

IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY

M.116/89

IN THE MATTER of Section 10 of the
Status of Children
Act 1969

AND

IN THE MATTER of an Application
for a Declaration of
Paternity

BETWEEN

R

Applicant

AND

THE PUBLIC TRUSTEE
at Auckland as
Administrator of the
Estate of Y
late

Defendant

Hearing: 24 July 1991

Judgment: 24 July 1991

Counsel: Douglas Blaikie for applicant
David Shanahan for defendant
Sonya Clapham for H: Y
Brian Carer for Me and Mic Y

ORAL JUDGMENT OF THOMAS J

In this proceeding the applicant, Mrs R, seeks
an order declaring that the late Mr Y is the
father of one Q
("Q'), who was born at Kawakawa on
1976. The application is made pursuant to s 10
of the Status of Children Act 1969.

I appreciate that in considering an application of this nature the Court is required only to be satisfied on the balance of probabilities that the deceased was the father of the child. However, no fine point as to the onus or standard of proof arises in this case. I entertain no doubt that the late Mr Yi was indeed the father of Qi

The deponents who have filed affidavits in support of the application have been capably cross-examined by Ms Clapham and Mr Carter. Ms Clapham appeared on appointment by the Court for one He and Mr Carter appeared for Me and Mi, the beneficiaries in the estate of the late Mr Yi.

I was considerably impressed with the evidence of Mrs H, the mother of Qi; Mrs R, her grandmother and the applicant; and Mrs B, the first wife of the late Mr Yi. Their evidence was convincing, not only in the manner in which it was given but in terms of the substance and detail of what they had to say. Allowing for the usual minor discrepancies, overall a clearly consistent account of the late Mr Yi's parenthood of Qi emerged from their evidence.

It appears that in early 1975, when H was living with her mother, Mrs R, at Moerewa, Mr Yi and his then wife, Mrs B, came to live on the property. They resided in a garage adjacent to Mrs R's house. The occupants of the house were Mr and Mrs R and their children. Mrs B was frequently absent at work and a sexual relationship developed between Mr Yi and H. It appears to have been an intimate, close and warm relationship which Mrs P still recalls with some

affection. I am satisfied that, prior to the intimacy which took place between her and Mr Yi she had had no prior sexual experience.

Some time later in 1975 Mr Yi and his wife, Mrs B , moved to their own residence. But H P continued to see Mr Yi when she visited their house to babysit for her sister. The sexual relationship between Mr Yi and H P continued during that time.

When H P was four months pregnant, Mr Yi suggested to her that she might be pregnant. She was apparently showing some signs of the pregnancy. She described quite vividly in her evidence how she was ignorant of such matters, and it was clearly something of a shock to her to learn that she was pregnant.

Shortly after this discussion, Mrs R was told of the pregnancy by H . She was most upset. It was a tearful occasion between mother and daughter. Mrs R was told at that time that Mr Yi was the father. She told her husband of this fact, but no-one else.

From the time Q was born Mrs R looked after her and brought her up as if she were her own child. Indeed, as Mr Blaikie elicited in evidence, Mrs R regarded the younger Q as being an adopted member of her family in the Maori tradition.

It may, on the face of it, seem strange that Mrs R took no steps to establish that Mr Yi was the father, and that she did not later seek some assistance by way of maintenance or otherwise for the upbringing of the child. But these matters were fully explained in evidence. They have to be viewed in the context of this family setting. There was concern that H P was at the time under

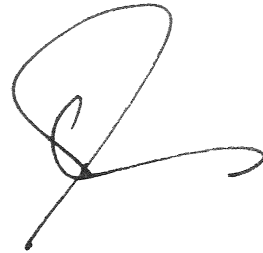
16 years of age and that Mr Yi would be therefore liable for criminal prosecution. Mrs R also desired to keep the knowledge of the fact that Mr Yi was the father from her daughter, Mrs B - although it appears that Mrs B was aware of this from direct conversations with her husband. Even so, it is clear that Mrs R is a good soul and she did not want to place a burden on her daughter's marriage. Then, Mrs R made no effort to seek any form of maintenance from Mr Yi simply because she regarded Q as her own child. This might also have made matters difficult for her daughter, Mrs B .

Mrs B also gave convincing evidence of how she learned of H P 's pregnancy. H told her when she was about four months pregnant that her husband was the father when she was at her mother's house. Mr Yi was present at the time. Mrs B was most upset and physically attacked her sister. The conversation was such as to confirm that Mr Yi accepted that he was the father. Indeed, he was apologetic.

Mrs B stormed out of the house and returned to her home. She was followed by her husband some two hours later. Again a stressful scene took place at which Mr Yi , on his knees, apologised profusely for the relationship which had occurred with H P . In order to minimise his involvement he claimed that there had only been one occasion on which sexual intercourse had taken place. However, I am satisfied that the sexual liaison had continued for some time from the beginning of 1975 up until the time it was discovered that H P was pregnant. The fact that Mr Yi was the father of H 's child continued to gnaw at the marriage and Mr Yi and Mrs B finally separated.

Entertaining no doubt that Q1 is the child of Mr Y1, I am therefore prepared to make the required order.

I declare that Mr Y1 is the father of Q1 born at on 1976.

A handwritten signature in black ink, consisting of a large, stylized initial 'Q' followed by a horizontal line that ends in a small loop.

Solicitors:

Palmer Macauley & Blaikie, Kaikohe, for applicant
Public Trust Office, Auckland, for respondent
Castle-Brown, Newmarket, for H: Y1
McVeagh Fleming, Manurewa, for Me and Mi Y1