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**IN THE FAMILY COURT
AT HUTT VALLEY**

**FAM-2004-032-000988
[2017] NZFC 7122**

IN THE MATTER OF	THE ORANGA TAMARIKI ACT 1989
BETWEEN	CHIEF EXECUTIVE OF THE MINISTRY FOR VULNERABLE CHILDREN, ORANGA TAMARIKI Applicant
AND	[RW] [PK] Respondents
AND	RADIO NEW ZEALAND FAIRFAX NZ LTD Other Parties
AND	[B W-K] Child This Application Is About

Hearing: 9-10 August 2017

Appearances: C Nicholls for the Applicant
[PK] in person
R Jobson for the Respondent
P Pennington for Radio New Zealand
RKP Stewart for Fairfax Media
SI Robinson as Lawyer for Child

Judgment: 5 September 2017 at 4.00 pm

**RESERVED JUDGMENT OF JUDGE A J TWADDLE
[Caring Arrangements for Child]**

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Introduction

[1] This case is about caring arrangements for [B W-K] aged 13.

[2] A declaration that [B W-K] was in need of care or protection was made on 17 May last year. On the same date, by consent, orders were made granting custody of [B W-K] to the Chief Executive of the Ministry for Vulnerable Children, Oranga Tamariki (“MVCOT”), and appointing the Chief Executive to be an additional guardian.

[3] On 28 September last year an interim restraining order was made against [B W-K]’s mother, [RW].

[4] [B W-K] has been in a specialist one-on-one placement in [location deleted] since [month deleted] this year.

[5] [B W-K]’s social worker, [the social worker] filed a revised plan and report on [date deleted] June this year. [The social worker] recommended that the custody and additional guardianship orders should continue in force, with a review in March next year. The Chief Executive also proposes that the restraining order against [RW] should continue in force.

[6] [RW] wants [B W-K] to return to her care. She opposes the plan and has applied to discharge the custody and guardianship orders. Also she wants the restraining order to be discharged. In essence, [RW]’s position is:

- (a) MVCOT failed to care for and supervise [B W-K], and she was exposed to serious risk, including being raped three times;
- (b) MVCOT cannot be trusted to provide [B W-K] with a safe, nurturing environment in the future;
- (c) She is able to provide [B W-K] with a safe, nurturing family environment;

- (d) [B W-K] wants to return home and her wishes should be given significant weight.

[7] [B W-K]'s father, [PK] appeared briefly at the start of the hearing but took no other steps. He has had little involvement in [B W-K]'s life.

[8] Radio New Zealand and Fairfax NZ Ltd want to publish a report of the proceedings.

Issues

[9] The issues to be determined are:

- (a) Whether the custody and additional guardianship orders should be discharged;
- (b) Whether the restraining order against [RW] should be discharged;
- (c) Whether the social worker's revised plan dated [date deleted] June this year should be approved;
- (d) The extent to which a report of the proceedings should be published by Radio NZ and Fairfax NZ Ltd.

Legal principles

[10] Section 125 of the Oranga Tamariki Act 1989 relevantly provides:

- (1) Any one or more of the persons specified in section 126 of this Act may, subject to that section, apply to the Court for the variation or discharge of any of the following orders, or for the variation or cancellation of any condition of any such order:

...

- (e) any restraining order or interim restraining order made under section 88 of this Act:

- (f) any custody order ...made under section 101 of this Act:
- (g) any guardianship order made under section 110 of this Act:

[11] Section 127(1) of the Act provides:

- (1) On the hearing of any application under section 125(1) of this Act for the variation or discharge of any order, or the variation or discharge of any condition of any order, the Court may—
 - (a) Vary the order in such manner as it thinks fit:
 - (b) Discharge the order:
 - (c) Discharge the order and substitute any other order referred to in section 83(1) or section 84(1) of this Act:
 - (ca) Make any order referred to in section 83(1) or section 84(1) of this Act in addition to the order (whether or not the Court exercises any other power specified in paragraph (a) or any of paragraphs (d) to (g) of this subsection in relation to the order):
 - (d) Vary any condition of the order in such manner as it thinks fit:
 - (e) Discharge any condition of the order:
 - (f) Discharge any condition of the order and substitute any condition that could have been imposed when the order was first made:
 - (g) Impose a further condition of the order.

[12] The powers given to the Court by s 127(1) are broad, and on the face of the section unfettered, but must be exercised on a reasonable and principled basis, having regard to the purpose and objects of the Act.

[13] The purpose of the Act is to reform the law relating to children and young persons who are in need of care or protection or who offend against the law and in particular –

- (a) To advance the wellbeing of families and the wellbeing of children and young persons as members of families, whanau, hapu, iwi and family groups;
- (b) To make provision for families, whanau, hapu, iwi and family groups to receive assistance in caring for their children and young persons;

- (c) To make provision for matters relating to children and young persons who are in need of care or protection, or who have offending against the law to be resolved, wherever possible, by their own family, whanau, hapu, iwi or family group.

[14] The general objects and principles are set out in ss 4, 5 and 13 of the Act.

[15] Section 4 of the Act relevantly provides that the object of the Act is to promote the well-being of children, young persons, and their families and family groups by—

- (a) ...
- (b) Assisting parents, families, whanau, hapu, iwi, and family groups to discharge their responsibilities to prevent their children and young persons suffering harm, ill-treatment, abuse, neglect, or deprivation;
- (c) Assisting children and young persons and their parents, family, whanau, hapu, iwi, and family group where the relationship between a child or young person and his or her parents, family, whanau, hapu, iwi, or family group is disrupted;
- (d) Assisting children and young persons in order to prevent them from suffering harm, ill-treatment, abuse, neglect, and deprivation;
- (e) Providing for the protection of children and young persons from harm, ill-treatment, abuse, neglect, and deprivation.

[16] The overriding principle is contained in s 6, which relevantly provides:

In all matters relating to the administration or application of this Act...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 sections 5 and 13 of this Act.

[17] The relevant s 5 principles are:

- (a) Wherever possible, a child's or young person's family, whanau, hapu, iwi, and family group should participate in the making of decisions affecting that child or young person, and accordingly that, wherever possible, regard should be had to the views of that family, whanau, hapu, iwi, and family group;
- (b) Wherever possible, the relationship between a child or young person and his or her family, whanau, hapu, iwi, and family group should be maintained and strengthened;
- (c) Consideration must always be given to how a decision affecting a child or young person will affect—
 - (i) The welfare of that child or young person; and
 - (ii) The stability of that child's or young person's family, whanau, hapu, iwi, and family group;
- (d) Consideration should be given to the wishes of the child or young person, so far as those wishes can reasonably be ascertained, and that those wishes should be given such weight as is appropriate in the circumstances, having regard to the age, maturity, and culture of the child or young person.

[18] Section 13 principles record and promote the desirability of a child being cared for by the child's family, whanau, hapu, iwi, and family group. Of particular relevance is the principle in s 13(2)(e) that a child or young person should be removed from his or her family, whanau, hapu, iwi, and family group only if there is a serious risk of harm to the child or young person.

[19] When a child or young person is removed from his or her family, whanau, hapu, iwi, and family group, the child should:

- (a) Wherever practicable, live in an appropriate family-like setting in which he or she can develop a sense of belonging, and in which his or her sense of continuity and his or her personal and cultural identity are maintained; (s 13(2)(g))
- (b) Be given an opportunity to develop a significant psychological attachment to the person in whose care the child or young person is placed.

[20] Counsel accept that the approach to be adopted to the exercise of the power given in s 127 is set out in the judgment of *MEM v Chief Executive of Ministry of Social Development*¹, where Judge MacKenzie said:

[17] However the test may be articulated, the common thread, unsurprisingly of decisions concerning whether or not to discharge orders under the CYP&F Act, is an analysis of whether care and protection concerns continue to exist. I consider that what needs to be answered is whether care and protection concerns remain, so that the child's welfare and best interests requires continuation of the custody order. The focus must necessarily be on the ongoing presence or absence of care and protection concerns, given that the gateway for the making of disposition orders, such as a custody order under the CYP&F legislation, is dependent on findings that a child is in need of care and protection on one of the grounds set out in s 14. The corollary therefore must be that if it is likely that a child is no longer in need of care and protection, then the foundation for orders under the legislation crumbles.

[18] The test, as I interpret it, seems to have three tiers:

- a) Consider the original care and protection concerns;
- b) Consider a child's current situation, including the presence or absence of care and protection concerns;
- c) An assessment of the consequences for the child if protective orders are no longer in place;

[19] The question of how the discretion ought to be exercised cannot be undertaken on a formulaic basis. That is, that the analysis needs to be undertaken relating to a child's unique and individual needs and situation, rather than being measured against ideals, which is how, on one analysis, the principles set out in ss 5 and 13 could be seen.

¹ *MEM v Chief Executive of Ministry of Social Development* FC Rotorua, FAM-2001-019-000230, 22 June 2009, MacKenzie J

Background and original care and protection concerns

[21] [B W-K] had a difficult start in life. She was delivered at 38 weeks, at a significantly low birth weight and reduced head circumference. She failed to thrive, had recurrent pneumonia and was admitted to hospital five times over a four month period. The hospital staff noted poor attachment between [B W-K] and her mother.

[22] A declaration was made on the grounds of neglect (including medical neglect) and a custody order in favour of the Chief Executive was made in [month deleted] 2004, when [B W-K] was ten months old.

[23] [B W-K] was then placed with [number deleted] different Ministry caregivers and a whanau member. [RW] completed a parenting programme and [B W-K] returned to her mother's care in March 2006. But on [date deleted] April 2006 [B W-K] and [number deleted] of her siblings were removed from [RW]'s care after they had been left alone by her. The Ministry also had concerns about [RW]'s ability to manage her household, make and implement safe decisions and protect the children's health, education, nutrition and social development. An interim custody order was made in favour of the Chief Executive in respect of all of the children, and the Chief Executive applied for a declaration in respect of the youngest child.

[24] [RW] opposed the application for a declaration and applied to discharge the interim custody order. Having heard evidence, the Court granted a declaration and continued the interim custody order.

[25] [B W-K] returned to her mother's care in [month deleted] 2008. [RW] had completed a parenting programme and was engaging with support services. The custody order was discharged in [month deleted] 2009.

[26] On [date and month deleted] 2011 the Ministry received a report of concern after [B W-K]'s older brother, [G] (then aged [age deleted]) disclosed his mother had hit him with a belt. Physical abuse of [G] by [RW] was substantiated and concerns were raised for [B W-K]'s safety in [RW]'s care.

[27] Interim and final custody orders were made in [month deleted] 2011 and [month deleted] 2012 and [B W-K] was placed in the care of Ministry caregivers.

[28] [B W-K] returned to her mother's care in [month deleted] 2012 when she was seven. The custody order was discharged in [month deleted] 2012 and replaced by a support order. [RW] had attended parenting and anger management programmes, and [B W-K]'s social worker considered she was using safe and positive parenting strategies. [J] and [G], who had been put into CYFS custody in [month deleted] 2014 as a result of [details of behaviours deleted], returned to [RW]'s care in 2015. The support order was not renewed in [month deleted] 2015 as [RW]'s living situation was then stable and she was maintaining her positive parenting practices.

[29] Also in [RW]'s care were [B W-K]'s [number deleted] other siblings or half siblings: [names and ages deleted].

[30] In 2015, at about the time [B W-K] entered puberty, [RW] experienced her behaviour as becoming more difficult; [RW] said she disobeyed the house rules, told lies, damaged property and did not care about her siblings. She said:

At times if [B W-K] wouldn't get her way, like if she wasn't allowed to do things then she would spitefully...do things to hurt the other children. So that would get a reaction because the other children would come to tell me so it would spark off something as a squabble...it was a way of getting attention.

[31] On one occasion [B W-K] did not come home after school but went to a house down the road without [RW]'s knowledge. [B W-K] began to show an interest in boys, which [RW] described as "a red flag sort of thing"; she was conscious [B W-K] "could potentially end up at boys' places" which she did not want.

[32] [RW] arranged for [B W-K] to stay with her father for [number of weeks deleted] and then sent her to [location deleted] to stay with her maternal grandmother for about [number of months deleted] months. [B W-K] returned home on [date deleted] 2016.

[33] On [date and month deleted – one month after returning home], [RW] lost her temper with [B W-K], who she felt was lying to her about a missing razor. She hit [B

W-K] (then aged 11) [Details of assault deleted]. She did this, she said, to discipline [B W-K].

[34] Initially [RW] said she went straight to the hospital with [B W-K], but later said she had gone first to the home of a friend in [location deleted]; she was distraught and needed someone to talk to and to comfort her. After staying at her friend's house for 15-20 minutes, she took [B W-K] to the hospital.

[35] The paediatrician who examined [B W-K] said she was "non-distressed...cooperative and friendly, if not a little over-friendly". [Details of injuries deleted]. [RW] subsequently pleaded guilty to a charge of assault with a weapon [details of conviction and sentence deleted].

[36] [RW] signed a s 139 Temporary Care Agreement on [date and month deleted] and [B W-K] went into the care of Ministry caregivers.

[37] [B W-K] told her social worker she was scared of her mother, and, in an evidential interview on [date and month – the day after going into care], said she "regretted living" and felt like her mother did not love her.

[38] [RW] signed a further s 139 Temporary Care Agreement on [date and month deleted].

[39] [RW] refused to sign referral forms for Gateway health and education assessments for [B W-K]. Advised that a FGC would be held, [RW] said she would not attend and declined to name any whanau participants.

[40] [B W-K] went initially to [the Ministry home, location deleted] and then had [number deleted] further placements.

[41] The Chief Executive applied for a declaration and for a s 78 interim custody order on [date deleted] March. An interim custody order was made on the same date.

[42] Neither [RW] nor any other members of [B W-K]'s family attended the FGC on [date deleted] May.

[43] On [date deleted] May a declaration was granted, an initial plan was approved, and s 101 custody and s 110 additional guardianship orders were made in favour of the Chief Executive.

[44] The grounds on which the declaration was granted were those in s 14(1)(a) and (b) of the Act, namely:

- (a) The child or young person is being or is likely to be, harmed (whether physically or emotionally or sexually), ill-treated, abused, or seriously deprived; and
- (b) The child's or young person's development or physical or mental or emotional wellbeing is being, or is likely to be, impaired or neglected, and that impairment or neglect is, or is likely to be, serious and avoidable.

Events since [date deleted – the date that the declaration was made] May 2016

[45] The plan approved by the Court on [date deleted] May was that [B W-K] would have a home for life with whanau, and [DD] (an ex partner of [PK]) was identified as a suitable caregiver. [B W-K] decided she did not want to live with [DD], but later changed her mind, on the basis [details of arrangement deleted].

[46] After two nights in [the Ministry home] (described by [the social worker] as an emergency family home) and two other placements, [B W-K] went back to [the Ministry home] on [date deleted]. Initially she settled and her school attendance improved. She met her mother and [number deleted] siblings on [date deleted]; the meeting went well.

[47] But in late July [number of children deleted], known as frequent absconders, moved into [the Ministry home] and [B W-K] began absconding. Between [dates deleted – approximately a four to five month period] she absconded a total of 20 times; on 11 occasions with others; on nine occasions by herself.

[48] On [date and month deleted] [B W-K] was missing between [times deleted]. She and [number of children deleted] others from the home went into [location deleted]. She was missing for two hours from [time and date deleted] (she went into [location deleted] with another young girl) and was missing for over 30 hours from [time and dates deleted]. On this occasion [number deleted] boys arrived at the home and [B W-K] and another girl went with them. [B W-K] later told her mother she had non-consensual sex on two occasions during this time. She rang the police and was picked up in [location deleted] and returned to [the Ministry home]. [The social worker] spoke to [B W-K] on her return; she had [identifying details deleted] and told [the social worker] she had “got with” some boys. She had been using drugs and drinking alcohol.

[49] [The social worker] and the caregiver reviewed security at the home and the caregiver decided not to have boys with the [number deleted] girls who were in the home at the time. [The social worker] did not tell [B W-K]’s parents that she had been missing, getting with boys and using drugs and alcohol.

[50] On [date and month deleted] [B W-K] was missing overnight for 19 hours and was briefly missing on [date and month deleted].

[51] On [date and month deleted] [RW] had access to [B W-K]. Without authority, she gave [B W-K] some money [a gift] and told her she did not want her to live with [DD].

[52] On [day and month deleted], despite the caregiver’s earlier decision not to have boys at the home, [B W-K]’s brother [G] was placed there. [B W-K], in the company of [G], went missing for five hours on [date and month deleted].

[53] On [date and month deleted], [B W-K], [G] and another [child] went missing for two days. [G] was picked up [details deleted] and returned to his mother’s home. [B W-K] was also found at her mother’s home. [B W-K] told her mother she had been raped three times (it is likely the third sexual assault took place on [date and month deleted –a date that she was missing]). When the police arrived to pick [B W-K] up, [RW] told them [B W-K] was not safe at [the Ministry home] and she should not be returned there; she said [B W-K] told her she had been raped three times while on the run from the

home. The police conducted a preliminary interview of [B W-K] about the rape allegations.

[54] In [the social worker]'s presence, [RW] told [B W-K] she loved her, wanted her back and would fight for her in the Courts.

[55] [RW] made a report of concern to the Ministry on [date and month deleted]. The police conducted a preliminary interview of [B W-K] about the rape allegations.

[56] On her return to [the Ministry home], [B W-K] told the caregiver she had been smoking marijuana that day. She absconded later in the evening and was found hitchhiking on a motorway by the police. She was returned to [the Ministry home], but absconded at about [time and date deleted] and was missing for three days. She was found at her mother's home.

[57] [B W-K] left [the Ministry home] on [date and month deleted] and was missing for 15 days. She was returned by her father.

[58] On [date and month deleted] [B W-K] absconded for eight days and was located at her [close family member's] home in [location deleted]. She was returned to [the Ministry home], but on [date and month deleted] went missing for seven days. She was found at her mother's home.

[59] On [date and month deleted] [B W-K] went missing with another young person for 12 days. She was found at [location deleted] with her mother on [date and month deleted] and was taken for an evidential interview concerning the rape allegations.

[60] In the evidential interview, [B W-K] spoke in considerable detail about [details deleted]. ;

[61] [B W-K] went missing briefly on [dates and month deleted]. On [date deleted] she went missing for 18 hours after she jumped over a fence at the back of [the Ministry home]. On [date and month deleted] she was missing for four days and on [date and month deleted] was missing for nine days.

[62] On [date and month deleted] [B W-K] was taken to a secure placement at [name of placement deleted] in [location deleted].

[63] At [name of placement deleted], [B W-K] went back to school, settled into a routine and did not display behaviour noted by previous caregivers, such as [behaviours deleted]. But, staff were concerned about her [behaviour deleted] behaviour and periods of “zoning out”.

[64] [DD] decided in [month deleted] this year to withdraw her offer to provide a home for [B W-K], and in [month deleted – the following month] a referral was made to the National Hub for a specialist one-on-one placement for her. A suitable caregiver match was found in [location deleted] in [month deleted].

[65] [Details relating to move to new placement deleted]

[66] [the social worker] said:

[The placement] is considered a stable placement and [details of the placement deleted].

[67] The police investigation into [B W-K]’s allegations of rape is still open. [Details regarding the investigation deleted].

[68] Asked about [the Ministry home] home, [the social worker] said the home was staffed by a Ministry caregiver who was there seven days a week with one weekend off a month. An alternative caregiver was provided for that weekend. The home had a maximum capacity of [number of children deleted]. Many of the children placed in the home have high needs and engage in risky behaviour. They are not permitted to be at the home during the day; during the day they go to [activities deleted].

[69] [The social worker] said the caregiver took steps to prevent [B W-K] absconding, such as confiscating her shoes and giving her treats as incentives not to leave. The caregiver would sit in a position in the lounge where she could see the front door to deter the children from running away. The caregiver would sometimes do rounds in the middle of the night to check the children were in their rooms. When [the social worker] learned of [B W-K]’s disclosure of having been raped three times,

she went to the home and stayed overnight but [B W-K] absconded at [date and time deleted], ten minutes after [the social worker] had left. [The social worker] said she had considered there was a risk that [B W-K] would continue to abscond, but believed the caregiver would be able to manage the risk.

[70] [The social worker]'s evidence was:

- Q. Do you accept that there was just insufficient safeguards put in place by the Ministry to protect [B W-K] from herself?
- A. No, I think the caregiver is very, very efficient at managing the children. We had arranged for security to be there at night and whenever [B W-K] or the other children that ran were going to be there together...
- Q. Well, I put it to you the steps and judgements that you made...steps that you put in place to protect [B W-K] from herself were totally inadequate. What do you say to that?
- A. I think I did the best I could with the resources I had...we can't restrain the children or lock them in...we can't hold them...If we believe they need secure, lock up type care then we make a referral to experts who make decisions about the available beds and children that need to go to those places, but careful consideration needs to be given before we place children in lock up facilities. That is, we have to weigh up the benefits versus the risk of doing that.

[71] [The social worker] said [B W-K] was returned to [the Ministry home] after she absconded because there were no other placements. The plan at that stage was still for her to go to [location deleted] to live with her [close family member].

[72] Although it is not strictly necessary in determining the issues for me to make any finding about the care [B W-K] received at [the Ministry home], I record my view that the supervision at the home when [B W-K] was there was completely inadequate and different arrangements for her should have been made much earlier, and certainly after [date and month deleted], when [the social worker] saw [B W-K] with [identifying detail deleted] and [B W-K] said she "got with" some boys, and had used drugs and alcohol.

[73] Further, I record my concern about the [date and month deleted] evidential interview; in my view the interviewer went on asking questions about aspects of [B W-K]'s evidence well beyond what was necessary; some of the questions were pointless

and repetitive. [B W-K] reached a stage where she was irritated and writhed uncomfortably in her chair, saying she could not say more.

[74] Although she is not an expert in child evidential interviews, [The clinical psychologist], a clinical psychologist and manager of clinical services for Oranga Tamariki, said [B W-K] appeared stressed at the repetitive nature of the questions. She said:

She did appear to become stressed and certainly she asked the interviewer to stop. As the interview continued, her movements, her body movements became more gross, she wasn't just fidgety, but she was moving her whole body around. That indicates potential stress, yes.

Q. For a child in [B W-K]'s situation, being repeatedly asked effectively the same question that she has already answered on numerous times, that would cause stress as well wouldn't it?

A. I think that would be so for a lot of people and it did appear to be so for [B W-K].

[75] Finally, while I accept the situation is not straightforward, I express my concern at the length of time the police enquiries are taking. Serious allegations have been made and they need to be followed up with much more determination.

[B W-K] – personality, characteristics, wishes, needs

[76] [Personal identifying details deleted].

[77] [RW] described [B W-K] as “a risk taker; she would not be afraid to do what she wants whether negative or positive...she pushed the rules”.

[78] [Personal identifying details deleted].

[79] [The clinical psychologist] prepared a psychological and cognitive assessment on [date and month deleted] this year. In preparing the assessment she did not speak to [RW] but said information was gathered from a number of sources, including documentation on the MVCOT files and talking to other people who know [B W-K]. [The clinical psychologist] accepted that some insights might have been obtained if [RW] had been spoken to, but I find that the report is based on a large amount of file

material and various interviews (including of [B W-K] herself on [date and month deleted] this year) and is to be given full weight.

[80] [The clinical psychologist] concluded:

- (a) [B W-K] meets the criteria [diagnosis details deleted]; she has been exposed to significant trauma events, [details deleted] (I note [the clinical psychologist] reached this opinion before the events when [B W-K] was at [the Ministry home] happened, which would be likely to have impacted further on [diagnosis details deleted]);
- (b) [B W-K] is [details deleted];
- (c) [B W-K] presented with symptoms [details deleted];
- (d) After [B W-K] was born she experienced neglect in the context of domestic violence and drug and alcohol use. Her brain and physical development are likely to have been negatively affected by exposure to these factors;
- (e) The frequent changes in caregiver and environment between the ages of ten months and four years are likely to have impacted on [B W-K]'s core development tasks including [examples deleted]. As a result she developed behaviours that allowed her to meet her need for attention, care, comfort and safety with whoever was available;
- (f) In her mother's care [B W-K] was exposed to physical abuse and is likely to have prioritised the development of strategies to maximise survival. Her compliance behaviours, to the extent that she now places herself at risk, are likely to have developed as a strategy to reduce risk of physical abuse from her mother. Although she knows right from wrong, when she is frightened or anxious she [details deleted];
- (g) The skills [B W-K] uses to regulate her emotions are those learned in early childhood. She presents [details deleted]. Evidence also suggests

she lacks an ability to problem solve, especially when anxious or distressed;

- (h) These factors combine to place [B W-K] at very high risk of further abuse or trauma. When she is emotionally aroused or anxious, she is unable to identify her thoughts and her ability to think rationally is further reduced. These behaviours act to place her at further risk.

[81] [The clinical psychologist] said she believed [B W-K] has an unhealthy or anxious attachment to her mother. She loves her mother and her family, she wants to be with them, but knows they can cause her harm. She has a lot of anger based on relationship problems. She finds it hard to identify and express her feelings, and gets angry when she feels let down, for example by her social worker.

[82] Asked how [B W-K] would cope in a busy household, [the clinical psychologist] said:

It's not suitable for [B W-K]. Now we know [B W-K]...it has become quite clear that the best placement option for her is a one-to-one carer who can provide a therapeutic support environment where she feels safe and stable with the idea she will start to be able to engage in therapeutic treatment alliance.

[83] With respect to [B W-K]'s wishes, in his memorandum of [date and month deleted] last year, Mr Robinson noted that following the assault, [B W-K] did not want to live with her mother or have access with her. This changed to the point where she unequivocally wished to see her mother and return to her care. She said she felt safe with her mother.

[84] On [date and month deleted] this year Mr Robinson's [location deleted] agent reported that [B W-K] said she wanted to go back to live with her mother.

[85] When I spoke to her before the hearing started, [B W-K] said she would love to go back to her mother, but if it did not turn out like that, at least she would be safe until she got old enough to do so.

[86] Turning to [B W-K]'s needs, [the clinical psychologist] evidence was:

- (a) [B W-K] needs a stable, consistent relationship with one caregiver;
- (b) Further changes in caregiver should be avoided because any change would increase the risk of negative life events;
- (c) Engagement with whanau who are healthy and adaptive may provide support and enhance [B W-K]'s wellbeing, but priority must be given to [B W-K] developing a meaningful and consistent relationship with one caregiver;
- (d) [B W-K]'s risks need to be managed by the adults around her; she is not able at present to take responsibility for managing the risks herself;
- (e) [B W-K] needs structured behaviour management to assist in managing any non-compliance such as refusing to attend school;
- (f) [B W-K] needs [details deleted], and her interests in [details of interests deleted];
- (g) Once she is settled in her placement, and has formed a trusting relationship with her foster caregiver, [B W-K] should have the opportunity to access trauma therapy with a clinical psychologist, and she should be able to follow through with legal proceedings about her sexual assaults if she wishes to do so.

[87] I accept [the clinical psychologist's] evidence and find:

- (a) As a result of her very dysfunctional upbringing, [medical details deleted];
- (b) [B W-K]'s very dysfunctional upbringing impacted detrimentally on her development tasks including attachments;
- (c) [B W-K] has an unhealthy or anxious attachment with her mother;

- (d) As a result of personal characteristics she has developed, [B W-K] is at very high risk of further abuse or trauma;
- (e) [B W-K]'s overwhelming need is to be in an environment which is stable, nurturing and consistent, free from physical and emotional abuse and as stress free as possible. She needs structure, routine, clear firm boundaries consistently applied and to be able to develop a trusting relationship with one caregiver. She needs a caregiver who has insight into her complex needs and the ability to manage her risk taking behaviour;
- (f) [B W-K]'s wishes are to return to her mother's care. While she appears to have some understanding of the risks for her in her mother's care, she is not likely to have an overall understanding of her complex needs and her wishes can be given only moderate weight.

[RW] – parenting abilities and ability to meet [B W-K]'s needs

[88] [RW] lives in [location and living arrangements deleted].

[89] There are positive aspects to [RW]'s parenting; [the social worker] said she is able to establish good routines, settles reasonable limits, has good expectations and feeds, shelters and clothes the children well.

[90] [RW]'s evidence was that she deeply regrets assaulting [B W-K]. She had apologised to her a number of times and [B W-K] had forgiven her.

[91] [RW] denied [B W-K]'s disclosure about what happened immediately after the assault ([B W-K] said her mother [details of identifying activities deleted], and said:

I then took her straight to the hospital...I did not take [B W-K] to the hospital "later". I took her straight to the hospital as soon as I realised what I had done and could see the cut[injury details deleted]. I knew what I did was wrong immediately and immediately took her to the hospital.

[92] After the assault, [RW] was told by the social worker she could have only supervised visits. She said she did not know why she needed to have supervision when she had her other [number deleted] children in her unsupervised care.

[93] [RW] gave [B W-K] \$20 when [B W-K] visited her home on [date and month deleted] last year as a gift because she had not seen her for eight months.

[94] [RW] said CYF had failed [B W-K] by allowing her to be exposed to alcohol, drugs and sex. She said:

I want [B W-K] to return to my care. CYF cannot keep [B W-K] safe. I can. If [B W-K] is returned to my care, I will work with the social worker to ensure [B W-K] is kept safe. I am already working with CYF for my other children.

[95] In the past [RW] said the Ministry had returned [B W-K] to her care, recognising that there was “sufficient relationship between them, and insufficient risk of harm” in her care.

[96] [RW] did not support [B W-K] going into [DD]’s care because [B W-K] did not want that. [RW] is concerned that there are risks to [B W-K] in the custody of the Chief Executive. For example, she said she has been subjected to bullying at [details deleted], and there is a risk of future placement changes, which could make her anxious.

[97] [RW] said she had learned her lesson in what she needed to do in managing [B W-K]’s challenging behaviour if she is returned to her care. She completed her sentence without incident, completed an anger management programme, and has a good relationship with social workers at [location deleted] (although [location deleted] largely supports the children rather than [RW]).

[98] [RW] said she had enrolled [number deleted] of the children in a Footsteps to Feeling Safe programme, but was working at the time. The programme provider could not take the children without her being present for three sessions. She could not go, so the children did not attend the programme. She could not understand, she said, the approach of the provider because the programme was for children, not her, and they would have benefitted greatly. She chose not to attend because she did not feel the programme was for her.

[99] Asked about her attendance at parenting programmes in the past, [RW] said:

Well to be honest, I've done a number of parenting programmes...I don't believe I've learned much from it. I am studying with [religious group details deleted], I've learned more off them and the Bible about that than anything else that I've done in my life. So I could possibly say that it's what I've learned [religious group details deleted] that's helped me to make changes to my life, nothing else.

([RW] is not a member of [details deleted] but attends meetings once a week every week).

[100] She had learned about time out (although this had not worked with [B W-K], it was time consuming and she had her other children to manage also) and building up her relationship with the children so she could find out the problems they were having. If [B W-K] returned to her care, and for example lied to her, [RW] said she would speak to friends and support people; she would "learn to deal with it in a different way". She would improve her communication with [B W-K] which would start by her "seeing [B W-K] as her daughter".

[101] With respect to the FGC, [RW] said it was her personal choice not to go; she had attended a few in the past and knew how they are run. It would have been pointless for her to attend and she was not ready at that time to participate in any plan about [B W-K]. She spoke to her family and it was her decision not to give [the social worker] the names of any family members.

[102] After the custody and additional guardianship orders were made, [RW] did not want any involvement in decisions about [B W-K] (for example the Gateway assessment, schooling, dental treatment). Her evidence was:

I think it was like I said, all responsibility of the Ministry so that was my answer to her coming to me saying "I need this, I need that", but my response to that was, "You have day-to-day care now. I've signed over temporary care, you need to take care of it. Okay. That's how I saw it".

[103] She said she has now changed her view because she has had quite a long time to think about what had happened.

[104] After the assault, [B W-K] told [the social worker] she wanted to see her siblings (she could not see her mother because of a bail non-association clause). [The social worker] asked [RW], who said no. She did so:

Because I needed it to be arranged with me, myself as the mother. I needed to make sure that the whole access arrangement was fully working in our favour with my family so I left it at that. No access would take place because we weren't ready so that's what it was...I agreed that the children will only have access on my terms, my [number deleted] children with me because I am the mother, okay so it's on that term which I agree that access takes, when my children will have access as well and they are in agreeance with that..that will happen that way, they were okay with that.

[105] [RW] would not agree to phone or video access with [B W-K] when she was in [location deleted], despite her request, because:

...Its not the same as face to face. Face to face you can have a cuddle and you can see the person but on the phone and on a tv, that's not the type of access that I'm happy to have okay and nor my children, I don't want them to have it like that, cos that's not how real normal people have a relationship and a bond. I don't see that as an appropriate access, it wasn't appropriate for me.

[106] [RW] agreed she had been asked to make a statement to the police about [B W-K]'s rape allegations, but had not done so; she had been ready to make a statement but had to wait a few months until the police were ready to take the statement:

So I feel it's not serious enough...my child is not important enough, so that's why I have acted in the way I have towards the Ministry because of the way it has happened.

[107] [RW] accepted that her household was "very busy" and at times she had struggled to manage the children, particularly [J] (now [age deleted]) and [G] (now [age deleted]). [G] went into the Ministry's care when he was [age deleted] but was living with her. She had difficulty [details deleted]. Asked if she agreed she had lost control of them, [RW] said:

Not really because [details deleted].

She never abandoned them she said; they were out with their friends, roaming around but always knew where home was.

[108] With respect to [G], [RW] said:

I accept [G]'s behaviour has been out of control. He has a plan to follow in our current CYF plan and I have agreed with CYFS that they hold custody should [G] play up at any time because of his out of control behaviour. [G] is still living with me and largely behaving himself. He does have the odd few days when he misbehaves if he doesn't get his way.

[109] And further, [RW] said:

I have called the police, and I have found the police to be of great assistance in dealing with the issues. [G] is bigger than me. He can be intimidating at times towards me, and also tries to get his way by dominating me, even though I am just making reasonable requests of him to comply with his daily routine and my house rules. Me calling the police is a useful and safe intervention.

[110] [RW] said [G] gets angry and upset and smashes things; [details deleted].

[111] The other children, [RW] said, have been afraid of [G] when he starts to get on her case; that is why she rings the police and involves the social workers, "to keep her house in order that needs to happen".

[112] Asked if it would be good for [B W-K] to be in a one-on-one caregiving situation, [RW] said:

But it's not actually about that. It's about what [B W-K] wants and actually moving forward from that.

[113] Also, she said [B W-K] would decide which school she goes to. She and [B W-K] would work together to find out together what worked for them. She said she accepts [B W-K] is not able to take responsibility for managing herself at present.

[114] I find:

- (a) There are some positive aspects to [RW]'s parenting; she is able to feed, shelter and clothe the children, has good expectations and sets reasonable behaviour limits;
- (b) There is a question mark over the truthfulness of aspects of [RW]'s evidence because:

- (i) Initially she said she took [B W-K] to hospital immediately after assaulting her but then said she went first to see a friend for 15-20 minutes and took [B W-K] to hospital after that;
 - (ii) She minimised the number of times she hit [B W-K] in her first interview with the police;
- (c) [RW] minimised the seriousness of the assault by saying:
 - (i) It was just the cut that was bleeding at the time and she thought that was all that was wrong; and
 - (ii) “When she [[B W-K]] went to hospital, she only stayed in overnight, she didn’t stay in there a whole week...so it wasn’t that severe is what I think”;
- (d) [RW] is a self centred person who is likely to put her own feelings and needs before [B W-K]’s needs. A graphic example of this is her failure to take [B W-K] to hospital immediately after assaulting her; instead she met her own need to be comforted by a friend. Further, she did not attend the FGC and has not complied with police requests for an interview about [B W-K]’s rape allegations for reasons which relate to her and are not persuasive;
- (e) [RW] takes a black and white, rigid approach to issues which has been contrary to [B W-K]’s interests, for example:
 - (i) She did not support telephone or video access when [B W-K] was in [location deleted] because she wanted hugs, cuddles and physical contact; if that could not happen, she did not want access at all; and
 - (ii) She did not consider she had any responsibility to make decisions about [B W-K]’s [care]; [B W-K] was in the custody of the Chief Executive who had responsibility and that was that;

- (f) [RW] has done a number of parenting programmes but has learned little; she was vague and unable to articulate strategies for safe parenting if [B W-K]'s behaviour became challenging;
- (g) If [B W-K] was in her care, [RW] is likely to place too much weight on her views;
- (h) [RW] is not able to control [G]'s angry, abusive behaviour and requires frequent assistance from the police. The other children are frightened of [G], and their emotional safety is likely to be at risk.

[115] For these reasons I find [RW] has not been a competent parent to [B W-K] and would not be able to meet her needs.

Are there still care and protection concerns for [B W-K]

[116] Against the background of the evidence I have referred to and the findings I have made, I find care or protection concerns continue to exist for [B W-K], for these reasons:

- (a) [RW] minimised the extent of her physical abuse of [B W-K];
- (b) [B W-K] has complex needs and is at high risk of further abuse or trauma;
- (c) [RW] has little insight into [B W-K]'s needs, and would not be able to meet them;
- (d) [RW] is likely to put her own needs ahead of [B W-K]'s needs;
- (e) [RW] is unable to control [G] and unable to protect his younger siblings from risk of emotional abuse.

[117] I conclude in terms of s 14 of the Act that there remains a serious risk of [B W-K] being harmed physically or emotionally in [RW]'s care and a serious likelihood her

emotional wellbeing would be impaired or neglected and the impairment or neglect is likely to be serious and avoidable.

The likely consequences for [B W-K] if the custody and guardianship orders are discharged

[118] If the orders are discharged, [B W-K]'s care would revert to [RW].

[119] Against the background of the evidence and findings I have referred to, I find:

- (a) [B W-K] would move into a busy, already overcrowded house;
- (b) [B W-K] would be exposed to [G]'s aggressive, unsettled, disruptive and abusive behaviour;
- (c) As a result of her anxious attachment to her mother, [B W-K] is likely to feel unsafe and anxious in her care;
- (d) [B W-K] is likely to experience anxiety, depression and hyper-vigilance, and would be at very high risk of further abuse or trauma;
- (e) As a result of [RW]'s lack of insight into [B W-K]'s needs, [B W-K] would be likely to suffer emotional neglect and deprivation;
- (f) [RW] does not have suitable strategies to cope with [B W-K] if her behaviour becomes difficult, and is not likely to be able to exercise control over her;
- (g) As a result of [RW]'s mistrust of the Ministry with respect to [B W-K]'s past care, she is unlikely to engage with [B W-K]'s social worker to assist her in meeting [B W-K]'s needs, and [B W-K] is unlikely to receive the therapy she needs;
- (h) [RW] is not likely to make informed and timely guardianship decisions for [B W-K].

[120] I am satisfied that [B W-K]'s current placement meets her needs.

Decision

[121] Having regard to the likely consequences for [B W-K] if she returns to the care of her mother, I find it would not be in her welfare and interests for the s 101 custody and s 110 additional guardianship orders to be discharged.

Access

[122] The plan is for [RW] and [B W-K]'s siblings to have access four times a year. That was on the basis that [B W-K] was to be living in [location deleted]. As [B W-K] is to remain in the [location deleted] area, [the social worker] said there was a possibility of more access, although the access would need to be supervised.

[123] [The clinical psychologist]'s evidence was that access would need to be a staged process, guided by [B W-K] and the therapeutic team which should be built up around her. Initially [B W-K] should be left to settle in to her new home and school, and build up a trusting relationship with her caregiver.

[124] In these circumstances, other than agreeing that there should be a settling in period and that any access should be supervised, I leave the decision as to when access should start, and the place, duration and frequency of access to [B W-K]'s social worker.

Should a final restraining order be made

[125] Sections 87 and 88 of the Act give the Court the power, after a declaration has been made, to make interim and final restraining orders preventing any person named in the order from doing certain things, including residing with the child or young person and watching or being setting a child's place of residence, work or education, following or waylaying the child or young person or contacting the child or young person in any way.

[126] The interim restraining order was made on the basis that [RW] had encouraged [B W-K] to leave [the Ministry home] and return to her.

[127] [RW] said the interim restraining order was obtained to stop her finding out about the abuse [B W-K] was being exposed to in the Ministry care. Once she found out about the abuse, she lost trust in the social worker and wanted to protect [B W-K] from the social workers and caregivers. She told [B W-K] it was not safe for her to be at [the Ministry home]; she could come home; her door was open; she would not shut her out of the house.

[128] I find [RW] is likely to persist in her strong view that [B W-K] should be in her care. As a result there is a serious risk that she would try to contact [B W-K], encourage her to return home and undermine her current placement. This would not be in [B W-K]'s welfare and interests. For these reasons I am satisfied a final restraining order should be made.

Publication of report of proceedings

[129] Mr Pennington of Radio NZ and Ms Murdoch attended the hearing as accredited news media reporters, pursuant to s 166 of the Act.

[130] Mr Pennington wants leave to report on the Court proceedings as they relate to what happened to [B W-K] in the Ministry's care while in its family home in [the Ministry home, location deleted], including the reported assaults and absconding, and the response to these of the Ministry and police. There would be no report of the outcome of the proceedings, or detailed evidence (except in as much as the applicant's lawyer raised questions around the Ministry's care of the child) or about the history of the interaction between the Ministry and the children's mother and siblings.

[131] The reasons for the application for leave are:

- (a) Radio NZ has already reported on [B W-K] and one other child in Ministry care at the same house reporting sexual assaults;
- (b) It is in the public interest to report on the case; the public needs to know about what [B W-K] said happened to her while in care at [the Ministry home], and the response of the authorities;

- (c) In a general sense, the evidence given in Court would add to public knowledge about how the Ministry has cared for children in its custody, and to knowledge about how a family home operates.

[132] On behalf of Fairfax Media, Mr Stewart submitted:

- (a) The general rule is that any person may publish a report of Family Court proceedings: s 11B(1) Family Courts Act;
- (b) When a person under the age of 18 is the subject of a proceeding, the leave of the Court is required before a report of the proceeding containing identifying information may be published: s 11B(3)(a)(i) Family Courts Act;
- (c) Identifying information means information relating to proceedings that includes any names or particulars likely to lead to the identification of a party to or the applicant in the proceeding: s 11C(1)(a) and (b) Family Courts Act;
- (d) The only identifying information Fairfax wishes to publish is the name of the Ministry for Vulnerable Children, Oranga Tamariki;
- (e) The Ministry's name has already been placed in the public domain in the context of being the agency which had the care of the child when the incident giving rise to the child's complaint was alleged to have occurred;
- (f) Allegations of sexual assault and the safety of children in the care of the State are matters of genuine public interest;
- (g) There are no privacy or other interests of the applicant that require the protection of s 11C; the acts and omissions of the State should always be subject to legitimate scrutiny, and there are no compelling countervailing reasons for the identity of the applicant to remain "suppressed";

- (h) Leave is not sought to publish identifying information concerning any other person associated with the proceedings (including the child, mother or father).

[133] Mr Pennington's application was not opposed by Mr Nicholls on behalf of [RW].

[134] The applications are opposed by the Ministry.

[135] Ms Jobson submitted:

- (a) Section 437A of the Act applies ss 11B to D of the Family Courts Act to publication of any report of proceedings under Part 2 of the Act;
- (b) Genuine public interest in the proceedings is a relevant factor, but [B W-K]'s welfare and interests must always be the first and paramount consideration: s 6 and 13(1) of the Act;
- (c) While general information already allowed by legislation to be published could be of public interest, specific information that may lead to identification of a child would not; such information is generally objectionable and outweighs any public interest;
- (d) The factual matrix of this case means that [B W-K] could be easily identifiable;
- (e) [Details of reporting deleted];
- (f) The purpose of seeking leave is for a collateral purpose of broadcasting information in relation to the standard of care for children at the Chief Executive's family homes. To allow publication about this would be entirely destructive and would prejudice the ability of the Chief Executive to recruit caregivers at family homes which would be contrary to the public interest.

[136] Mr Robinson submitted:

- (a) [B W-K] is a vulnerable child and publication of any information which may lead to identification of her or her family would be contrary to her welfare and interests;
- (b) There are strict statutory rules about publication of information contained in evidential interviews;
- (c) The rape allegations made by [B W-K] are the subject of continuing investigation and fair trial rights apply in terms of those allegations being in the public domain at present;
- (d) It is difficult to see how publication of any information pertaining to the proceedings would be demonstrably consistent with, or promote, [B W-K]'s welfare and interests.

[137] I accept that ss 6 and 13(1) of the Act apply, that [B W-K]'s welfare and best interests are the first and paramount consideration, and that she is particularly vulnerable. Publication of any information which may lead to her identification, or the identification of her family, would not be in her welfare and interests.

[138] I consider it is a relevant factor that publication of some information, including the name of the Ministry, has occurred. For that reason there would be little point in now preventing publication of the name of the Ministry.

[139] I do not accept there is a collateral purpose in the applications for leave; evidence about the care given to [B W-K] while in the Ministry's care was an integral part of [RW]'s case.

[140] I am satisfied it would be in the public interest to know what has been alleged to have happened to [B W-K] while she was at [the Ministry home], but apart from permitting publication of the name of the Ministry, I do not consider I should make a detailed order as to what can and cannot be published. It is the responsibility of

Radio NZ and Fairfax Media to comply with ss 11B and 11C of the Family Courts Act, and within these bounds, to decide what should be published.

[141] I accordingly intend to let Radio NZ and Fairfax Media have a copy of my full judgment and give leave to them to identify MVCOT as a party to the proceedings. Other than that, the provisions of ss 11B and 11C of the Family Courts Act are to apply.

Orders

[142] I make these orders:

- (a) [RW]'s application to discharge the s 101 custody order and s 110 additional guardianship order is dismissed;
- (b) The revised plan dated 27 June 2017 is approved;
- (c) The s 101 custody and s 110 additional guardianship orders are to continue in force with a review in March next year;
- (d) The interim restraining order is discharged. A final restraining order is granted and is varied in accordance with the application dated 7 December 2016;
- (e) Leave is granted to Radio NZ and Fairfax Media to publish a report of the proceedings that identifies MVCOT as a party. No other leave is given and in all other respects the report must comply with ss 11B and 11C of the Family Courts Act.
- (f) A copy of this judgment is to be released to Mr Pennington of Radio NZ and to Fairfax Media in addition to the parties.

Family Court Judge