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**IN THE YOUTH COURT
AT NORTH SHORE**

**I TE KŌTI TAIOHI
KI ŌKAHUKURA**

**FAM-2019-044-000624
[2019] NZYC 521**

**NEW ZEALAND POLICE
Prosecutor**

v

**[JL]
Young Person**

Hearing: 30 October 2019

Appearances: Sergeant K Evans for the Prosecutor
J Anderson for the Young Person

Judgment: 30 October 2019

ORAL JUDGMENT OF JUDGE A J FITZGERALD

NEW ZEALAND POLICE v [JL] [2019] NZYC 521 [30 October 2019]

[1] [JL] is here again today at the North Shore Youth Court facing new charges alleging that she assaulted her mother and damaged a bedroom wall on 11 October. I will return to say more about those charges shortly.

[2] There are also now Family Court proceedings because the police applied for a care and protection order under the Oranga Tamariki Act 1989 on 16 October. They also applied without notice that day for a s 78 interim custody order, which I directed proceed on notice to [JL]'s parents and to Oranga Tamariki. [JL]'s mother was at Court on 16 October and I explained to her then that she and her husband were being given an opportunity to get advice and consider their position before an order would be made.

[3] The s 78 application was made because the police were often called by [JL]'s parents when [JL]'s behaviour at home became violent and they were at their wits end. Some of the callouts in the past have resulted in [JL] being arrested and she has previously been remanded in custody when facing charges. As recently as last weekend I am told there was another callout, and [JL] has again been placed at the [community organisation deleted], which is a community remand home for young female offenders. The police seek the s 78 order because they think it is better for Oranga Tamariki care and protection services to intervene to find a place for [JL] to go if there are problems in future, instead of continuing to use the police.

[4] There are a number of practical complications that might arise whether I do make the s 78 order or not but I do not think it is necessary to set those out given that agreements have been reached about what is to happen today. I am pleased agreements have been reached because I think it is essential that everybody work together on ensuring that things work as well as possible in the future in a co-operative way and without continuing to treat this as a criminal issue.

[5] I think it is important that I acknowledge [JL]'s parents in the context of the current situation and the agreement reached today. Although I have mentioned that [JL]'s mother had been at Court two weeks ago, it has only been in very recent times that they have seen Ms Gregory to talk about the applications and there were, understandably, some concerns about proceeding today to have the s 78 order made

which they were uncomfortable about. My hope was that matters could be approached without the need to force decisions on anyone today for the reasons that I have mentioned. I understand [JL]'s parents also had a concern about comments that led them to believe that if Oranga Tamariki had interim custody of [JL] they might not be consulted about placement, and I am going to return to address that concern shortly.

[6] I do also want to record that I think the police application was a good and proper one to make, and I agree with them that it is better from hereon that Oranga Tamariki care and protection services be the ones who intervene when need be without continuing to use youth justice powers and facilities to manage the problem.

[7] In fact, I believe enabling continued use of the youth justice processes is arguably contrary to law. In relation to that I refer to the amendments to the Oranga Tamariki Act that came into force on 1 July this year which include a requirement that rights children have under the UN Convention on the rights of children must be respected and upheld.

[8] As it happens, on 18 September 2019, the UN issued a new general comment on child justice which is the first they have issued since 2007. There is a strong emphasis on avoiding criminalising the behaviour of children, and also an emphasis on diverting them wherever possible from criminal law processes. In the introduction to the general comment it points out, amongst other things, that children differ from adults in their physical and psychological make up and that requires a separate system with a differentiated individualised approach. They say that exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults. They also go on to say children accused of having infringed criminal law need to be treated in a matter consistent with their sense of dignity and worth, and that the evidence shows the prevalence of crime committed by children decreases after the adoption of systems in line with those principles.

[9] Oranga Tamariki are neutral on the application for the s 78 order. There is a care and protection social worker already assigned who is here. I am told respite care had recently been used. Amongst other things it has been mentioned today that application could be made to The Hub, but that it might take a while to find a suitable

placement. A care and protection FGC is being held on 27 November 2019 and the plan is to look at a special placement with an organisation called Oregon with a s 140 agreement then being made.

[10] The primary issue today has been what happens in the meantime. Given the history of this case I think four weeks is a long time to leave things to chance. I am therefore satisfied that a s 78 interim custody order should be made today and as a result of the discussions that is an order made by consent. I am making it subject to a condition that Oranga Tamariki consult with [JL]'s parents about placement decisions in the event that they are called upon to intervene. In that regard I just note though that the intention is that [JL] will continue to live at home, and we all hope that that works successfully.

[11] The proceedings are adjourned to the Oranga Tamariki list at the North Shore Family Court on [details deleted].

[12] As a result of that order having been made the police have asked today for the charges I referred to earlier to be withdrawn on the basis that those matters now be dealt by alternative action. Leave to withdraw those charges is now granted. I agree that it would be a much better way to deal with matters for that approach to be taken.

[13] The order that I have made is to be issued as soon as possible and my decision should be typed back and made available as soon as possible as well.

A J FitzGerald
Youth Court and Family Court Judge