

**NOTE: PURSUANT TO S 437A OF THE CHILDREN, YOUNG PERSONS,
AND THEIR FAMILIES ACT 1989, ANY REPORT OF THIS PROCEEDING
MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT
1980. FOR FURTHER INFORMATION, PLEASE SEE
[HTTP://WWW.JUSTICE.GOV.T.NZ/COURTS/FAMILY-
COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).**

**IN THE FAMILY COURT
AT HUTT VALLEY**

**FAM 2015-096-000232
FAM 2015-096-000547
[2016] NZFC 1627**

IN THE MATTER OF the Children Young Persons and Their Families
 Act 1989

 CJ born on [date deleted] 2014
 Child or Young Person Application is About

BETWEEN CHIEF EXECUTIVE OF THE MINISTRY OF
 SOCIAL DEVELOPMENT
 Applicant

AND TM AND XJ
 Respondents

Hearing: 19 January 2016

Submissions Filed 29 January 2016

Appearances:

 CP Bridgeman for the Chief Executive
 KJ Patterson for the Respondent M
 BA Nathan for the Respondent J
 SE Hughes as Lawyer for Child

Judgment: 11 March 2016

JUDGMENT OF JUDGE A P WALSH

[Permanent Placement]

Introduction

[1] The Court is required to determine, under the Children Young Persons and Their Families Act 1989 (the Act) whether –

- (a) CJ born [date deleted] 2014 should remain in the permanent care of his caregivers; or
- (b) his mother, TM, should be given a further opportunity to be his long term primary caregiver.

[2] XJ, the father of CJ, is presently in custody. He supports the mother having the care of CJ. Upon his release he will seek access to CJ.

[3] The Chief Executive – Ministry of Social Development (MSD) has custody of CJ pursuant to a s 78 order. MSD has filed a plan under s 135: the goal of the plan is a “*Home for Life*” for CJ with a maternal uncle and aunt, TF and MF. MSD seek the discharge of the s 78 order, the making of a s 101 custody order placing CJ in the custody of MSD and an order under s 110 appointing MSD an additional guardian. The mother opposes the applications and seeks the return of CJ to her care.

[4] The resolution of these proceedings requires careful weighing of the evidence, in particular risk factors, having regard to the provisions of ss 5 and 13 of the Act under the overarching provision of s 6 which mandates the welfare and best interests of CJ is the first and paramount consideration.

Background

History of Care and Protection Issues

[5] On 27 May 2015 MSD applied without notice and obtained interim custody of CJ pursuant to s 78. On 4 June 2015, by consent, a declaration was made pursuant to s 67 declaring CJ was in need of care and protection on the grounds set out in s 14(1)(a) and (b).

[6] MSD had become concerned, despite interventions being monitored by MSD, CJ's parents behaved in ways which raised concerns for his safety and overall for his welfare and best interests.

[7] The parents separated in August 2014 after an incident of family violence. The mother had obtained an interim parenting order under the Care of Children Act 2004 on 23 October 2014 granting her the day-to-day care of CJ. She had also obtained a final protection order against the father on 26 February 2015 under the Domestic Violence Act 1995. The father's mother was recorded as an associated respondent on the protection order.

[8] The without notice application on 27 May 2015 was triggered by concerns the mother was using methamphetamine, had threatened to harm Mrs MF and remove CJ from her care. Mrs MF informed the police about the threat. The maternal grandmother had contacted Mrs MF about her concerns relating to the mother's behaviour.

[9] For some time there had been ongoing concerns for CJ's welfare and best interests while in the care of his mother. Between 16 October 2013 to 10 May 2015 MSD had received numerous reports of concern about -

- The mother had previously attempted suicide by hanging.
- The mother had driven under the influence of alcohol and attempted to run over a previous partner.
- There had been multiple family incidents between the father and mother with each being the victim and aggressor at different times.
- Violence used by the father and mother towards extended family.

- Physical confrontations between KJ(the father's mother) and the mother during contact handover of CJ.
- Intoxication of the father.
- The father threatening to kill the mother and her unborn child resulting in him being arrested and charged with threatening to kill and male assaults female.
- Ongoing violence in the home with the mother.
- Ongoing violence between the mother, the father and the paternal grandmother.
- The father breaching a Police Safety Order and being arrested.
- The mother's use of alcohol and other drugs and possible undiagnosed mental health issues.
- Incident on 25 February 2015 involving alleged assault of father and paternal grandmother by the mother.
- On 10 May 2015 the mother had breached bail conditions. The father and mother were involved in a physical altercation.

[10] In July 2014 MSD considered there were care and protection concerns for CJ as he was being exposed to ongoing family violence. It was alleged the mother did not follow through with police statements and minimised CJ's exposure to violence.

[11] On 22 October 2014, 11 November 2014 and 17 February 2015, Family Group Conferences had been held to consider care and protection issues affecting CJ.

[12] At the family group conference on 22 October 2014 it was agreed CJ was in need of care and protection on the grounds set out in s 14(1)(a) and (b), but he was to remain in the care of the mother. It was recorded the mother and father would live

apart and address issues relating to counselling, alcohol and other drugs and anger management. Assessments for alcohol and other drug issues were to be undertaken. A comprehensive plan was agreed for a period of six months.

[13] The family group conference was reconvened on 11 November 2014. The father was not present on this occasion. The goal was still for CJ to remain in the care of the mother. Matters to be addressed by the mother and father were reviewed. The mother agreed to continue addressing her issues. There were issues about her relationship with a new partner MW and inquiries were to be made about this relationship. The mother acknowledged if there was a further incident that caused the social worker to consider CJ was unsafe, he would be placed in family care until the family group conference reconvened. Five agencies – Family Start, Protected Persons Programme, Police Family Safety Team, Whanau/Family Support and MSD were involved in providing assistance and support. It was agreed to reconvene the family group conference in three months.

[14] At the reconvened family group conference on 17 February 2015 it was agreed CJ was to be placed with Mr and Mrs FJ. He would return to the mother's care when she had completed all the tasks set out in the family group conference plan and was able to provide a secure and stable environment free of alcohol, drugs and violence. The mother and father attended the conference. There was to be an informal review of the family group conference plan in three months and a formal review in six months. A contingency plan recorded, if CJ's placement broke down then he would be placed with relatives in Brisbane, Australia until a permanent family placement was arranged.

[15] During the period 22 October 2014 to 17 February 2015, despite the comprehensive provisions of the family group conference plan, ongoing care and protection issues for CJ continued to arise. On 5 November 2014, when the mother took CJ to see the father, she was physically assaulted by him and suffered injuries. The police were notified. She made a formal statement and the father was arrested for assaulting her. He remained in custody until 5 February 2015.

[16] As noted, at the reconvened family group conference on 11 November 2014, the mother disclosed she had entered into a relationship with Mr MW. It transpired they had been in a relationship for a few months and were living together. The

Police Family Safety Team and Probation confirmed MW had requested to be bailed to the mother's address after being charged for drug offences. MSD was advised MW had a history of family violence; it became concerned the mother had entered into the relationship with MW who had patterns of behaviour similar to those of the father, compromising the mother's care of CJ. Later the mother claimed she was no longer in a relationship with MW and he had left the home. On 5 January 2015 the police notified MSD the mother and MW were still in a relationship.

[17] On 5 February 2015 the father was released from prison on electronic bail. The police reported the mother had driven to the father's address on 7 February 2015. She was described as being in a distressed state and unable to cope with being a single mother with no support. The mother and CJ stayed overnight.

[18] At a meeting on 9 February 2015 Ms Cook, CJ's social worker, discussed the information she had received from the police with the mother. It was alleged the mother became verbally abusive and threatened to place CJ in the care of the maternal grandfather and his partner; they had just arrived in New Zealand from Australia. Later, on 9 February 2015, the maternal grandfather's partner advised Ms Cook the mother had jumped out of their moving car. When the grandfather and the partner tried to reason with the mother she came back to the car and grabbed CJ. The mother then ran away with CJ stating she was not going to comply with the arrangements.

[19] On 13 February 2015, Ms Cook cited text messages received by the maternal grandfather and his partner from the mother, one of which referred to using a gun if needed.

[20] Ms Cook obtained a place of safety warrant for CJ on 13 February 2015. She advised the mother that unless she complied with the contingency plan agreed at the family group conference she would have no choice but to place CJ in the care of MSD. The mother, who had travelled to the home of the maternal grandmother in Christchurch, returned to Wellington and handed CJ to the maternal grandfather and his partner. He remained in their care until the reconvened family group conference on 17 February 2015.

[21] After the reconvened family group conference on 17 February 2015 there were further developments:

- The police advised MSD on 27 February 2015 there had been an incident on 25 February 2015 when the mother allegedly attacked and injured the paternal grandmother. She had used an axe and knife to damage a garage door.
- The mother maintained the father had been on drugs on 25 February 2015 and had assaulted her. She denied attacking the father and his mother.
- On 8 March 2015 the police advised MSD the mother had been arrested on 7 March 2015 and charged with assault with a weapon and assault, arising out of the incident on 25 February 2015. She was released on bail.
- Although MSD was advised by Mental Health Services there were no concerns for the mother's mental health, Ms Cook continued to have "*grave concerns*" for the mother's mental health.
- On 31 March 2015, Ms Cook advised the mother MSD no longer supported CJ returning to her care; a family placement would be sought. The mother advised MSD she was pleading not guilty to the charges. She produced paperwork indicating she had attended counselling and had made appointments to start a parenting programme and complete other alcohol and drug assessments.
- On 21 April 2015, Ms Cook and another social worker met with the mother and members of her family. The mother denied there were any care and protection issues for CJ. She blamed the father and MSD for the situation and left the meeting. She was described as being "*aggressive and threatening*". Members of the maternal family present at that meeting expressed concern about the mother's mental health and her behaviour at the meeting; they supported CJ remaining in family care.

- Ms Cook met with the father and his mother on 22 April 2015. The father denied anything had occurred on 25 February 2015. His mother disagreed with him and he became verbally abusive to her.
- On 7 May 2015, the family group conference was reconvened but no agreement was reached.

[22] The ongoing violence between the mother and the father continued. The police alleged the mother breached her bail on the weekend of 10 May 2015. While at the home of the father, a fight resulted with the parties physically attacking each other. During this confrontation the father received a cut to his side caused by the mother allegedly striking him with a broken cup. There was ongoing concern about the negative behaviour between the parents and their lack of insight as to how their behaviour impacted negatively on CJ.

[23] Given the alleged history of violence between the mother and the father, MSD applied for custody of CJ. Although the parents had begun to engage with services and start programmes, the confrontation on 10 May 2015, combined with the mother's possible alcohol and other drug use and undiagnosed mental health issues, indicated the parties had not developed any insight into their behaviour and could not protect CJ.

The Mother's Position

[24] The mother objected to the goal of the plan being "*home for life*" with family/whanau; she wanted CJ returned to her care and opposed the making of the ss 101 and 110 orders. She acknowledged she had made "*some bad decisions in the past 12 months*"; these "*bad decisions*" had impacted negatively on her ability to care for CJ. She was prepared to own up to her mistakes and accept responsibility for her actions.

[25] The mother accepted she had made a mistake by taking CJ to see the father on 5 November 2014, after the temporary protection order had been granted on 23 October 2014. She claimed she did not understand how court orders worked and denied she had intentionally disregarded the orders. After the father had assaulted

her she made a complaint to the police. He was arrested and charged with breach of protection order.

[26] At the family group conference on 11 November 2014, the mother was forthcoming in telling the meeting about her new relationship with MW. While she was aware MW's history was "*not exactly glowing*" she did not know the extent of his criminal history or previous violence. After Ms Cook had carried out inquiries and ascertained details of MW's full criminal history, the mother said she had also found out about his past and had decided to separate from him to ensure her safety. She denied remaining in a relationship with MW.

[27] The mother denied CJ was present when she had gone to meet the father on 5 February 2015. There was an argument because he was drinking alcohol in breach of his bail. The police were called, but she said there had been no physical violence.

[28] At the meeting on 9 February 2015 the mother acknowledged she had become frustrated; she felt she was doing everything required of her by MSD but was struggling to deal with the difficult and conflicting emotions she was experiencing. She did not have a good relationship with the partner of the maternal grandfather. She alleged there was a scuffle between the partner and herself after she had placed CJ into a car seat. When she tried to remove CJ from the seat the maternal grandfather had started to drive off.

[29] By 9 February 2015 the mother was overwhelmed by what was going on. She felt under pressure because the father was in prison, she was trying to parent CJ by herself and believed MSD and members of her family were putting her under pressure. She decided to take CJ and see her mother in Christchurch. She indicated she would return for the family group conference to be reconvened on 17 February 2015. She alleged, when she spoke to Ms Cook, she was threatened with the execution of the safety warrant. Upon her return to Wellington CJ was placed in the care of the maternal grandfather and his partner.

[30] On 25 February 2015, the mother had gone to see the father in the Wairarapa in response to texts from him. On arriving at the property she observed the father was consuming illicit drugs. She was then confronted by the father's mother who appeared to be intoxicated and was abusive. When the mother informed her about

the father using illicit drugs, she claimed the father's mother reacted by attacking her and placing her in a neck lock. The father intervened and removed his mother. Before the mother could leave she had to retrieve her handbag and keys which she had left in a garage. When she tried to open the garage door the father's mother assaulted her. The mother used a small garden trowel to hit the door in an attempt to stop the attack. When the father's mother released her the mother fell to the ground. She started kicking the door because she was desperate. The father then threw her handbag out with the keys inside. The mother was able to drive away.

[31] She made a statement to the police, but was later charged with assault with a weapon and common assault. She pleaded not guilty to the charges. She refuted claims she had attacked the father and his mother with an axe or knife, claiming she had acted in self defence. On 14 August 2015 she was found not guilty on the charge of assault with a weapon. She was found guilty on the assault charge.

[32] As to concerns about her mental health, the mother said she had been suffering from depression, arising from grief after the removal of CJ from her care. She denied there were any grounds to have "*grave concerns*" about her mental health.

[33] The mother acknowledged she was extremely upset at the meeting on 21 April 2015; she became defensive and lashed out at the maternal grandfather and his partner. She acknowledged she had blamed other people "*because it was easier than accepting that I had not done the right thing by my son*". When she walked out of the meeting she felt overwhelmed.

[34] On 4 May 2015, the mother had become very upset and emotional because she would not be able to spend time with CJ on his first birthday. She felt hopeless about the situation. She confirmed she had picked up a dog leash that was on the ground and considered briefly ending things by suicide, but did not go further. She denied she had attempted suicide. The maternal grandfather had come into the garage and saw her holding the leash. It appeared he thought she was going to self harm and he removed the leash. An ambulance was called. After discussions with her, the paramedics decided there was no need to get assistance from the crisis assistance team. She denied she was drunk on that day.

[35] The mother accepted she had breached her bail conditions by travelling to see the father on 10 May 2015, but at the time she was in “*a state of extreme distress*”. She had not seen CJ for almost a month and it was Mother’s Day. The father had sent her text messages about being a family and she was feeling very vulnerable. There was an argument. The police were called, but she denied any incident involving a broken cup. She subsequently pleaded guilty to the breach of bail.

[36] The mother denied telling her mother on 27 May 2015 she had used methamphetamine, or that she would stab MF. She maintained she had never used methamphetamine, or made any threat to harm MF. She disputed Ms Cook’s account of the telephone discussion on 27 May 2015. She accepted her mother may have warned Mrs MF that she was not in a good space as a result of CJ being removed from her care.

[37] The mother did not accept Mr and Mrs F were appropriate caregivers. Since CJ had gone into their care, she claimed his health had declined. Although she remained a guardian of CJ, she had not been consulted about health issues relating to him. She was dissatisfied over contact arrangements and alleged Mrs F changed arrangements at the last minute. She had lost trust in Mrs F’s ability, or willingness to communicate with her and did not believe she was an appropriate caregiver for CJ.

[38] The mother disputed the goal of having CJ placed in a home for life with family; she believed he should be returned immediately to her. She accepted she had work to do on her parenting and decision making skills, but believed if MSD and the family supported her she could make the necessary significant changes. She maintained MSD had been too quick to decide CJ needed a home for life with her family. She asserted MSD should be doing everything possible to assist CJ’s return to her care.

[39] Although the mother acknowledged there were other issues for her to address, she argued MSD were forever “*shifting the goal posts*” about issues she had to address. She felt MSD were “*playing a game with my child’s life, a game that I simply have no chance at winning because [MSD] are constantly finding flaws in my judgment and exploiting them to justify their actions in respect of how they have dealt with my family*”. She contended the “*responsibilities*” for her to address were

vague. There was no real way of monitoring her progress; her responsibilities needed to be more detailed so they accurately reflected the concerns of MSD.

[40] The mother took issue with MSD insisting all access with CJ was to remain “*child focused*”. She had been the primary caregiver. She cherished every moment spent with CJ and was adamant she was focused on his welfare and best interests.

[41] The mother felt strongly CJ had been taken wrongly from her care, she was being set up to fail by MSD and that it was “*a no win situation*”.

[42] The mother acknowledged, during her relationship with the father, he was violent to her. There had been occasions where their actions resulted in CJ being exposed to violence. She regretted this had ever occurred. While she was aware the father was violent, she wanted to believe he was telling her the truth when he said he would not hurt her again and wanted to be a family. During her relationship with the father there had been good times. She had struggled to make a choice as to whether it was in CJ’s best interests that she and the father attempt to work things out so they could be a family, or whether it was in his best interests the parties separated and CJ spend less time with the father. She acknowledged she had made the wrong decision at the time. She rejected any suggestion she had neglected the care of CJ, maintaining throughout she had been conscientious in her care of him.

[43] Addressing the family group conference plans which required her to attend programmes and courses the mother said she had completed the following tasks:

- (a) Counselling as part of the protected persons counselling programme. This counselling had dealt with general issues and also anger management.
- (b) Engaging with Naku enei Tamariki Ora to address anger management, parenting programmes and living without violence. She attended the “*Parenting Through Separation*” and produced a certificate of her attendance at that programme. She had also attended “*Your Moving Baby*”, “*Toolbox Parenting*” and “*Plunket Parenting Style*” courses. She had completed an assessment with Porirua Stopping Violence,

however, as she had been the victim of domestic violence she was referred back to her one-on-one counsellor.

- (c) She had undergone an alcohol and other drug assessment. This assessment was dated 1 April 2015. The assessment noted any erratic behaviour displayed by the mother appeared to be the result of circumstances relating to her upbringing and subsequent violent relationship with the father. It appeared she had been the victim of an abusive relationship and had difficulty staying away from her abusive ex-partner. There was no evidence to suggest she had a drinking or drug problem.
- (d) She had contributed financially to the care of CJ by buying toys, clothes and other necessities.
- (e) She had tried to be available for contact by her social worker. It had been necessary for her to change her phone number several times to avoid receiving unwanted text messages and calls. She had endeavoured to keep her social worker advised of her new phone number.

[44] After CJ had been removed from her care, the mother suffered from grief induced depression and anxiety. She had consulted her doctor regularly and at one stage was prescribed medication for panic attacks. She no longer took medication and felt a lot calmer. She disputed having any further mental health issues. She produced details of her medical history for the period 20 August 2014 until 17 April 2015.

[45] The mother continued to have regular one-on-one counselling, apart from a break of a couple of months when she was overwhelmed by events.

[46] As events unfolded over the previous 6 - 12 months, the mother's family relationships had become fractured. When CJ was removed from her care she felt her family were out to get her and no one was on her side. In hindsight she now realised everyone was putting CJ's needs first. She was now working hard to rebuild

her relationships with her family. She produced correspondence from family members confirming their support for her.

[47] Overall the mother acknowledged there had been aspects of her life requiring change. She needed to reassure MSD and her family she was now capable of keeping CJ safe. Her grandmother was prepared to provide support and she was able to live with her. To enable her to *“be the best mother possible”* she confirmed she would need support and assistance from her family, external agencies and MSD. She also considered it was important MSD understood how this ordeal had completely overwhelmed her and time was needed to put matters right.

[48] Ms Cook filed an affidavit in response to the mother’s affidavit. She disputed the mother’s claim the relationship between her and MW had ended in approximately November 2014. She believed the mother in fact had continued a relationship with MW and had lived with him on and off during the previous few months. There had been an incident on 19 June 2015 involving the police. The Police Family Violent Report recorded a Police Safety Order had been served. It appeared there had been a dispute between the mother and MW over his belongings. MW was subsequently arrested. She also produced a family violence report from the police regarding an incident which occurred on 31 July 2015 involving the mother and MW. This family violence report noted:

M is a red victim who has 40 family violence occurrences, two of which involve MW, with her last occurrence being on 24 June 2015 and involved MW. MW has 11 family violence occurrences.

[49] After speaking to the mother and MW, the police served a Police Safety Order served on the mother. It was recorded MW lived at another address and agreed to stay there that night while the mother stayed at her address.

[50] The following comments were recorded in the Police Family Violence report:

It was obvious that M had been the aggressor tonight due to her admitting that she had caused the argument to escalate by getting angry and yelling. It was also obvious that both parties were not telling police the full truth about what had happened tonight.

[51] Ms Cook disputed the mother’s account of events which occurred at the meeting on 9 February 2015. She had contacted the mother to encourage her to hand

CJ over to family as an alternative option to an application being made for a s 78 order which would result in CJ having to be placed with non-family. Ms Cook claimed she had tried repeatedly to contact the mother; when she did she was given various explanations about CJ's health and where she was residing.

[52] When she obtained the place of safety warrant, Ms Cook said there were concerns for CJ. She told the mother, if she did not return with CJ from Christchurch, police and social workers would action the warrant. As the mother returned to Wellington the warrant was not actioned. When MSD applied for the s 78 custody order, it had determined the application was necessary as other forms of interventions had been tried unsuccessfully, including family group conferences, family meetings and also meetings with the mother to address concerns with her. The application for a s 78 custody order was seen as a last resort.

[53] MSD did not accept the mother's concerns about the standard of care being provided by Mr and Mrs F and her claim she was not being informed about health issues affecting CJ. Mr and Mrs F had been assessed and approved as caregivers. The health issues affecting CJ were not due to a poor standard of care; they were believed to be normal childhood issues. Feedback from recent paediatric visits, CJ's daycare, family and Ms Cook's own observations and interactions with CJ and his caregivers, indicated the placement was "*extremely positive and encouraging*". The mother had been updated regularly about CJ's health.

[54] MSD had agreed to facilitate contact between the mother and CJ to relieve stress for the family arising from the mother's aggressive behaviour and aggressive texts/Facebook messages. Ms Cook remained concerned about the mother's relationship with MW, her instability in maintaining stable accommodation and safety within her home.

The Father's Position

[55] The father claimed he had been unable to defend the mother's application for a protection order because he had been in custody. By the time he was released and had started to address matters it was too late to defend the making of the final order. He acknowledged there were occasions when he was violent, but claimed there were also many occasions when the mother was violent towards him. After his release

from prison and following an assault on him by the mother, he had contemplated applying for a protection order against her.

[56] When the mother and CJ arrived at his address on 7 February 2015 the father confirmed the police were advised. There was concern the mother may “*lose the plot and have us breached for the protection orders against us*”. He claimed the mother was in such a state he could not turn her away.

[57] As to the incident on 25 February 2015, the father said there had been two incidents when the mother had travelled to the Wairarapa resulting in violence. On 25 February 2015 his mother had called the police, but the mother had left by the time the police arrived.

[58] The father disputed Ms Cook’s account of events on 25 February 2015. He did not want to tell Ms Cook about the incident because he was “*protecting everyone involved*”. He acknowledged getting upset when the social worker kept questioning his mother and confirmed he had verbally abused his mother. In a victim impact statement 4 March 2015, the father claimed the mother regularly had outbursts and came across as a compulsive liar. He alleged when something did not go her way “*she flips out*” but “*five minutes, she will be fine; almost normal, like nothing happened*”. He believed she was mentally unwell. In the past she had tried to harm herself and he had stopped her.

[59] In May 2015 the mother was taken away to be questioned and alleged he had assaulted her. He denied assaulting the mother. He was not charged, but the mother had been charged with breaching the terms of her bail.

[60] The father opposed the goal “*home for life*” for CJ with whanau/family. He disputed Ms Cook’s claims the mother would continue to contact him and that he still had issues relating to anger. He maintained the mother had breached her bail conditions by travelling to see him. After his release from prison he had abided by the terms of his release conditions. The father acknowledged any contact with CJ was to be supervised, but once he had completed his programmes he would seek unsupervised contact. He did not believe he was a risk to CJ. He acknowledged, however, when he and the mother were together they had been physically violent and for that reason they should not come into contact with each other.

[61] The father described the history of his relationship with the mother. He claimed her mood started changing dramatically when she was around 5 - 6 months pregnant with CJ. He alleged "*when she lost the plot*" he would restrain her to stop her hurting herself or him.

[62] He believed the mother had some form of mental illness. They had done their best to conceal this from MSD for fear CJ would be removed. In hindsight he acknowledged, if full disclosure had been made, the mother may have got the help she needed, but at the time "*we were just young and scared*". After CJ was born, for the first two months of his life, he and the mother stayed at home enjoying family life. Problems arose when the father did not know how to manage the mother and her mood swings. These problems compounded when he started working long hours and arrived home too tired to help the mother, either physically or emotionally.

[63] The father accepted CJ's exposure to domestic violence was detrimental to his development. He acknowledged he had acted in ways that were detrimental to both the mother and CJ and expressed remorse for his actions. After he began serving a sentence of home detention, he experienced "*some form of breakdown*". Although he had limited supervised contact with CJ, he believed this contact had gone well and CJ knew who he was. He was concerned about proposals to reduce his contact to three hours every second weekend.

[64] Ms Cook disagreed with the father's claims regarding access arrangements. She alleged no agreement was reached with the caregivers because of the father's demeanour and demands for access. MSD intervened to arrange contact. It supported the father having a meaningful relationship with CJ and in time hoped access could become more informal and relaxed once safety issues were addressed. In the meantime the father was to have supervised contact.

[65] In July 2015, the father acknowledged he was not able to provide day-to-day care for CJ, but was committed to change and would attend a parenting programme. He was to undergo a Court-directed Short Rehabilitation Programme. By about the end of October 2015 he considered he would be in a better position to have CJ in his care. He believed CJ was better off in his care, or the care of the mother, rather than remain in the care of Mr and Mrs F.

Ongoing Care and Protection Issues

[66] Ms Cook retained concerns about the parents. She alleged they were dishonest and secretive with MSD and their families.

[67] On 2 September 2015 the father applied for an access order pursuant to s 121 of the Act.

[68] At the hearing the father confirmed he had been charged with a number of offences, including breach of the protection order, refusing to supply blood, dangerous driving and breach of release conditions. He had been remanded in custody and advised, after sentencing he thought he would be released about April 2016.

[69] Ms Cook filed a police family violence report relating to an incident involving the mother and MW on 14 September 2015. The mother declined to make a statement. It was noted she was on active charges for assault, obtaining by deception and theft of a motor vehicle. Her bail conditions included no contact with the father. She alleged the father had unlawfully taken a motor vehicle owned by her; she had not seen who had taken the vehicle, but suspected it was the father. In the course of the police inquiry, the mother referred to having an argument on the telephone “*with her current partner MW*”. The mother was arrested for breach of bail. She was later released without charge. It appeared she had been involved in a verbal altercation with a male who later drove off in the vehicle which the mother alleged had been stolen. The police noted the mother was adamant there was no one else with her, but they suspected the father had been at the mother’s address.

[70] The mother swore an affidavit 9 November 2015 disputing Ms Cook’s evidence and generally criticising the F and MSD. She was distressed by the removal of CJ from her care. She had become concerned he was displaying separation anxiety when she had contact with him. He was placed in a daycare centre for 45 hours per week. She continued to worry about the standard of care he was receiving. She felt stressed because of demands made by Ms Cook and was trying to comply with the family group conference plan. She tried to end the relationship with the father. During November – December 2014 she had undergone

an abortion which accounted for her missing a number of appointments with Ms Cook.

[71] Ms Harper became CJ's social worker on 15 October 2015. After meeting Mr and Mrs F and observing their interaction with CJ, she considered they loved CJ; his health and wellbeing was very much a priority and he was part of the family unit. It appeared the mother had been having regular supervised access with CJ and generally that had gone well. On one occasion the mother had become emotional and was asked to leave and compose herself before returning to finish the access visit. As the usual supervisor was going to be unavailable in November – December 2015, arrangements were made for the maternal grandmother to supervise access. She supervised one access visit which went well, however, she declined to do any further supervised access, alleging she had received abusive texts from the mother.

[72] On 19 November 2015, the police advised a warrant to arrest the mother had been issued as she had failed to appear in Court on a charge of unlawful taking of a motor vehicle and obtaining by deception. The mother advised there was a mix up over Court dates. She appeared later in Court when the warrant was withdrawn. On 11 December 2015, the mother was sentenced on the unlawful taking of a motor vehicle. She was ordered to pay reparation of \$3,500 and was sentenced to 70 hours community work. The charge of obtaining by deception was withdrawn.

[73] On 1 December 2015 the mother was having supervised contact with CJ at [location deleted] when the father turned up unexpectedly. The police were called. MW was outside [location deleted]; he had driven the mother there. An argument occurred between the father and MW. When the police arrived the father's vehicle was seen leaving the area. The father advised the police he had gone to [location deleted] to peek over the fence to see CJ and had done this regularly. It was by chance he met up with the mother on 1 December 2015.

[74] The police family violence report filed in respect of this incident recorded the mother had telephoned the police on 30 November 2015 claiming the father had been sending her threatening texts. She later made a complaint to the police. The father was arrested for breaching the protection order and remanded in custody.

[75] As a result of the incident on 1 December 2015 and given safety concerns, the mother's access with CJ was suspended. Ms Harper believed there was ongoing contact between the parents. The mother showed her threatening messages she had received from the father. These messages were produced in evidence. There were concerns about the content of Facebook updates made by the father. A review of the messages confirmed the threatening nature of them.

[76] On 7 December 2015, Ms Harper received advice about an incident involving the mother and MW on 5 December 2015. Inquiries with the Family Violence Co-ordinator confirmed the mother had made a false complaint to the police about an alleged family violence incident involving her and MW. She had made a statement to the police on 5 December 2015 alleging MW had assaulted her and tapped her head with a monkey wrench. On 6 December 2015 the mother told the police she had made a false statement against MW. In a second statement to the police the mother advised she was distressed over access visits to CJ being stopped. There had been an argument between the mother and MW. She had grabbed a monkey wrench, but MW had taken it from her. He had left the property but later returned and stayed the night.

[77] The Police Family Violence Report in respect of this incident noted the mother's house was in a state of disrepair. She had met the police and was described as "*frantic and excited*". She alleged there had been an argument with MW; he had assaulted her, taken the keys to her vehicle and stolen her car. Another police patrol vehicle observed a motor vehicle being driven without lights, matching the description of the mother's vehicle. When the police activated red and blue flashing lights this vehicle sped off. The police did not pursue the vehicle because the police officers at the time were involved in another matter. Police cordons were set up in the area but the vehicle was not located.

[78] The mother completed a Victim Impact Statement detailing alleged injuries she suffered and indicated she wanted a protection order against MW. She completed a formal written statement alleging she had been assaulted by MW. On 6 December 2015, she completed another written statement. She described how she became upset and hysterical over CJ. MW had tried to calm her down and restrain her. He then took her car keys and drove off. She did not want him to leave. In her

second statement, the mother said she realised “*my previous statement may have been slightly inflated due to me being so hysterical*”.

[79] On 17 December 2015, the police notified MSD there had been a family violence incident between the mother and MW on 15 December 2015. The mother claimed MW had physically assaulted her by punching her in the eye. He had then smashed her car windows after a verbal altercation. The police family violence report recorded the mother was hesitant about making a statement as she feared for her safety. She worried as to how this may affect her chances of getting CJ back. She alleged she had been pushed and punched by MW. He damaged the property and then left, taking her car, money and other belongings.

[80] On 18 December 2015, the mother advised Ms Carter she had wanted MW out of her life because he was jeopardising her chances of having CJ returned to her care.

[81] There was a further family violence incident involving the mother and MW on 20 December 2015. The mother told the police MW was attempting to take her vehicle. She then hung up on the police and refused to engage with police officers when they arrived. The police family violence report recorded MW claimed the mother had texted him and asked him to come to her home. He showed the texts to the police. The mother told the police she was saying anything she could to get her car keys off MW. She then informed the police she wanted MW trespassed from her property. It was noted in the report the mother and MW had been in an on/off relationship for about a year. MW claimed the mother had given him the car.

[82] The mother told Ms Carter on 21 December 2015 she wanted MW out of her life so she could get CJ back. Ms Carter expressed concern there had been four incidents of family violence involving the police in December 2015. Ms Carter believed the mother loved CJ, but he could not return to her care because of her lifestyle.

[83] Since becoming CJ’s social worker, Ms Carter had found Mrs F easy to engage; she was “*great*” at communicating issues relating to CJ’s care and access with the mother. CJ had glue ear and would need grommets. A specialist had recommended CJ’s tonsils be removed and surgery had been arranged for May 2016.

There were no concerns about the standard of care CJ was receiving from Mr and Mrs F.

[84] The mother did not support the father's application for access. She was upset contact at [location deleted] had stopped because the father had turned up. She had no idea he would turn up and was unaware he had been going to [location deleted] to observe CJ. She had telephoned the police on 1 December 2015 when confronted by the father.

[85] The mother acknowledged, when looking back, she had allowed herself and CJ to be put in situations where conflict could and did arise. She believed the counselling she had undergone had helped her deal with anger issues and given her skills to identify abuse and how to get out of situations where there was a risk of conflict.

[86] The mother sought an increase in access. She had been living in a two-storey three bedroom house for over two months by herself. She had chosen this property so she could be prepared for CJ returning to her care. She had prepared a bedroom especially for him. The mother denied she had sent abusive texts to her mother after she had supervised access. She explained she had telephoned her mother to ascertain why she was not prepared to supervise further access and became upset with her. She believed her mother had not given Ms Harper a truthful explanation.

[87] The conviction for unlawful taking of the motor vehicle involved her father's car. The mother had tried contacting him to borrow money. When she was unable to contact him, she took his car and sold it. She acknowledged her actions were wrong. At the time she needed money and was upset over losing care of CJ. Her father had subsequently forgiven her for taking the car and selling it.

[88] According to the mother her relationship with MW was for a couple of months over a year ago. Since then he had been in her life, but only as a friend. When the incident at [location deleted] occurred on 1 December 2015, MW had attempted to leave the scene to avoid risk of a confrontation with the father. She asked the police to contact MW and get him to return to collect her. When he did, the confrontation with the father occurred. The father then drove off before the police arrived.

[89] The mother claimed she no longer had contact with the father. She admitted in the past they had exchanged texts about CJ and often these texts were abusive. She now realised she could no longer have a relationship with the father because of his unsafe and abusive behaviour.

[90] When the mother complained to the police about MW on 5 December 2015, she did not intend to make a false complaint. She acknowledged there was an argument with MW and he had grabbed her to try and calm her down. She became concerned he was going to harm her and lashed out. After reflecting about her actions, she believed she was adversely affected by trauma she had suffered in her relationship with the father because of his violence. She accepted she needed help to deal with trauma issues.

[91] Acknowledging the police callouts in December 2015 were not good, the mother had contacted the police because of concerns for her safety. She understood Ms Harper's concerns about the four incidents of family violence in December 2015 requiring police intervention on each occasion. With the right support and the continued help of MSD, the mother was confident she would be able to maintain a lifestyle free of violence.

[92] The loss of CJ had caused her much grief and she had not coped. She looked to people for support, but because of her emotions she lashed out at them, given her feelings of hurt, anger and frustration. If the goal was for CJ to return home to her, that would change everything for the better. She was receptive to attending a residential programme.

[93] The mother disagreed with Ms Harper's assessment CJ could not return to her care because of her lifestyle. Since the first family group conference, the mother had

—

- Completed two Plunket Parenting Programmes;
- Engaged with an alcohol and drug assessment;
- Had undergone a urine drug test which indicated she was not taking drugs;

- Had undertaken further personal counselling.

[94] The mother sought the return of CJ over a three month transition period. She proposed this goal be contingent on there being no further family violence/police callouts, her continued engagement with Ms Harper, further counselling with monthly progress reports to be provided. She wanted to be given a last chance to show she could care for CJ and raise him safely.

The Law

[95] Section 4 sets out the general objects of the Act. The main object of the Act is to promote the wellbeing of children, young persons and their families and family groups. The means for achieving that object are contained in s 4(a) to (g). The general principles contained in s 5 are subject to s 6. These principles emphasise the involvement of families in the decision making process and where possible the goal of unification and strengthening of family groups while focusing on the welfare of the child or children. It is implicit in those principles there will often be conflict especially when the Court is confronted with a decision as to whether children and parents should be separated.

[96] Section 6 provides:

6 Welfare and interests of child or young person paramount –

In all matters relating to the administration of application of this Act (other than parts IV and V and Sections 351 - 360), the welfare and interests of the child or young person shall be the first and paramount consideration having regard to the principles set out in ss5 & 13 of this Act.

[97] Section 13 contains a number of principles set out in paragraphs (a) to (h). Essentially the thrust of those principles is that wherever practicable children should live, be supported, cared for and protected within their own family and family group. Where that is not possible then steps should be taken to ensure that the child or young person is given an opportunity to develop a significant psychological attachment to the person in whose care the child or young person is placed.

[98] Given the comprehensive nature of the principles contained in ss 5 and 13 it is inevitable there will be conflicts of principle and interest; in such event s 6

stipulates the welfare of the child is the first and paramount consideration. The full provisions of ss 5 and 13 are produced in the appendix to this judgment.

[99] In *B (CA 204/97) v Department Social Welfare* (1998) 16 FRNZ 522 the Court of Appeal, commenting on the focus of the Courts regarding the application of principles, stated at page 525:

... the starting point in New Zealand for all cases under the Act is s 6. Parliament through this section is telling the Courts that they must regard the welfare and interests of the child as the first and paramount consideration, having regard to the principles set out in ss 5 and 13. These principles cover a number of matters which will have different weight in individual cases. They are all matters which must be considered in each case, but what relevance and importance they will each have in individual circumstances will be a matter for individual assessment.

Further on the Court stated:

...

We must not be thought to be downplaying the importance which biological ties have in the principles underlying this area of the law. Ordinarily the interests and welfare of the children are best served by their being in the custody of their biological parents, or at least one of them; that is to do no more than to state the obvious and to recognise the fundamental role of the biological family in our society.

If it is suggested that the welfare and interests of a particular child would be best served in a different custodial environment the natural inquiry is why should this be so. The alleged deficiencies of the biological environment are then identified and the Court has to decide whether the circumstances are such that the child should live elsewhere. In making that decision the welfare and best interests of the children predominate over the interests of the biological parents and, indeed, over the biological tie as a factor in itself. That is not to deny the relevance of the tie in making the necessary decision. Indeed, the biological tie between parent and child will often, indeed usually, be the logical starting point in deciding what is best for the child. But there will be cases where the primary focus can legitimately assume that starting point without expressly articulating it and thereby concentrate on the issues which are said to require custody to reside with someone other than a biological parent.

[100] The comments of Judge Inglis QC in *The matter of the S Children* [1994] NZFLR 971 also provide guidance. At page 980 His Honour stated:

Because these principles are clearly subsidiary to those stated in ss 5 and 6 it is of obvious importance that no one should fall into the error of treating the principles in s 13 as though they were a self-contained code or as though they provided that family reunification and assistance were paramount objectives. The very fact that the child is found to be in need of care and protection on any of the grounds stated in s 14(1) is itself an indication of

family dysfunction or inadequacy, inimical to a child's welfare and interests and from which the child needs to be protected. While the general theme of s 13, read with s 5, is encouragement of the positive objective of empowering extended family to accept responsibility for considering the situation in which the child has been placed and how the family itself might assist, the emphasis must still remain on the welfare and interest of the child. The emphasis on the child's place within the family, if treated as a matter of doctrine rather than as a factor to be balanced against the child's welfare and interests, may achieve little more than locking a child into the inimical family situation from which the proceedings were designed to rescue him.

[101] I also take into account the provisions of the 1989 United Nations Convention on the Rights of the Child which was ratified in New Zealand with certain reservations in 1993. As Judge Inglis QC noted in *S Children* (supra), there are two clear threads which run through the Articles of the Convention. The first is the promotion of the "*best interests*" of the child as a recurring and principal theme - refer Articles 3(1), 9(2) and 18(1). Secondly, there is respect for the integrity of the child's natural family unit and in particular, recognition of the nurturing responsibility of the child's parents and the child's rights to be nurtured by his or her parents - Articles (5), (9) and (18).

[102] The expression "*best interests of the child*" was considered by Judge Inglis QC in the context of the Convention on the Rights of the Child. At page 982 he stated:

The expression "*best interests of the child*" is itself illuminating. To assess what is in a child's "*best interests*" involves balancing a variety of interests. It is clear from the Convention that an obvious interest of the child will be to maintain personal relations and direct contact with those who are responsible for the child's nurturing, but it is also clear that the child has an interest in being protected from abuse or neglect. A course of action which is dictated by the child's "*best interests*" would therefore be one which treats some interests of the child as dominant and others as of relatively less weight depending on the circumstances. The expression "*best interests*" involves the concept of promoting the child's welfare, so that the course to be chosen is one which enhances, or at least maintains, the child's welfare. Both the Convention and ss 5 and 13 promote the family unit as the ideal structure within which the child should be nurtured. While protection and support of the family and family relationships are seen as an effective way of enhancing the welfare of the child in the generality of cases - a proposition which plainly underpins both the Convention and ss 5 and 13 - nonetheless the question will always be whether the protection of this family and these family relationships will in fact be effective in promoting the best interests of this child.

The Hearing

[103] Ms Cook did not accept the plans, agreed at the family group conferences, were unclear to the mother. She had discussed the plans in detail with her. The parents knew what they had to do. MSD had decided to proceed with the goal of a “*home for life*” for CJ given the following factors –

- The mother’s erratic behaviour at meetings;
- The incidents in May 2015;
- Ongoing concerns regarding the relationships with the mother and father, having regard to the history of violence between them.

[104] Although it was suggested the mother did not have family support, Ms Cook advised this support was available. Problems arose because of the “*up and down*” nature of the relationships the mother had with family members. Throughout Ms Cook had concerns about the mother’s emotional state, her erratic behaviour and decisionmaking.

[105] Ms Cook did not consider the mother would be suitable for a residential programme because of her assaults on others and the level of her agitation.

[106] The mental health of the mother worried Ms Cook; although she had “*grave concerns*” about the mother’s mental health, there was no medical evidence to support these concerns.

[107] The decision to seek a permanent placement for CJ within the whanau/family was made after the confrontation between the mother and father in February 2015. Despite agreements being reached at the family group conferences and the formulation of safety plans, violence continued between the mother and the father and the mother and MW. The mother maintained her relationships with the father and MW were over, but that was not the case as shown by the history of ongoing violence necessitating involvement of the police on a number of occasions. While Ms Cook accepted the mother was the victim of violence on occasions, she considered the mother was also the perpetrator of violence on occasions. It appeared there were only short periods of stability for the mother.

[108] Ms Cook was questioned about the delay in filing proceedings. She advised MSD was in the process of preparing an on-notice application when concerns arose for CJ's welfare, after the mother had allegedly telephoned her mother to advise she was going to "*stab*" Ms F and uplift CJ from her care.

[109] Ms Harper was concerned about events which had occurred between the mother and MW in December 2015. On 7 January 2016, she had spoken to the father, who confirmed he had been charged with breaching the protection order in favour of the mother. In that discussion he made allegations against MW. The decision to suspend the mother's access after the incident on 1 December 2015 had been made by the child care centre and not Ms Harper. The mother had not made full disclosure to Ms Harper about the ongoing contact with the father, despite claiming the relationship with him was over.

[110] As to whether the mother should be given another opportunity to care for CJ with appropriate support in place, Ms Harper considered there was too much risk. She based her view on concerns continuing to arise out of the relationships between the mother, the father and MW and the matters recorded in the police family violence reports.

[111] The frequency of the mother's access had not been resolved. The relationship between Mr and Mrs F and the mother was "*up and down*". Before there could be any progress to unsupervised access, safety issues needed to be resolved.

[112] Ms Harper considered the mother's relationship with MW remained an ongoing issue. In a telephone discussion with Ms Harper, the father had said he was staying with the mother, but she denied that claim.

[113] The mother confirmed she had invited MW to her home on 25 December 2015 as she was very emotional and was home by herself. There was no incident. On 29 December 2015 MW had come to her home; she had not invited him and called the police. She invoked the trespass notice which had been served on . Although a police family violence report had described as "*the boyfriend*" of the mother, she denied that relationship and maintained while they had been in a relationship in 2014 they were now "*friends*". When questioned about the events

that occurred on 5 December 2015, the mother said she was very emotional at that time.

[114] As noted on 7 February 2015, the mother had taken CJ to see the father who had been released from prison on 5 February 2015. She claimed she did so because “*a child needs a father*”. On 10 May 2015 when there was a further incident involving her and the father, she said she was very upset because she could not see CJ on his first birthday.

[115] The mother acknowledged all family group conference plans had broken down because of her actions. Although she initially claimed she did not fully understand what was required of her under the family group conference plans, she conceded the plans were detailed and “*pretty clear*”. She accepted she had placed herself in bad situations with the father and MW.

[116] The mother claimed she had learned how detrimental domestic violence was. She believed every mistake she had made was when she was vulnerable and upset; this accounted for her actions on Mother’s Day, CJ’s birthday and Christmas Day 2015. She accepted there was a history of her making mistakes when upset; she described feeling isolated and referred to having no family or friends. She now maintained she had the support of an aunty, her grandmother and friends.

[117] The mother wanted a relationship with the father as “*separated parents*”. She denied he had ever stayed at her home in [location deleted], but she had stayed with him in [location deleted]. She confirmed she had seen the father between July – September 2015 and also had contact with him through Facebook.

[118] When questioned about the threatening texts she had received from the father on 30 November 2015, the mother advised she was staying with MW at a motel in [location deleted] and had been away from home for about one and a half weeks. She claimed she now had “*blocked*” MW out of her life. No contact details for him were in her Facebook or on her cellphone. MW had tried to contact her a couple of weeks before the hearing, but she maintained her relationship with him had finished. When she served the trespass notice on him on 29 December 2015, she was indicating to him then the relationship was over.

[119] The father disputed the mother's account about the extent of contact between them after he had completed his sentence of home detention in July 2015. For a time he had lived with his sister and the mother had lived in [location deleted]. He claimed he had stayed with her in [location deleted] and then [location deleted] and in numerous motels for periods of three to five days in Petone, Lower Hutt, Wellington, Paraparaumu and Palmerston North. He last stayed with her for two to three weeks before the confrontation [location deleted] on 1 December 2015. He further claimed he had driven the mother to daycare "*heaps of times*". He described being with the mother when on the "*spur of the moment*" she had purchased a motor vehicle. During this period he and the mother had sent hundreds of texts to each other.

[120] On 30 November 2015 he was at the mother's home when he sent her text messages that were produced in evidence. He explained he had been waiting for her to return home. He did not know where the mother was. He had been living at her home since she had left on 29 November 2015. He became concerned matters were "*looking unstable*" with the mother; he had heard she was "*moving south*" because someone had purchased the property she was renting. When he went to [location deleted] on 1 December 2015, he knew the mother would be there. He wanted to find out whether MW was with her.

[121] The father supported CJ being returned to the mother so long as he was not exposed to any violence or arguments. He was concerned CJ had previously been exposed to violence and understood how detrimental that was for his wellbeing. His relationship with the mother was finally over. In the past the relationship had been "*off-on*". He alleged the mother would come and go between MW and him.

[122] I questioned the father about his claims of staying with the mother at various places as alleged by him. He maintained he had told the truth.

Analysis and Findings

[123] I am satisfied on the evidence the mother and father were put on notice on 22 October 2014 about care and protection issues affecting CJ arising from their relationship. It was agreed at the family group conference he was in need of care and protection. The responsibilities of the parties were clearly defined. When I

reviewed the contents of the family group conference record, I found there was no basis for the mother's claim it was unclear what she had to do. I noted at the hearing, she acknowledged the family group conference plans were "*pretty clear*".

[124] At the reconvened family group conference on 11 November 2014, a detailed review of the plan was conducted. The mother agreed to continue addressing concerns which had been identified at the family group conference on 22 October 2014. At that stage the goal of the family group conference plan was for CJ to remain in her care. Concern was raised relating to her relationship with MW. The mother agreed, if there was a further incident causing the social worker to consider CJ was unsafe, he would then be placed in family care until the family group conference reconvened. As noted, five agencies were involved in supporting the parties carry out their tasks agreed at the family group conference.

[125] When the family group conference reconvened on 17 February 2015, the goal of the plan had changed because of events affecting the safety of CJ. It was recorded he would return to the mother's care when all the tasks as detailed in the plan had been completed and the mother was able to provide "*a secure, stable, alcohol/drug/violence-free home*". I find there can be no doubt about that goal. The mother was fully aware of what she needed to address in terms of the revised family group conference plan; by that stage the tasks she had to address had been refined and identified. Eventually the family group conference plans broke down because of the mother's actions.

[126] On 25 February 2015, it is clear the mother went to the father's home where a physical confrontation occurred involving him and his mother. She was subsequently convicted of assault. What is troubling about this incident, is that the mother, in the full knowledge of what the care and protection concerns were for CJ and the concerns about violence, provoked the confrontation. Such behaviour raised serious issues about her judgment and commitment to addressing the tasks enabling the return of CJ to her care.

[127] I found the mother was not truthful in her disclosures to the social workers about the nature of the relationship with the father. I was satisfied there were grounds for Ms Cook to claim the mother was dishonest and secretive about her ongoing contact with the father and MW.

[128] I well understand the distress of the mother when she was advised in February 2015 MSD had decided to seek a “*home for life*” for CJ. The events that followed over the succeeding months, however, continued to raise serious concerns about her ability to address care and protection issues and her use of violence.

[129] I accept the mother became distraught after CJ was removed from her care. Support for the mother was undermined by her behaviour. She acknowledged she lashed out at people and family trying to help her. She further acknowledged, when she was upset she made bad decisions. It is evident the mother had developed some insight into her behaviour, but lacked the ability or commitment to address the issues of concern.

[130] Despite the emotional turmoil the mother experienced after the removal of CJ, the focus must be on CJ’s welfare and best interests. He is a very young and vulnerable child. It is critical to his development and overall wellbeing that in the first two to three years of his life he forms emotionally and psychologically secure attachments with important adults in his life. This process cannot be put on hold while the mother addresses her issues. Over time I found a pattern has emerged where it appeared the mother has had an ongoing “*on/off*” relationships with the father and MW during the latter part of 2014 and throughout 2015. The mother was fully aware of concerns about the nature of the relationships she had with the father and MW and the implications of such relationships affecting adversely the welfare and best interests of CJ, but she continued these relationships.

[131] In November 2014, concern was flagged relating to the mother’s relationship with MW. Although she claimed their relationship had lasted for about two months in 2014 and had then continued as “*friends*”, I found that was not the reality of the relationship. The police family violence reports relating to incidents involving the mother and MW during 2015 clearly indicated the relationship was not one of “*friends*”. When I weighed the evidence relating to these incidents, which involved the police, I found there was an ongoing “*off/on*” relationship between the mother and MW.

[132] In the full knowledge of these concerns about this relationship, as late as December 2015, the mother was initiating contact with MW. The police family

violence reports relating to incidents between the mother and MW, particularly in December 2015, confirm the volatility of that relationship.

[133] The father was adamant the mother had stayed with MW at various places during 2015. It appeared he was concerned the mother was carrying on relationships with him and MW at the same time. He described having ongoing contact with the mother during 2015. She denied such contact occurred.

[134] In weighing the evidence of the father and mother, there were clearly issues of credibility. I found the mother's claims about these relationships were not supported by the evidence. On the contrary I consider the evidence, particularly the police family violence reports, indicated the mother had continued these relationships. I found she was not honest in disclosures about the relationships when dealing with MSD.

[135] In her submissions, Ms Paterson stressed the Court must have regard to Articles 7 and 9 of the United Nations Convention on the Rights of the Child which outlined the fundamental right of a child to live with and be cared for by his or her parents. She also stressed the need to apply the principles in ss 5 and 13 of the Act. While I accept those submissions it must be remembered s 6 stipulates CJ's welfare and best interests remain the first and paramount consideration. She contended a more intensive level of therapy would be beneficial to the mother to maintain a safe lifestyle free of violence. The mother had not been offered this assistance from the Ministry. A Residential Parenting Programme had not been offered to the mother.

[136] When I have regard to the comprehensive nature of the family group conference plans and the mother's inability to meet her responsibilities in completing tasks assigned to her, I am not persuaded the Residential Parenting Programme would have been complied with by her. While the mother completed various programmes, she failed to maintain her commitment to addressing issues of concern.

[137] When I considered the position of the father, it is clear despite his wish to become involved in CJ's life, he has been unable to address the issues and the tasks agreed at the family group conference. He has committed further criminal offences resulting in him being remanded in custody and facing terms of imprisonment.

During 2015 it appeared he continued to pursue a relationship with the mother. He must accept his share of responsibility for the violence which resulted between them.

[138] The father claimed MSD had failed to provide sufficient planning and proposals for assistance to the extent he had been forced to file his application seeking an increase in contact. I find the evidence does not support the claim of the father. The reality is there were tasks he needed to complete. He was not consistent in his commitment to addressing the tasks; he continued to commit further offences resulting in him being remanded in custody and facing terms of imprisonment.

[139] In her submissions, Ms Hughes noted between the time the social worker first formed a belief CJ was in need of care and protection and 17 February 2015, a period of seven months, there were four family violence incidents reported to the police involving the mother and the father. Since the family group conference in February 2015, there had been a further eight incidents where the police had been called.

[140] Throughout there was no concern raised about the mother's ability to parent CJ and provide for his needs when in her care, but there were ongoing serious concerns about her ability to provide him with a world free of violence and conflict. The evidence indicated throughout the mother had made decisions in her personal life which placed her and CJ, when in her care, in circumstances which compromised their safety.

[141] Given the principle, decisions need to be made within a timeframe appropriate to CJ, Ms Hughes argued he was unable to wait for the mother to demonstrate she was able to provide a predictable, stable and safe living situation. She contended if CJ was returned to the mother's care there would continue to be concerns relating to his care and protection. While the mother had made some progress in advancing her personal counselling, the recent involvement of the police and her relationship with MW continued to call her decisionmaking into question. I am satisfied, after reviewing the evidence, these concerns are valid.

[142] MSD submitted the family group conference plans satisfied the requirements of s 130. I find that is the case.

[143] When I review longitudinally the events which have occurred, particularly since October 2014, I have determined it is in CJ's welfare and best interests to remain in the care of Mr and Mrs F. The evidence indicates he has thrived while in their care. Although the mother expressed concerns about the standard of care, I found such concerns were not supported by the evidence.

Orders and Directions

[144] I make the following orders and directions:

- (a) The plan 1 October 2015 is approved.
- (b) The s 78 order is discharged.
- (c) Pursuant to s 101 a Custody Order is made in favour of the Chief Executive – Ministry of Social Development.
- (d) Pursuant to s 110(1)(a) and (2)(b) the Chief Executive – Ministry of Social Development is appointed an additional guardian.
- (e) The plan is to be reviewed in April 2016. The review of plan is to contain proposals relating to access by the mother and the father.
- (f) The father's application for access is dismissed.

A P Walsh
Family Court Judge

Signed at am/pm this day of 2016