

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

NOTE: PURSUANT TO S 139 OF THE CARE OF CHILDREN ACT 2004, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE [HTTP://WWW.JUSTICE.GOV.T.NZ/FAMILY-JUSTICE/ABOUT-US/ABOUT-THE-FAMILY-COURT/LEGISLATION/RESTRICTION-ON-PUBLISHING-JUDGMENTS](http://www.justice.govt.nz/family-justice/about-us/about-the-family-court/legislation/restriction-on-publishing-judgments).

**IN THE FAMILY COURT
AT MANUKAU**

**FAM-2015-092-000633
[2017] NZFC 7526**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[NGAIRE RUATOKI] Applicant
AND	[KIRI RUATOKI] Respondent

Hearing: 19 September 2017

Appearances: J Harland for the Applicant
L Manning for the Respondent (via telephone)
M Muller as Lawyer for the Children

Judgment: 19 September 2017

ORAL JUDGMENT OF JUDGE M L ROGERS

[1] [The children aged around 11-13], are the children of [Kiri Ruatoki]. The children's father or fathers are unknown. The applicant in these proceedings is the children's [family member], [Ngairu Ruatoki].

[2] The situation is that for a number of years the children's mother struggled to provide adequately for their care. [Kiri] has mental health problems. She has also battled with drug and alcohol issues and has been in violent relationships. Oranga Tamariki became involved in around 2012. As a result of a family group conference it was agreed that the children would be placed in the care of [family member 2]. That arrangement worked fairly well for a period of time but [the family member]'s health began to fail and that had implications for [the] ability to care for the children.

[3] Shortly before [family member 2]'s death people began thinking about who could look after the children in the long term. [Ngairu Ruatoki] had always been involved in the children's care while they were formally in [family member 2]'s care and she expressed an intention to go on providing for the children. When [family member 2] died, [Ngairu] applied to this Court and was granted leave to apply and interim parenting orders.

[4] [Kiri] was initially opposed to the applications but it seemed that matters might be resolved by way of round table meetings addressing [Kiri]'s contact requirements. However, as at this morning [Kiri]'s proceedings were withdrawn. [Kiri] had advised her lawyer that she was unable to financially manage the contact which had been agreed at round table meetings and thus felt unable to pursue her applications. I granted [Kiri] leave to withdraw her response and she and her lawyer were excused from further participation in proceedings. I note that counsel had only engaged via telelink and [Kiri] was not in fact actually able to be engaged at all.

[5] That meant that today's hearing's focus turned the orders sought by [Ngaire] having regard to s 5(a) and the broader s 5 principles. Mrs Muller, who is the children's lawyer, identified in her most recent report a number of concerns for the children as follows:

- (a) The school has to chase up the applicant for [one of the children's] medication to ensure [there is] an adequate supply at school.
- (b) The applicant did not show up for an urgent appointment organised by the school social worker to assist with priority housing.
- (c) The applicant had failed to fill in documents to ensure the children continue to receive funding they are entitled to and the school has had to step in to complete the required documents.
- (d) [The child] has not been enrolled at a school next year and as a result [ORS] funding may not be transferred in time.
- (e) Medical appointments are not always kept.

[6] Many of the concerns were drawn from information obtained from [School name deleted]. It is important to note alongside those concerns and criticism that the school also reported that [the child]'s care and presentation at school have definitely improved in the time he has been in the applicant's care.

[7] In order to further explore these concerns Ms [Ruatoki] was asked to give evidence today. That evidence has proved invaluable for me as it has shed a lot of light on the day-to-day realities for Ms [Ruatoki] and the children.

[8] Ms [Ruatoki] has [number deleted] children of her own and she has taken in [the children] because she loves them. They call her Mum and they have a very close relationship but [the children] are very challenging children. [Medical details deleted]. In a social worker's report filed on [date deleted] it was noted that the "high level of needs for the children will require ongoing support."

[9] Ms [Ruatoiki] was quite frank in acknowledging that sometimes she does forget to organise [the child's] medication for school and that she has struggled to keep on top of the paperwork, but what became very clear in listening to Ms [Ruatoiki] was that this was not for want of trying. Ms [Ruatoiki] simply has too much on her plate to cope alone with the high and complex needs of [the children].

[10] Ms [Ruatoiki] is doing her very best to meet all of the children's needs while maintaining her own employment. It seems that Ms [Ruatoiki] does not have great support from her employer and she has often been prevented from attending at meetings and the like because she cannot get time off work. [Ngaire] is doing her best to arrange meetings around the time the children are at school but that time is largely filled up with work.

[11] The stresses upon Ms[Ruatoiki] were amplified by a [details of event deleted] but nonetheless the situation was traumatic.

[12] [Details of accommodation deleted].

[13] Ms [Ruatoiki] would like to try and find other accommodation but she just does not think it is possible at the moment. She does not have the time, she does not have the money and she does not have the flexibility in employment to explore options either in the private rental market or through Housing New Zealand.

[14] Ms Muller spoke to Ms [Ruatoiki] about concerns that early on the children had been physically disciplined by her. Ms [Ruatoiki] was adamant that she does not hit the children, that she has never physically disciplined them, but she does use her words to manage their behaviour. I accept Ms[Ruatoiki]'s evidence in this regard but I wonder how long anyone can be expected to manage these children's challenging behaviour without deterioration in their parenting skills.

[15] Not only do the children have diagnosed health issues but there are also behaviours which are likely a result of their early upbringing by their mother. [Name deleted] in particular has exhibited sexualised behaviour and a very unhealthy knowledge of and interest in pornography. This has meant that Ms[Ruatoiki] has to

now monitor all [the child's] access to the Internet which means Ms [Ruatoki] has to closely oversee all homework done on the family computer. This may in and of itself seem like a small thing but it is indicative of yet another burden that falls to Ms [Ruatoki] without support from anyone. The children have not seen their mother for something like [number of years deleted]. They have no identified fathers. There is no respite for Ms [Ruatoki]. These children are her responsibility 24/7.

[16] After listening to Ms[Ruatoki]'s evidence today I can only feel admiration for how well she manages all that she has to manage but it is also quite plain that she is struggling. While I have no criticism of Ms [Ruatoki]'s efforts, I do wonder realistically how long we can ask her to go on with this level of burden and no help. As I said, there is no family support and there are no agencies actively involved with [Ngaire]. My concern, without in any way wishing to criticise or offend Ms[Ruatoki], is that ultimately she will break and that will pose a risk to the children.

[17] In her report of [date deleted] 2017 Ms Muller observes that Oranga Tamariki have an open file for the family but they have done little, if anything, to assist the family. They have not even completed the gateway assessments. Having regard to that history, Ms Muller is sceptical as to whether or not the agency would do anything for the family. I can well understand that level of scepticism but the Ministry have statutory obligations. They have identified in three previous family group conferences that these are children in need of care and protection.

[18] The Oranga Tamariki interventions as a consequence of those assessments have been absolutely minimal. For reasons I cannot understand, when family group conferences have reached agreement that the children are in need of care and protection but have not reached agreement as to a plan, the Ministry have simply let matters slide into abeyance. The fact that there is no agreement to a plan is not an excuse for not dealing with identified care and protection issues.

[19] The Ministry acknowledges these children have high needs. Those needs are only going to develop further as they grow older. While I have no concerns about the children's current care in Ms [Ruatoki]'s custody, and do not expect the Ministry to

look at placement options, I do think they need to look very carefully at providing considered, comprehensive support for these children's high level of needs.

[20] The Ministry has already accepted the children have care and protection needs. I have no doubts in that regard and I am thus going to make a further s 19 referral which is consistent with my statutory obligations. Ms [Ruatoiki] consents to that referral and acknowledges that she needs help and support in her responsibilities.

[21] Oranga Tamariki are directed to file a response to the most recent s 19 referral within 28 days. Within that response I expect there to be an explanation of the Ministry's effective inaction since the first family group conference and since concerns for the children were first identified.

[22] In the meantime, the interim parenting orders in favour of Ms [Ruatoiki] will simply continue as they are. I am going to case manage this file and the Ministry's report is to be referred to me in the first instance. I will personally manage monitoring of the 28 day timeframe for filing of the Ministry's s 19 response and if the statutory timeline is not complied with I will make further directions as appropriate.

[23] In concluding this minute, I note again that Ms[Ruatoiki] has stepped in to care for these demanding children when no one else has been willing or available to do so. If the Ministry do not support Ms [Ruatoiki] then it seems to me there is a real risk that eventually full responsibility for the care of the children will fall to the Ministry. That would be quite contrary to the statutory expectations that children should wherever possible be in the care of family and those family members should be supported in the care of their children.

M L Rogers
Family Court Judge