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<http://www.legislation.govt.nz/act/public/1989/0024/latest/DLM155054.html>

**IN THE YOUTH COURT
AT WHANGAREI**

**I TE KŌTI TAIOHI
KI WHANGĀREI-TERENGA-PARĀOA**

**CRI-2020-288-000098
[2021] NZYC 47**

**NEW ZEALAND POLICE
Prosecutor**

v

**[DH]
Young Person**

Hearing: 11 February 2021

Appearances: Senior Constable R Stevens for the Prosecutor
D Whitehead for the Young Person

Judgment: 11 February 2021

MINUTE OF JUDGE G L DAVIS

[1] I have before me [DH]. [DH] has a number of matters before the Court, they include an unlawful taking of a motor vehicle in October 2020, escaping Oranga Tamariki custody on the same day, another charge of escaping Oranga Tamariki custody on [date deleted] November, shoplifting alcohol [several days later] and another escaping Oranga Tamariki custody on [date deleted] December 2020.

[2] I am directing an urgent family group conference be held and this matter, go into the cross-over Court. Today, I am granting [DH] bail on the following conditions:

- (a) She is to live at [address deleted].
- (b) She is to attend and engage with supported bail.
- (c) She is to attend and engage with all family group conferences as directed.

[3] Bail to [the address] is not supported by the police. In many respects, it might not necessarily be supported by Oranga Tamariki but they are of the view that if there is a remand in custody under 238(1)(d) it would only be to the [youth justice facility] in Auckland and [DH] will likely abscond from that address. It is not to say that Oranga Tamariki have put out the white flag in terms of a custodial remand but there are a number of complex issues here that, in my view, require thorough examination by either the Youth Court, the Family Court, the cross-over Court, or whoever the responsible judge who manages these files may be.

[4] Today I heard from the care and protection social worker, Ms Reilley. She told me that the living situation for [DH] and her whānau is as follows; they live in [location deleted]. [DH] is there. In addition to that, there are three very complex high needs children in the household two of whom have [condition deleted] and one of whom has [a different condition].

[5] Mum and Dad are, by and large, good parents but they literally have the weight of the world on their shoulders. There have been interventions in the past by Oranga Tamariki and supports being offered but those supports have not necessarily been either accepted or followed through by the whānau. I am not here to enquire why that may be because what I heard today and what I saw when we discussed the living arrangements, lead me to think that this is a whānau that is, in many respects, in crisis. I emphasise that [DH]'s mum is thought of very highly by Oranga Tamariki as a mum. Those are not the issues. But what we have, it appears to be, is a woman who has had to soldier on through thick, through thin, through hot, through cold, through high, through low, in a very complex household and, in many respects, she may simply be worn out by life itself.

[6] [DH] is part of that broader puzzle and no doubt because of the high needs of the other children, I am told that [DH] has been brought up with very few boundaries. When those boundaries are put in place for [DH], she rebels and does a runner. It might explain a number of the missing person reports that relate to [DH] since she was about 12 or 13 years of age. But what that then means is that, eventually, she comes home. That her base and, from what I understand, somewhere she relies on and understands. But that still is a complex living situation.

[7] I enquired whether anybody had asked the whānau whether they themselves saw a pathway out of the weight that I have seen and in fairness to [DH]'s mum, she did not answer that, and nor did I expect her to.

[8] I wonder whether she has even had time to ever think of what a pathway to an easier life might even look like. That is not a criticism. Again, she is, literally, busy 24 hours per day, seven days per week managing her household.

[9] So, I wonder, in terms of the care and protection issues that [DH] faces, the youth justice issues that she faces, whether these will, largely, all be resolved by a broader in depth look as to what the whānau needs might be. Funnily enough, ss 4, 4A, 5, 6, 7 and 7AA of the Oranga Tamariki Act 1989 also require the courts to look at that.

[10] These sections of the Oranga Tamariki Act introduce new concepts including a new set of purposes. These purposes include to promote the well-being of children, young persons, and their families, whānau, hapū, iwi, and family groups. The purpose of promoting the well-being of children, young persons, and their families, whānau, hapū, iwi, and family groups will be achieved through establishing, promoting and co-ordinating services that:

- are designed to affirm mana tamaiti (tamariki), are centred on children's and young persons' rights, promote their best interests, advance their well-being, address their needs, and provide for their participation in decision making that affects them;
- advance positive long-term health, educational, social, economic, or other outcomes for children and young persons;
- are culturally appropriate and competently provided;
- support and protect children and young persons to prevent them suffering harm, abuse, neglect, ill treatment or deprivation, or by responding to those things;
- assisting families, whanau, hapū, iwi or family groups to prevent their children and young persons suffering harm, abuse, neglect, ill treatment or deprivation, or by responding to those things;
- assisting families and whānau, hapū, iwi, and family groups, at the earliest opportunity, to fulfil their responsibility to meet the needs of their children and young persons (including their developmental needs, and the need for a safe, stable, and loving home);
- ensuring where children and young persons require care under the Act they have a safe, stable, and loving home from the earliest opportunity and support to address those needs; Tiriti o Waitangi also requires the courts and all persons exercising functions and powers under the Act

to look at these matters. The United Nations Convention on the rights of a child requires minimum standards to be put in place for our tamariki.

[11] These are mandatory requirements and are not simply checklists. All children and young people are entitled to the support contemplated by the Act to the fullest extent reasonably practical.

[12] The principles of the Treaty of Waitangi have an important role to play here. I have said many times in this court that the Waitangi Tribunal's jurisprudence is very instructive in that regard. While the principles of partnership and those sorts of things are well-known, the Tribunal have also spoken about deprivation and other similar broader social issues.

[13] Once these issues are known, the treaty partner acting in the utmost good faith towards its treaty partner, would seek to address those issues. The Crown is a Treaty partner. The organisation that exercises the Crown's functions on a day-to-day basis is Oranga Tamariki. They are, for the purposes of this exercise, a Treaty partner. It is not enough to say that this is somebody else's responsibility. It is this Court's, Oranga Tamariki's, the police, the lawyers', the social workers', everyone in this court has obligations that they must fulfil. We owe a specific duty to this particular whānau. That Act must be looked through a lens that is specific to the needs of this whānau. I invite everyone to look at this through a human lens, not through a youth justice lens. Look at it through anything but a youth justice lens, a health lens, a whānau ora lens, the solutions will come forward then.

[14] The obligations are as I have said many times before are active obligations. They are not passive. The Act supports that view clearly setting out in its purposes the need to respond to harm, abuse, neglect, ill treatment or deprivation.

[15] Section 5 requires the well-being of the child or young person to be at the centre of all decision making that affects the child or young person. Again, phrases such as mana tamaiti and a young person's well-being are reiterated. Here, the link between a

young person's well-being and mana tamaiti is specifically recognised and is to be protected through recognising their whakapapa and the whanaungatanga responsibilities of their family, whānau, hapū, iwi, and family group.

[16] Furthermore, a holistic approach that sees a young person as a whole person is required.

[17] The United Nations Convention on Rights of the Child have a role to play here.

[18] Section 7AA places specific duties on the Chief Executive of Oranga Tamariki to recognise and provide a practical commitment to the Treaty of Waitangi (Te Tiriti o Waitangi). While s 7(2) of the Act sets out the need to develop high level policies and practices and s 7(5) of the Act requires the chief executive to publish annual reports to demonstrate to the public how the requirement of s 7(2) have been achieved. [DH] is the practical embodiment of those obligations. How Oranga Tamariki respond to this case, will demonstrate what progress has been made.

[19] In other words, how will the burden that is weighing this whānau down be lifted?

[20] This sounds as though I am firing bullets at everybody else in the room. I signalled earlier; [DH] has come before this Youth Court before. I was not aware of these issues if and when I dealt with [DH] previously. I am, therefore, as much to blame as anyone else, [DH].

[21] Having said all of that, I repeat formally in this minute what I said to you as well, you need to pull your weight as well. It is all well and good to say: "I am going to do a runner from the [youth justice facility], I am going to pinch somebody's car, go on a joyride, go and see my boyfriend or whatever I want to do or go and play up." The Court has an obligation to make sure members of the public are protected and if you are not going to pull your weight then what might well happen is the Court responds to that by putting you in jail. So, we all have to work together on this, it cannot be done without your help, it cannot be done without the whānau's help, it

cannot be done without Oranga Tamariki's help, it cannot be done without the police's help and everyone else's help as well.

[22] So, with that in mind, this note is being dictated up so that it can go to Judge King in the cross-over court and she can have a look at it at that point.

[23] I am going to remand you on bail to 26 March at 2.45 in the cross-over court. Your bail conditions are:

- (a) You are to live at [address deleted].
- (b) You are to attend and engage with supportive bail.
- (c) You are to attend and engage with family group conferences as directed.

[24] I signal that I have not overlooked the fact there is a s 101 custody order here, but I am satisfied from what I have heard today, family violence issues that last came before the Court happened in June 2020. It is a measure of practical necessity in this bail decision today as much as anything else.

[25] I also direct a copy of this decision be place on the Care and Protection file.

Judge GL Davis
District Court Judge

Date of authentication: 16/02/2021

In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.