

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

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**IN THE FAMILY COURT  
AT WHANGANUI**

**I TE KŌTI WHĀNAU  
KI WHANGANUI**

**FAM-2010-054-000679  
[2019] NZFC 9186**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[LAUREL SNIDER] Applicant
AND	[NAVEED FRAZIER] Respondent

Hearing: 23 September 2019

Appearances: Applicant appears in Person  
No appearance by or on behalf of the Respondent

Judgment: 6 November 2019

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**RESERVED DECISION OF JUDGE D G MATHESON**

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[1] On 23 September 2019 I delivered an oral judgment concerning the applicant's application to have the respondent removed as a guardian. I adjourned the matter. Being mindful of s 6 of the Care of Children Act 2004, I arranged for Ms Burlace to be appointed as lawyer for the child, to engage with him and report.

[2] Ms Burlace has now reported and identified she met a confident and engaging young man who was a pleasure to meet and talk with. He had a general knowledge of

the applications before the Court. He has limited knowledge of his [nationality deleted] heritage.

[3] Ms Burlace considered that that is something that could be developed.

[4] The recommendation of lawyer for child was that the father be removed as the guardian, that New Zealand be confirmed as the child's principle place of residence and that the order preventing removal from New Zealand be varied to provide that the child not be able to travel overseas with anyone other than Ms [Snider].

[5] Having received that information, I now make my determination.

[6] The issue of removal of a guardian is set out in s 29 of the Care of Children Act 2004.

### **29 Court may remove guardians**

- (1) On an application for the purpose by an eligible person, the court may make—
  - (a) an order depriving a parent of the guardianship of his or her child; or
  - (b) an order removing from office a testamentary guardian or court-appointed guardian; or
  - (c) an order revoking an appointment of an additional guardian made under section 23.
- (2) In this section, **eligible person**, in relation to a child, means any of the following persons:
  - (a) a parent of the child:
  - (b) a guardian of the child:
  - (c) a grandparent or an aunt or an uncle of the child:
  - (d) a sibling (including a half-sibling) of the child:
  - (e) a spouse or partner of a parent of the child:
  - (f) any other person granted leave to apply by the court.
- (3) An order under subsection (1)(a) (that is, an order depriving a parent of the guardianship of his or her child) must not be made unless the court is satisfied—

- (a) that the parent is unwilling to perform or exercise the duties, powers, rights, and responsibilities of a guardian, or that the parent is for some grave reason unfit to be a guardian of the child; and
  - (b) that the order will serve the welfare and best interests of the child.
- (4) An order under subsection (1)(b) or (c) must not be made unless the court is satisfied that the order will serve the welfare and best interests of the child.
- (5) On making an order under subsection (1), the court may also make on its own initiative an order under section 27.

[7] The applicant is an eligible person.

[8] An order must not be made unless the Court is satisfied that the parent is unwilling to perform or exercise the duties, powers, rights and responsibilities of the guardian, or that the parent is for some grave reason unfit to be the guardian of the child, and that the order will serve the welfare and best interests of the child.

[9] The duties, powers, rights and responsibilities of a guardian are set out in detail in s 15 and s 16.

[10] The evidence before the Court, as I noted on 23 September 2019 is that for all intents and purposes the mother's relationship with father was over before the child was born. There was a joint decision the child be brought up in New Zealand, and just shy of a week prior to the child's birth, Father removed two other children from New Zealand and has not been back.

[11] It is clear to me that Father has shown no interest in developing his relationship with the child, even at a time when the child had a [medical event deleted] at age 5. Mother's evidence is that Father did not assist in advancing investigative processes about that at all, and that lack of assistance was something contrary in my view to the best interests and welfare of the child.

[12] There was a brief window of a month or so when some child support was paid, but other than that there has been no financial support. Initially Mother did make contact by 'phone or Skype when the child was very young for birthdays or

anniversaries and other special occasions, but that was many years ago. There has been no approach from Father at all.

[13] From time to time Mother has sought leave of the Court to travel overseas for brief holiday periods and Father has made no formal response to her applications.

[14] This is a situation of abandonment and it seems to me, particularly taking into account, the lack of engagement at the time of the child's [medical event] that Father has been unwilling to exercise the responsibilities of guardianship.

[15] It seems this is a situation similar to the one confronting Judge Riddell in *Dalal v Alfarsi*, wherein it was found that the father had not provided support for the mother either emotionally or financially and had never seen or had contact with his son<sup>1</sup>.

[16] Accordingly, I am satisfied that the applicant has established that the father is unwilling to perform or exercise the duties, powers, rights and responsibilities of a guardian.

[17] The matter does not end there however, and I need to be satisfied an order will serve the welfare and best interests of the child.

[18] The situation that developed at the time of the child's [medical event] wherein Mother was unable to enlist the assistance of Father underlines that it will be in the welfare and best interests of the child for him to be removed. Should such a situation develop again, Mother needs to be able to respond quickly and effectively without having to go through a process of attempting to engage with a defaulting co-guardian.

[19] In the circumstances I am satisfied that the father should be removed as a guardian.

[20] That of course does not mean he is removed as a parent and neither does it remove mother's obligations to ensure that the child develops an awareness of his paternal lineage as required by s 5(f).

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<sup>1</sup> *Dalal v Alfarsi* [2016] NZFC 10653

[21] Removal of guardianship also does not remove the need to seek the engagement of the father in relation to the current order that is in place that prevents the child being removed from New Zealand. Having engaged with Mother and having reviewed the file wherein she has on several occasions had to come to Court to facilitate short-term holidays, I think that the current order can be tidied up by a simple amendment.

[22] The order is in place for very good reason with father's history of removing two other children from the Country. The order in place is to prevent the father spiriting the child away.

[23] Section 77(3)(c) identifies:

... (c) may, whether or not a warrant has been issued under paragraph (a) (either with or without an additional order under paragraph (b)), order that the child not be removed from New Zealand by—

(i) any person; or

(ii) any person other than a person named in the order.

[24] The order as it currently stands simply provides that the child shall not be removed from New Zealand until further order of the Court. I now, on my own initiative, amend that order to provide that the child [James Frazier], born [date deleted] 2008, shall not be removed from New Zealand by any person other than the child's mother, [Laurel Snider].

[25] As a result of this Mother will be able to travel on holiday with the child without impediment in the future.

[26] There have been difficulties with service and with his removal as a guardian, I consider this a pragmatic and sensible resolution of an ongoing problem.

[27] As I noted at the hearing on 23 September 2019, there will be no costs contribution towards lawyer for child's fees and expenses.

Judge DG Matheson  
Family Court Judge

Date of authentication: 12/11/2019

In an electronic form, authenticated pursuant to Rule 206A Family Court Rules 2002.