EDITORIAL NOTE: NAMES AND/OR DETAILS IN THIS JUDGMENT HAVE BEEN ANONYMISED.

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IN THE FAMILY COURT
AT AUCKLAND

FAM-2012-004-003253
[2017] NZFC 6365

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[ZACH LOWE] Applicant
AND	[TRISH WAY] Respondent
AND BETWEEN	THE CHIEF EXECUTIVE OF THE MINISTRY OF VULNERABLE CHILDREN ORANGA TAMARIKI Applicant
AND	[TRISH WAY] First Respondent
AND	[ZACH LOWE] Second Respondent

Hearing: 14 August 2017

Appearances: S Abdale for the Applicant
M Bird and C Holdaway for the Ministry
M Headifen Lawyer for the Child
A Cooke Lawyer to Assist

Judgment: 14 August 2017

Reasons: 29 August 2017

REASONS OF JUDGE A M MANUEL
[FOR DECISION OF 14 AUGUST 2017]

Introduction

[1] On 14 August 2017 a submissions only hearing of several interlocutory applications took place. An oral decision was given. The reasons for the decision are set out below. Parts of the oral decision (under the headings **Background**, **The applications before the Court** and **Decision**) have been repeated.

Background

[2] This case concerns a nine year old boy, [Geoffrey Way Lowe], who was born on [date deleted] 2008. The parties are his parents and the Chief Executive of the Ministry for Vulnerable Children, Oranga Tamariki. The child has been the subject of acrimonious litigation between his parents since late 2012. There is no prospect of resolution in sight. Although there are Court orders for shared care in place, he has been kept in his mother's sole care since 23 June 2017. He was due to be in his father's care on 28 June 2017. He has not been attending school. He has repeatedly said he is frightened of his father and does not want to be in his care. He has expressed suicidal ideation. The issues have spilt over into the child's wider family, friends and school environment. Last month he ran away from school. An attempt by the police to execute a warrant to return him to his father's care had to be aborted because he was distressed. Clearly, this child is vulnerable.

The parties' positions

[3] The mother's position is that:

(i) the child's rejection of his father is realistic because he has experienced physical and psychological abuse in his father's care;

(ii) she has also been subject to abuse but her allegations concerning her son and herself have not been accepted or acted on appropriately;

(iii) she has applied for a protection order which is awaiting hearing;

(iv) not only is the child unsafe in his father's care, but he is posing a risk to his own safety, running away and expressing suicidal wishes;

(v) the only way to keep the child safe meanwhile is to end all contact with his father;

(vi) her actions in this proceeding have all been prompted by a need to protect herself and her child.

[4] The father's position is that:

(i) the child has never experienced psychological or physical abuse in his care. He has been safe and happy;

(ii) the fears the child claims to have are not based on reality. They are a result of the mother's influence on him;

(iii) the mother's unshakeable view is that he is a very violent man and unsafe in his dealings with the child. The Courts however have not accepted her view of him;

(iv) on 24 June 2014 the Family Court made the current parenting order, which provides for share care essentially on a 5/5/2/2 basis. The mother had been seeking only supervised or limited contact on the grounds of safety but the Court ordered unsupervised care. Appeals by the mother to the High Court and the Court of Appeal were unsuccessful;

(v) in late 2015 the mother returned to the Family Court seeking a protection order and a variation of the parenting orders. Since then she has made many applications, filing hundreds of pages of documents, both in the Family Court and the High Court. She has also made complaints about the professionals involved in the case including Judges, lawyer for the child and the Court appointed psychologist. She has been either substantially or wholly

unsuccessful in all of this with the parenting arrangements remaining in place for nearly three years, until late June 2017;

(vi) if his contact with the child ends:

(i) the buffer which he provides against the mother's influence, anxiety and disconnect with reality will be gone;

(ii) it is very likely that all contact with him and his family will cease with serious long term consequences for the child and his development.

Expert evidence

[5] Unfortunately no up to date independent expert advice about the child's situation or his views and wishes is available. This evidence is essential in this case because the parties' positions are highly polarised. It is missing because the mother refuses to give consent to the child being interviewed by Dr Calvert, a senior psychologist appointed by the Court in August 2016 to provide a report under s 133 Care of Children Act 2004 (COCA). The psychologist's report was due in January 2017. Preparation was begun but the report could not be completed.

[6] In 2016 the child had been referred to the Kari Centre[1] for therapeutic assistance but the psychologist's advice was this should not begin until the interviews and observations needed to complete the report had taken place. Nearly a year went by without the psychologist's report being completed or the child receiving any therapeutic assistance.

[7] To resolve the impasse, the Court made an order on 21 July 2017 placing the child under the guardianship of the Court for the specific purpose of being interviewed by the psychologist in order to complete the report.

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[1] The Kari Centre is the tertiary level Child Mental Health Service of the Auckland District Health Board.

[8] Some independent expert advice is available. There is a report from the Ministry for Vulnerable Children (the Ministry) dated September 2016. It was compiled after an investigation by the Ministry took place in June, July and August 2016 in response to notifications made by the mother, one of the doctors at the medical practice the child attends and other notifiers. The Police became involved.

[9] Although the report is no longer current it is significant because it deals with the same (or very similar) issues to the present issues. At the time of the investigation the mother and others were asserting that the child was unsafe in his father's care. The child was expressing suicidal ideation and fear of his father. He said he did not want to go to his father's home.

[10] In the course of the investigation the child was interviewed by a senior social worker. The outcome was that the child was seen to be safe in his father's care, although there were concerns about the emotional impact on him and what both parents might be saying to him. The social worker concluded that:

> I do not have any care and protection concerns for [the child] in [the father's] care … and as such I do not think any further statutory action needs to be taken.
>
> I am of the belief that the psychologist's report that has been ordered by the Court is the best way to determine what is actually going on for [the child] and to suggest possible solutions.

[11] The investigation by the Ministry was subsequently closed.

Decision of 21 July 2017

[12] The case came before the Court in late July 2017 to decide applications by the father for:

(i) a warrant to enforce the parenting orders; and

(ii) an order placing the child under the guardianship of the Court for a specific purpose (to be interviewed by the psychologist). Lawyer for the child supported both applications. The mother opposed.

[13] The orders were made but they have not been put into effect. This is because the mother remains opposed to the interview taking place. And although she gave an assurance to the Court that it would not be necessary for the warrant to be executed, she refused to return the child to the father. A warrant was then issued but could not be executed.

The applications before the Court

[14] The applications before the Court on 14 August 2017 included:

(i) applications by the mother:

(i) to vary or discharge the decision of 21 July 2017. The mother's application in respect of the guardianship order was made under s 56(2) or s 35 COCA. Her application in respect of the warrant was made under s 56(1)(b) COCA;

(ii) to suspend the decision of 24 June 2014, in terms of which the child was to be in his parents' shared care. The father opposed both applications and so did lawyer for the child;

(ii) two applications, one by the father and the other by the Ministry, for an order placing the child under the guardianship of the Court for general purposes, with the Chief Executive to be appointed as agent of the Court. Lawyer for the child supported and the mother was opposed;

(iii) an application by the mother for costs in the event she was successful with her applications.

Evidence

[15] The evidence is contained in the mother's affidavits of 28 July 2017, 8 and 11 August 2017, the father's affidavits of 1 and 11 August 2017, and the affidavit of Natalie Oates (Ministry social worker) of 4 August 2017. Reference was also made

to evidence in earlier affidavits. Lawyer for child reported on 27 July 2017. Extensive written submissions were filed in advance on behalf of all parties.

The relevant law

[16] In deciding these applications the Court must take into account the provisions of ss 4, 5 and 6 COCA.

[17] Section 4 provides that the welfare and best interests of a child in his particular circumstances must be the first and paramount consideration. The Court must take into account the principles in s 5 COCA and the principle that decisions affecting the child should be made and implemented within a timeframe that is appropriate to the child's sense of time. The conduct of a person who is seeking to have a role in the upbringing of the child may be taken into account to the extent that it is relevant to the child's welfare and best interests.

[18] There are six principles set out in s 5 COCA:

(i) Section 5(a) is mandatory and provides that a child's safety must be protected and in particular the child must be protected from all forms of violence as defined in the Domestic Violence Act 1995 (DVA).

(ii) Section 5(b) provides that a child's care, development and upbringing should primarily be the responsibility of his parents and guardians.

(iii) Section 5(c) provides that a child's care, development and upbringing should be facilitated by ongoing consultation and co-operation between his parents and guardians.

(iv) Section 5(d) provides that a child should have continuity in his care, development and upbringing.

(v) Section 5(e) provides that a child should continue to have a relationship with both parents and that his relationship with his family group should be preserved and strengthened.

(vi) Section 5(f) provides that a child's identity should be preserved and strengthened.

[19] Section 6 COCA provides that a child must be given reasonable opportunities to express views on matters which affect him and that any views the child expresses must be taken into account.

[20] The applications for guardianship are made under Part 2 COCA.

[21] Section 33 COCA empowers the Court to make an order under s 31 COCA placing a child under the guardianship of the Court and appointing a named person as agent of the Court, either generally or for a particular purpose. An application may be made by any eligible person as defined in s 31. Section 32 provides that notice must be given to the Chief Executive in certain circumstances. Section 33 sets out the types of orders which may be made and when the order ceases to have effect. Sections 34 and 35 set out the powers of the Court.

[22] In *Wilkinson v C*[2] the Family Court described guardianship as follows:

> It is an ancient and flexible jurisdiction … Basically the jurisdiction is parental, protective and administrative, and the procedure dominated by the welfare of the ward. Because a wardship order, placing a child under the guardianship of the Court, has the effect of transferring the power to make guardianship decisions from the parents to the Court, so potentially overriding the parents' own wishes, it is a jurisdiction to be exercised with due caution. The extensive experience of the Courts in England does not however suggest that wardship should be reserved for exceptional or unusual situations. It is a valuable and appropriate procedure where the welfare of the child requires such intervention, and that may occur in a great variety of circumstances in which the Family Court's ordinary remedies under the Guardianship Act 1968 or the Children, Young Persons and Their Families Act 1989 are for some reason less likely to be effective in responding to the child's welfare in a particular situation. I do not consider that anything useful is now to be gained by describing the wardship procedure as an "exceptional" remedy.

[23] The applicable principles are set out in the well known case *Hawthorne v Cox*[3] in which the High Court stated:

> The Court's guardianship (or wardship) jurisdiction, while one to be invoked cautiously and after proper inquiry, ought to be regarded as a flexible and

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2 [1999] NZFLR 569.

3 [2008] 1 NZLR 409 at [75].

> resourceful remedy that can be used to protect vulnerable children who cannot speak or act for themselves. … However, despite the need for flexibility, the touchstone for invoking the jurisdiction remains *the need to protect a vulnerable child*.

[24] The need for caution is a recurring theme in decisions concerning wardship. In some decisions it has been described as a matter of last resort. In *CMP v The Director-General of Social Welfare*,[4] for example, the High Court emphasised that the wardship jurisdiction was one not to be lightly invoked and was a jurisdiction of last resort. In *B v L*[5] the High Court held that:

> The guardianship or so-called wardship jurisdiction is a matter of last resort, to be used with care, and only where the interests of the child and in that sense any aspects of wider public interest so require. As examples only, it may be invoked where a child is about to be removed from the jurisdiction, or is to be hidden, or a matter of considerable physical or mental health significance is involved.

[25] In *The Chief Executive, Ministry of Social Development v C*[6] the Family Court stated that:

> It is, and must always be remembered to be, a dramatic and far reaching step for a Court to intrude on natural relationships and the rights and responsibilities that flow therefrom. To deny parents the responsibilities and/or rights that arise by their parenthood is a significant step for the State, through the Courts, to invoke; see, for instance, Articles 5, 7 and 18 United Nations Convention on the Rights of the Child. Accordingly, a cautious approach must be sustained throughout a Court's determination.

[26] The applications to vary or discharge the 2017 orders and suspend the June 2014 orders were made under s 56 or s 35 COCA. Section 56 relevantly provides:

> **56 Variation or discharge of parenting and other orders**
>
> (1) On an application for the purpose by an eligible person, the court may vary or discharge any of the following:
>
> (a) a parenting order (whether the order is about the person or persons who have the role of providing day-to-day care for a child, or about contact with the child, or about both of those matters):
>
> (b) any other order about the role of providing day-to-day care for, or about contact with, a child:

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4 (1997) NZFLR 1.
5 (1991) 7 FRNZ 400.
6 FC Wanganui FAM-2004-083-000374, 2 September 2008 at [15].

(c) an order about the upbringing of a child.

(2) On an application for the purpose by an eligible person, the court may vary or discharge an order vesting the guardianship of a child in 1 parent or in any other person or persons. If the order is discharged, and no other order with respect to the guardianship of the child is made, guardianship vests in the person or persons (if any) who would be the guardian or guardians if the order discharged had not been made. …

[27] Section 35 provides:

35 Further provisions relating to powers of court

(1) This section applies to a court … hearing or otherwise dealing with proceedings under section 31.

(2) The court may, before or by or after the principal order, make any interim or final order it thinks fit about the role of providing day-to-day care for, or about contact with, or about the upbringing of, a child who is the subject of the proceedings.

(3) Section 50 applies with all necessary modifications to an order under subsection (2), and an order of that kind may be subject to any terms or conditions the court thinks fit.

(4) The court may, if in all the circumstances it thinks it appropriate to do so, make an order vesting the sole guardianship of the child in 1 of the parents, or make any other order with respect to the guardianship of the child that it thinks fit. However, if the court makes no order with respect to the guardianship of the child, every person who was a guardian of the child continues to be a guardian of the child.

(5) An order may be made under this section, and an order made under this section may be varied or discharged, even though the court has refused to make the principal order or to give any other relief sought.

[28] Although it was not relied on by counsel for the mother, s 33(2) COCA is relevant to her application in respect of the guardianship order for a specific purpose. Section 33(2)(a) COCA provides that a guardianship order in respect of a child ceases to have effect when the Court makes an order to that effect.

The child's views and wishes

[29] The child's views and wishes were obtained at a meeting with his lawyer on 17 July 2017 and a judicial interview on 18 July 2017. They were summarised by lawyer for child in his submissions as follows:

> 106. [The child's] views are to live with his mother and not to be disturbed so that he is able to get on with his life. His views are that he wishes the litigation to end. He wishes to have the responsibility to choose if and when he sees his father. He does not want to have to talk to other "professional people". He has done enough talking. He wants the stress of these proceedings to end. He wishes to remain with his mother where he considers himself to be safe.

[30] At the insistence of the mother a meeting between the child and his lawyer took place on the day of the hearing to ascertain his views on the guardianship applications. The mother and her support person were present. The child was extremely distressed. As expected, his views remained very much the same.

Mother's applications for variation/discharge/suspension

[31] The mother initially applied for a stay of the decisions of July 2017 and June 2014 under r 19.9 of the District Court Rules 2014. At the commencement of the hearing she conceded that this application could not succeed. She applied orally to amend her application. Leave was granted to withdraw her application for a stay and to proceed on the oral applications set out at [14] (a) above.

Submissions in support of the mother's applications

[32] It was submitted that the situation had changed since the July 2017 decision was made. The child had run away from school on [date deleted] July 2017. The school had called the Police. He was eventually found by the Police in a garage at a friend's house where nobody was home. The father, his parents and sister-in-law arrived at the home where the child was found. The father expected the Police to return the child to him, but the Police returned him to his mother. That evening the father requested that the child be returned to him. The mother refused. The following day the father obtained a warrant to uplift the child. The Police and the father arrived at the mother's home in the early evening, but ultimately the warrant was not executed.

[33] While the child had expressed suicidal ideation and threatened to run away in the past, he had never before acted on any of his threats.

[34] Previously the primary risk had been to the child's safety in the father's care, but there was now a risk from the child himself, both physical and psychological, if his wishes and views were not accepted and acted on.

[35] The troubles which had arisen demonstrated that the July 2017 decision had not placed sufficient weight on the overriding requirement of s 5(a) COCA which was to protect the safety of the child. By prioritising the need for an expert report, and continuation of the child's relationship with the father over the child's own vehement wishes, the child's immediate psychological and physical safety had been placed at risk.

[36] In the light of recent events and the child's views and wishes, it was submitted that it was in his welfare and best interests for the warrant and the guardianship order for a specific purpose to be discharged and the June 2014 parenting orders "as they relate to the father's care of the child" to be suspended.

Submissions in opposition to the mother's applications

[37] It was submitted in response that if the mother's applications were granted, the litigation would effectively end with no inquiry about why the child was rejecting his father and his paternal family or whether this was a result of the mother's influence on him. The relationships with his father and his paternal family would very likely cease, which would be seriously detrimental to the child.

[38] Reference was made to research which indicated that:

(i) children of divorce generally do best when they have good relationships with two involved and effective parents. (Kelly, 2007);

(ii) in retrospect, young adults who experienced parental separation wished they had more time with the non-custodial parent. (Fabricius & Hall, 2000; Finley & Schwartz, 2007; Laumann-Billings & Emery, 2000);

(iii) fathers play an important role in child development and adjustment. (Parke, 2004, Schwartz & Finley, 2009); and

(iv) alienated children and adults alienated as children report that despite their protests otherwise they secretly longed for more contact with the

> rejected parent and wished someone would have insisted they have contact. (Baker, 2005, 2007; Clawar & Rivlin, 1991)[7]

[39] It was also submitted that the Court had little or no assurance that the child was actually safe in his mother's care or protected from her influence, anxiety and mistaken views of the father.

[40] The mother was simply attempting to stall matters and continue to thwart the completion of the psychologist's report, maintain the child in her sole care, and achieve her end goal of excluding the father and his family from the child's life. This was not in the child's welfare and best interests when he was suffering in his mother's care and had no opportunity to be interviewed by the psychologist.

[41] In addition, there were jurisdictional problems with her applications. Her application with regard to the guardianship order for a specific purpose was made under s 56(2) or, in the alternative, s 35 COCA. These did not apply. Section 56(2) COCA applied where an order had been made vesting guardianship in one parent. No order of that kind had been made. Section 35 COCA applied in a guardianship proceeding where an order about day to day care or contact relating to the upbringing of a child was made. No such order had been made.

[42] There was no provision for a suspension of a parenting order under the COCA. Section 56 COCA governed the variation or discharge of parenting orders but did not provide for a suspension. Suspension was distinct from and quite different to variation or discharge. This argument was supported by reference to s 77 COCA, which specifically provides for suspension of an order preventing the removal of a child from the country. It was argued that if Parliament had wished to provide for suspension of a parenting order, a reference to suspension would have been specifically included in the legislation.

[43] Counsel for the father referred to the reasons given by the High Court in February 2017 when an application by the mother for interim relief and stay of the Family Court proceedings was declined. If her application had succeeded the

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[7] Barbara Jo Fidler and Nicholas Bala "Children Resisting Postseparation Contact with a Parent: Concepts, Controversies and Conundrums" (2010) 48 Family Court Review 10 at 23.

proceedings would have come to a halt, as would happen now if her present applications were granted. The High Court stated that:

> [33] … I do not think the Court would be justified in awarding interim relief in the present case. My primary reason for coming to this view is that I consider, contrary to the submission made by Ms Abdale, that a stay of the Family Court proceedings would be highly adverse to [the child's] welfare and best interests in his particular circumstances.
>
> [34] As noted above, [the mother] has previously expressed fears for [the child's] physical and psychological safety …
>
> [35] In my view, the application for interim relief by way of stay is completely inconsistent with [the mother's] account of the danger to [the child]. By [the mother's] account, the present parenting orders in respect of [the child] are creating a threat to his life – hence the need for a variation in the application under the DVA. If that is the case, then it is absolutely crucial that the Family Court has the opportunity to gather together the necessary information and make new parenting orders that will better protect [the child]. The "escalating distress and desperation suffered by [the child]" are the precise reasons why the Family Court proceedings must continue on foot ... I note that this process would be expedited by [the mother's] full co-operation with the senior psychologist in charge of compiling the s 133 report for the purpose of the COCA proceedings.
>
> [36] I also take into account the statutory direction in s 4(1) of the COCA that any person considering the welfare and best interests of a child, in his or her particular circumstances, must take into account the principle that decisions affecting the child should be made an implemented within the timeframe that is appropriate to the child's sense of time.
>
> [37] In that regard, in his letter of 27 January 2017 the GP said:
>
> > [The child] is sometimes overwhelmed and distressed. He feels he would sometimes be better off dead.
>
> One of the "significant contributing factors" listed by the GP is "[t]he protracted Court Process – Chronicity of ongoing stresses without any real change for him.

[44] It was submitted that the reasons given in February 2017 remained applicable now.

[45] In summary, it was argued that any immediate risk to the child's safety was outweighed by the risks to the child in his mother's sole care and to his ongoing development.

The applications by the father and the Ministry for guardianship for general purposes

[46] Some preliminary matters were agreed; that the father and the Ministry were eligible to apply under s 31 COCA; that the notice requirement under s 32 COCA had been satisfied; and that the child was a vulnerable child.

Submissions in support of guardianship

[47] It was submitted for the father that:

(i) the child's safety was increasingly at risk, particularly while he was currently in the sole care of his mother;

(ii) the threshold required for protection from inappropriate conduct was met. The child had been alienated to such an extent that he was now at risk of injury, running away from school and talking of killing himself;

(iii) the extreme circumstances referred to in *Hawthorne v Cox* were present with the child under the controlling influence of his mother and being unable to make decisions for himself due to his young age;

(iv) the mother's considerable anxiety had transferred itself to the child;

(v) the guardianship order was sought as a last resort, and only after other applications had been made and granted, but not resolved matters (the warrant and the guardianship order for the specific purpose of enabling interviewing);

(vi) unlike the orders sought by the mother for general purposes a guardianship order would not prematurely determine the proceedings; the position of the mother and father would not be affected or prejudiced.

[48] Counsel for the Ministry argued that the order sought was appropriate in the circumstances where litigation had been protracted, the parties' positions were entrenched, and the child was suffering distress.

[49] Lawyer for child submitted that if a 'last resort' approach was adopted, that point had been reached. In July 2017 the Court had referred the case to the Ministry under s 19 of the Oranga Tamariki Act 1989 and requested that consideration was given to holding a family group conference. The decision by the Ministry to apply for a guardianship order, rather than convene a family group conference, supported the view that the matter had gone beyond that point.

Submissions in opposition

[50] Counsel for the mother submitted that:

(i) the application for wardship was premature and unnecessary. In the mother's care the child was not in imminent danger. He had been doing well. This was confirmed in a doctor's note dated 4 August 2017. It was only the prospect of returning to his father's care or engaging with professionals which caused him distress;

(ii) nothing the Ministry could do could not be more easily achieved by the Court suspending the father's care under the parenting orders, directing the child to be assessed by the Kari Centre and appointing another psychologist to prepare a report;

(iii) the order sought would be contrary to the child's welfare and best interests and to his own wishes; and

(iv) there was danger in making guardianship decisions about this child without the evidence which had been given by way of affidavit being tested by cross-examination.

Findings

[51] In reaching a decision I have considered each of the principles in s 5 COCA and the child's view and wishes and the significance and weight they should be accorded.

[52] I decline the invitation from his mother to appoint another psychologist. No proper explanation has been given for mother's objection to Dr Calvert. Given her complaints about the professionals in this case, the Court cannot be confident she would find another psychologist any more satisfactory. In any event the child objects to meeting with any psychologist, not just Dr Calvert.

[53] Essentially, I am faced with a choice between two alternatives. The option sought by the mother would be in accordance with the child's express wishes. It may have the effect of alleviating his immediate distress, and may meet the requirement under s 5(a) COCA to protect his safety if indeed it has the effect of alleviating any immediate risk he presents to himself and/or eliminating any risk to his safety in his father's care.

[54] But it may not meet the requirement under s 5(a) COCA to protect his safety, if he is indeed at risk from negative influence, anxiety and distress in his mother's care. It would not be in accordance with the principles at s 5(d) or (e) COCA in that it would not achieve continuity in his care or his relationship with his father or his paternal family. It may well have the effect of finally determining the proceedings without the advantage of expert evidence or cross-examination.

[55] On the other hand, the option supported by the father, Ministry and lawyer for child would meet the requirement to protect his safety under s 5(a) COCA, once directions about his day to day care, contact and upbringing are made after reporting by the Ministry. It would be in accordance with the principles at s 5(d), (e) and (f) COCA insofar as they can be achieved. It will ensure that the proceedings are not finally determined without expert evidence and cross-examination. But it may not alleviate the child's immediate distress and will not be in accordance with his express views and wishes.

[56] Having weighed these factors and carefully considered the child's current distress and distressed actions, I have decided that the time has come for this child to be placed in the guardianship of the Court for general purposes.

[57] While it is possible that the mother's proposal may alleviate the child's immediate distress by ending contact with his father, his father's family and court appointed professionals, and bringing the case to a close, there can be no certainty that this will ease his distress. If it is caused by the mother's influence, as the father claims, then it may not have that effect. The mother's proposal will almost inevitably result in the loss of the child's relationship with a father who has been fully involved for many years in the child's care and upbringing. If no psychologist's report is completed and the proceedings come to an end, there will be no proper inquiry into this child's circumstances and views and wishes.

[58] The proposal by the father and the Ministry on the other hand offers the prospect of a proper inquiry into the child's situation, while he is professionally supported in his current distress. It is heartbreaking that the conflict between the parties has continued for so long without resolution. It would be even worse, however, if there was no properly considered or satisfactory resolution for this child. He deserves better.

[59] The mother's application to vary a discharge of the guardianship order for a specific purpose fails on jurisdictional grounds. The application should have been made under s 33 COCA, not s 56(2) or s 35 COCA. For the reasons set out at [41] above the sections relied on by the mother do not apply.

[60] The mother's application to suspend the June 2014 parenting order fails on jurisdictional grounds. I accept the argument outlined at [42] that there is no jurisdiction to suspend (as opposed to vary or discharge) a parenting order.

[61] Had the mother's applications been properly founded, they would not have succeeded on the merits. The result she seeks is not in the welfare and best interests of this child in his particular circumstances.

Ancillary matter

[62] The mother's initial application (as set out at [31] above) was made without notice. There is a duty on counsel to make proper disclosure when making without notice applications. Counsel for the mother failed to provide copies of either the June 2014 or the July 2017 decision with the documents she filed. They were essential for the Court to consider the merits or otherwise of the application. The omission of the documents was in breach of counsel's obligations to the Court.

Decision

[63] The mother's application to vary or discharge the July 2017 decision is declined. So too is her application for a suspension of the June 2014 decision.

[64] The applications by the father and the Ministry are granted and an order is made placing the child under the guardianship of the Court for general purposes and appointing the Chief Executive as agent of the Court.

[65] For the avoidance of any doubt, the decision of 21 July 2017 (placing the child under the guardianship of the Court for a specific purpose) is to remain but is amended to provide that the social worker is not only to facilitate but also to arrange and ensure that the interview(s) with Dr Calvert take place without any further delay.

[66] Dr Calvert is requested to complete her s 133 report as soon as possible thereafter.

[67] The Chief Executive is requested to appoint a senior social worker forthwith, if that has not already been done, to manage arrangements and assist with decision making on guardianship matters for the child.

[68] The Chief Executive is directed to file and serve a detailed report to the Court and proposed plan for the child within 14 days concerning the child's health needs (with particular regard to his mental health), care arrangements, schooling, privacy issues and any other relevant guardianship matters. The report is to confirm that the necessary interview(s) with Dr Calvert have taken place or, if she is not able to see

the child within the 14 day period, arrangements have been made and appointment(s) booked for this to take place as soon as possible. Without limiting the matters contained in the report it is to consider:

(i) the placement of the child with one or other or both of his parents, as well as with possible caregivers other than his parents;

(ii) contact with his parents and wider family;

(iii) schooling and whether in particular the child should resume attendance at his current school; and

(iv) how the child's health needs should be addressed and, in particular, whether and if so when he should attend the Kari Centre.

[69] Until 1 September 2017 (by which time the report should be available) the Chief Executive is to direct matters of care, contact and schooling, but all other guardianship matters, and all guardianship matters after that date are to be referred back to the Court for direction.

[70] I direct the Court staff to request a senior psychologist who is suitably qualified to prepare reports from time to time. None of the matters in s 133(1)(a) to (f) COCA are to be covered. Rather, the report(s) are directed to assist the Court in making guardianship directions for the child. To that end, the psychologist is also to provide assistance to the social worker and any other members of the Ministry.

[71] All parties are to support and co-operate with the Court and, in particular, to ensure that the direction at [65] is complied with promptly. Failure to comply is likely to result in sanctions.

[72] On receipt of the report from the Ministry, the matter is to be referred to me in chambers for directions to be made and a further fixture allocated. The nature of that fixture will be determined at the time.

[73] The guardianship order is to be reviewed in any event in three months from the date of this decision.

[74] Given that a guardianship order for general purposes has been made, the warrant issued on 21 July 2017 is discharged.

[75] Any memorandum seeking costs is to be filed within 14 days and any reply within a further 14 days.

[76] Leave is reserved to the Court's agent and lawyer for child to bring this matter back to Court on 48 hours' notice.

[77] Any affidavits filed in this matter in future are to be limited to 50 pages, including exhibits, unless leave is obtained and granted from the Court to exceed that limit. Similarly, submissions are to be limited to 20 pages, unless leave is sought and obtained from the Court.

[78] Counsel to assist the Court is thanked for his contribution. His appointment is to continue, but with his involvement in any future events to be specified by the Court.

Dated at Auckland this 28th day of August 2017 at 3.45 pm.

A M Manuel
Family Court Judge