

**IN THE HIGH COURT OF THE COOK ISLANDS**  
**HELD AT RAROTONGA**  
**LAND DIVISION**

Adoption Number 136/93

**IN THE MATTER** of Part XV of the Cook Islands  
Act 1915

**AND**

**IN THE MATTER** of an application by JOHN  
TEATUOKORO DEVVON  
ARBUTHNOTT of Rarotonga,  
Mechanic and NIIMETUA  
ARBUTHNOTT, his wife to  
adopt a child

Mr Arnold for the Applicant  
Mr Natoli for the Mother of the Child

Date of Judgment : 2<sup>nd</sup> February 1995

**JUDGMENT OF DILLON J.**

The Court has already considered in a preliminary way this application for adoption and as a result issued a Memorandum for Counsel. The principal purpose of that Memorandum was to ensure that Mr Natoli, the Barrister acting for the mother of the child proposed to be adopted, was fully advised on the law relating to adoptions in the Cook Islands and was able to advise Mrs Thompson, the mother of the child, on her legal rights relative to the granting or withholding of her consent to the proposed adoption. Since that Memorandum Mr Arnold has forwarded copies of all the documents to Mr Natoli. He in turn has responded by correspondence dated 10 February 1994. In that correspondence Mr Natoli corrects certain allegations that have been included in the papers that were filed and which Mrs Thompson challenges. That correspondence concluded with this statement by Mrs Thompson's solicitor, namely :

"Finally that my client only has the best interests of the child at heart and is sure that any decision made by the Honourable Court will also be based upon the child's best interests."

Since that letter Mr Arnold, by correspondence to the Deputy Registrar of the High Court dated 10 March 1994, has set out in some detail the issues which he believes are relative for the Court's consideration; the four New Zealand cases to which he refers supporting the dispensation of consent under certain circumstances; and generally submitting that it would be in the best interests of the child proposed to be adopted to have that adoption concluded by dispensing with the natural mother's consent for the reasons included in the application, the probation report and the correspondence.

It is significant that Mr Arnold forwarded a copy of that comprehensive submission to Mr Natoli but there has been no response.

This child, Marion, was born in Rarotonga on 19 December 1985. In December 1986 the mother, Mrs Mary Thompson, left Rarotonga for New Zealand and is now living in Australia. John Arbuthnott, one of the applicants and the father of Marion, has had custody of her since 1986. She is therefore now nine years old.

The Court has no information from Mr Natoli as to Mrs Thompson's circumstances in Australia. The Court has a comprehensive and very detailed probation report on the applicant's circumstances, housing conditions and conduct towards Marion. The Court has been advised that she is aware of her mother and the circumstances surrounding the adoption. It is clear that the maternal grandparents of Marion are very supportive and they also live in Rarotonga. Of equal significance is the clear undertaking which Mr Arnold has been authorised to make on behalf of Mr and Mrs Arbuthnott relative to reasonable and generous access in the event of the natural mother returning to Rarotonga in the future.

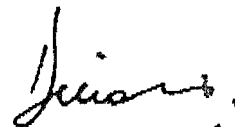
The law relating to adoption has been explained in the Memorandum issued by the Court previously. There was a suggestion that the maternal grandparents of Marion were concerned that an adoption may deprive her of land entitlement on their death. That would not apply as has already been explained.

The Court at one stage gave consideration as to whether or not the application should be deferred until Marion was twelve years of age when she could then give formal consent in accordance with the legislation. In view of the fact that she has been made aware of the circumstances of the adoption and accepts her foster mother, this course of action seems unnecessary and could have

a counter-productive effect on Marion settling into the family atmosphere.

Taking into account that Marion has been solely with her father since 1986; that the Court has no information as to Mrs Thompson's circumstances in Australia; that there has been no expression by Mrs Thompson of wanting custody of Marion; and finally, and very importantly in the Court's view, on the undertakings set out by Mr Arnold in his letter dated 10 March 1994 on behalf of Mr and Mrs Arbuthnott, the Court is satisfied that in the words of Mr Natoli on behalf of Mrs Thompson it would be in the best interests of Marion for the adoption to proceed and for Mrs Thompson's formal consent to be dispensed with.

There will be an Adoption Order accordingly.



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Dillon J.