

SUPREME COURT OF QUEENSLAND

CITATION: *Re: Fleetwood* [2012] QSC 325

PARTIES: **IN THE MATTER of the *Status of Children Act 1978* (Section 10)**
and
IN THE MATTER of an Application by Charles Henry William Fleetwood
(applicant)

FILE NO/S: BS 5064 of 2012

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 24 October 2012

DELIVERED AT: Brisbane

HEARING DATE: 18 June 2012 and 26 September 2012

JUDGE: Martin J

ORDER: **I declare that Leopold Pitt, also known as Leo Pitt, also known as Lionel Sydney Pitt, was the father of Grace Muriel Finlayson.**

CATCHWORDS: FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE LEGISLATION – LEGITIMATION – DECLARATION OF LEGITIMATION – where applicant seeks declaration that a person was the father of his mother under s 10 *Status of Children Act 1978* – whether applicant has a “proper interest in the result” – whether all affected persons have had opportunity to make representations to the Court – whether declaration should be made

Re Bournes & Johnson [2002] QSC 457, considered
Re Pellitteri [1991] 1 Qd R 154, applied

COUNSEL: CHW Fleetwood (in person) for the applicant

SOLICITORS: CHW Fleetwood (in person) for the applicant

[1] The applicant seeks a declaration under s 10 of the *Status of Children Act 1978* (‘the Act’) that Leopold Pitt (deceased), also known as Leo Pitt and Lionel Sydney Pitt, was the father of Grace Muriel Finlayson (‘the Deceased’).

- [2] The applicant is a son of the Deceased, who was born on 19 August 1906 and died on 1 March 2003. Her father's name is not recorded on either her birth certificate or her death certificate.
- [3] The applicant has previously engaged in correspondence with the Registry of Births, Deaths and Marriages and was informed that "the Registrar-General is not able to establish without reasonable doubt that the documentation provided identifies the biological father of Grace Muriel Finlayson".
- [4] Section 10 of the Act relevantly provides:

"10 Declaration of parentage

(1) A person who –

- (a) alleges that any named person is the parent of her child;
- or
- (b) alleges that the relationship of parent and child exists between the person and another named person; or
- (c) having a proper interest in the result, wishes to have determined the question whether the relationship of parent and child exists between 2 named persons;

may apply to the Supreme Court for a declaration of parentage and the Supreme Court may, if it is proved to its satisfaction that the relationship exists, make a declaration whether the parent or the child or both of them are living or dead.

...

(4) The Court shall not make or revoke a declaration under this section unless the Court is satisfied that, so far as is reasonably practicable, all persons whose interests are or may be affected by the declaration or revocation are represented before or have been given the opportunity of making representations to the Court upon the subject matter of the proceedings."

- [5] There are two preliminary issues that have to be decided: first, whether the applicant is a person who has a "proper interest in the result"; and secondly, whether all persons whose interests are or may be affected by the declaration have been given the opportunity of making representations to the Court.

"Proper interest"

- [6] The applicant seeks the declaration as a person who has a "proper interest in the result". The term proper interest is not defined in the Act and there does not appear to have been judicial consideration of its meaning. The only Queensland decision that involved an applicant other than one within ss (1)(a) or (b) is *Re Bournes & Johnson*.¹ In that case, Holmes J (as her Honour then was) considered an application under s 10 brought by both the mother and the grandmother of a child. There was no suggestion that the child's grandmother was not a person who had a proper interest in the result.

- [7] A proper interest might be demonstrated in a number of ways. One such interest could be financial where, for example, an applicant might benefit through the

¹ [2002] QSC 457.

distribution of an estate. Another interest is the type in this case – where the interest is familial. The applicant has an interest in knowing who his mother’s father and, thus, his grandfather, was. I am satisfied that the applicant, as a direct descendant of the Deceased, has a proper interest in the determination of the relationship between the Deceased and Mr Pitt.

Affected parties

- [8] The second issue is whether all affected persons are represented or have had the opportunity to make representations to the Court. The Deceased’s Death Certificate discloses that she had two sons – the applicant (Charles Henry William Fleetwood) and Trevor John Fleetwood. She was married to Charles Henry Fleetwood, but he died in 1952. Trevor Fleetwood states in a letter that he is aware of and fully supports the application brought by his brother. Their mother’s estate was wound up many years ago and there is nothing to suggest that Leopold Pitt’s estate could be affected in any way. There is no further information contained in the documents the applicant has been able to obtain as to anyone else whose interests may be affected by the declaration. Given the time which has elapsed since the death of the deceased I am satisfied that the only other person likely to be affected by this decision has had the opportunity to make representations.

The standard of proof

- [9] In *Re Pellitteri* Thomas J (as his Honour then was) said, in relation to the standard of proof in s 10:²

“... I do not think it is seriously arguable that the criminal standard (or its equivalent) applies to such determinations. Having regard to the nature of the issues I would not be prepared to make the essential finding on a mere balance of probability (i.e. a 51 per cent finding, or a satisfaction that the scales tilt slightly more in one direction than the other). I do not wish to lay down any particular level of necessary satisfaction, but, for myself, would not be prepared to make the necessary finding that the applicant is in fact the father of this child unless I held what is sometimes referred to as a ‘comfortable’ satisfaction that this is indeed true.”

- [10] This standard has since been applied in *Re Cressy*³ and *Re Wintour*.⁴

The evidence

- [11] The applicant relied, not surprisingly, on a number of documents which he had obtained relating to the Deceased and the person he claims was his mother’s father. They include the Deceased’s death and birth certificates to which reference has already been made.
- [12] The most compelling piece of evidence consists of a copy of a page from the Roll of Carragher Nursing Home in Rockhampton. From other material provided I am satisfied that that nursing home was established under the *Infant Life Protection Act* 1905. This was legislation enacted in most States and which was drawn from a

² [1991] 1 Qd R 154, 158.

³ [1993] QSC 216.

⁴ [2002] QSC 173.

similar statute in the United Kingdom. One of its purposes was to regulate the manner in which children born out of wedlock might be cared for when the mother was unable to do so. It was a provision of that Act (s 9) that a Roll had to be kept of the details of “each infant retained in or received into ... care or charge.”

- [13] The person who conducted the nursing home was required by s 9 to “enter in such roll opposite the name of each infant ... the full names and places of residence and occupations of its parents ... and also particulars of the periodical payments, if any, to be made in respect of such infant and by whom they are to be made.”
- [14] I am satisfied that the Deceased did live in that nursing home for the first two months of her life and that the extract of the Roll concerns her. The name of the infant is the same as the Deceased’s, the birth date is the same, and the mother’s name is the same as that which appears on the Deceased’s birth certificate. Leopold Pitt is named in the roll as the father and as the person who was to make the periodical payment in respect of the infant.
- [15] There is other evidence which demonstrates that, in May 1906, a Leo Pitt had been living in the Rockhampton area for some two and a half years.
- [16] The applicant has included other material which suggests that Leo or Leopold Pitt’s true name was Lionel Sydney Pitt. The name Lionel Sydney Pitt (but not Leopold Pitt) appears on the electoral roll as living at Lake’s Creek. Lake’s Creek was a place within the Capricornia District.
- [17] Leopold Pitt’s occupation is listed on the Nursing Home Roll as “Cattle buyer at Lake’s Creek”. Leo Pitt is described in other material as being employed by the Central Queensland Meat Export Company at Lake’s Creek.
- [18] At this remove, and considering the circumstances of the deceased’s birth, it is not surprising that there is a paucity of direct evidence. But the material conveys such a number of similarities as to exclude coincidence. On the whole of the material, I am satisfied to the requisite degree that Leopold Pitt was Grace Muriel Finlayson’s father. I am similarly satisfied that Leo or Leopold Pitt were names also used by Lionel Sydney Pitt.
- [19] I declare that Leopold Pitt, also known as Leo Pitt, also known as Lionel Sydney Pitt, was the father of Grace Muriel Finlayson.