMILTON**

**I TE KŌTI WHĀNAU
KI KIRIKIROA**

**FAM-2021-019-000715
[2022] NZFC 1081**

IN THE MATTER OF	THE STATUS OF CHILDREN ACT 1969
BETWEEN	[SKYE ATHANASIOS] Applicant
AND	[DAVIS ATHANASIOS] (DECEASED) Respondent

Hearing: 8 February 2022

Appearances: Z Kneebone for the Applicant
M Earl as Counsel to Assist

Judgment: 8 February 2022

ORAL JUDGMENT OF JUDGE N J GRIMES

[1] Today has been sent down as a formal proof hearing under the Status of Children Act 1969 for an application brought by Ms [Skye Athanasios] to have her deceased husband [Davis Athanasios] declared as their youngest child, [Rory Athanasios] born [date deleted] 2018's, father.

[2] Her application was made on 21 September 2021 and she has provided considerable evidence regarding her relationship with Mr [Athanasios], conception of

[Rory], Mr [Athanasios]' total acceptance that he was [Rory]'s father and subsequent DNA testing between [Rory] and his four-year-old brother [Joshua].

[3] The circumstances are that the parties met in 2013 and were married on [date deleted] 2014. Ms [Athanasios] has deposed of serious physical violence against her and the children by Mr [Athanasios], that the relationship was highly unstable in that Mr [Athanasios] had a methamphetamine addiction and had been unfaithful.

[4] The correspondence that she has attached to her evidence is suggestive of Mr [Athanasios] accepting this to a large extent, with his having some excuses for why he behaved in the way that he did.

[5] The parties were married at the time of [Rory]'s conception and the reason that she did not name Mr [Athanasios] on [Rory]'s birth certificate was because of the effects of the family violence he had perpetrated against her at the time. [Rory] was also a very sick little boy and needed hospital care for [some months] when he was born. She and [Joshua] moved to Hamilton from [location deleted] where [Rory] was in hospital. I can appreciate that at that time all of these events would have been overwhelming for her.

[6] Mr [Athanasios]' drug addiction led to an accidental drug overdose from which he passed away at [date deleted] and, as a result, [Joshua] obtains funding from ACC because of his father's death. In order for [Rory] to be eligible for the same level of funding, ACC require a declaration of paternity.

[7] Given the trauma that Ms [Athanasios] and the children were subjected to, and in particular were subjected to as a result of Mr [Athanasios]' adverse behaviour, such funding is necessary for the children. It will be necessary in the future, not only for their education and daily needs, but also any counselling and therapeutic assistance they may need.

[8] Subsequent to this and with the assistance of counsel to assist Mr Earl, the boys undertook DNA testing from DNA Diagnostics and the report has been submitted and

annexed to an updating affidavit from Ms [Athanasios]. It confirms that the boys have a common male ancestor.

[9] Mr Kneebone submits that not only is [Rory] presumed to be Mr [Athanasios]' son under s 5 of the Status of Children Act because the parties were married at conception, but as the DNA testing confirms that the boys have a common male ancestor, it is suggestive that Mr [Athanasios] would be their father. Mr Earl supports an order declaring Mr [Athanasios] being [Rory]'s father being made given that DNA test result.

[10] I am satisfied from all that I have read and heard that it is appropriate for the order to be made and have told Ms [Athanasios] that. She has no doubt had a very difficult time and no doubt it will be some closure for her to put this matter behind her.

[11] In all of these circumstances I grant Ms [Athanasios]' application and I now make a declaration under the Status of Children Act that Mr [Davis Athanasios] is the father of [Rory Athanasios] born [date deleted] 2018.

[12] Mr Earl's appointment is discontinued with the thanks of the Court.

[13] Mr Kneebone is thanked for his helpful submissions.

Judge NJ Grimes
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 13/02/2022