

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

NOTE: PURSUANT TO S 437A OF THE ORANGA TAMARIKI ACT 1989, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE

<https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/>

**IN THE FAMILY COURT
AT MANUKAU**

**I TE KŌTI WHĀNAU
KI MANUKAU**

**FAM-2020-092-000346
[2020] NZFC 2519**

IN THE MATTER OF THE ORANGA TAMARIKI ACT 1989

BETWEEN CHIEF EXECUTIVE OF ORANGA
TAMARIKI—MINISTRY FOR
CHILDREN
Applicant

AND [TQ]
[XR]
Respondents

AND [BR] born on [date deleted] 2020
Child or Young Person the application is
about

Hearing: 9 April 2020

Appearances: C Mutavadzic for the Chief Executive
Respondent [TQ] appears in Person
M Anderson-Ulu for the Respondent [XR]
I Telford as Lawyer for the Child
[GR] and [HR] as Grandparents
Y Ewert as Supervisor for Manurewa Oranga Tamariki
R Ashby as Supervisor for Manurewa Oranga Tamariki
C Garvin as Social Worker
B Hoete as Iwi Support Advisor

Judgment: 9 April 2020

ORAL JUDGMENT OF JUDGE K TAN

[1] This is a matter that relates to the young baby, [BR], born [date deleted] 2020. [BR]'s matter came before me on the eDuty platform on 7 April. I received on that platform an urgent without notice application filed by Oranga Tamariki seeking amongst other things a s 78 order. I deferred the decision in relation to that application to what is colloquially known as a Pickwick Hearing which occurred today, 9 April, at 11.00 am. I also made some directions and asked Oranga Tamariki to respond to three questions that I had which related to information on the offending of an adult son in the home of the paternal grandparents, what was the care situation for another child in the home [AR] and attachment issues for [BR].

[2] The pleadings and the teleconference minutes were served on the parents of the child as well as the paternal grandparents yesterday. We have had lengthy discussions at 11 o'clock this morning and I will go through the participants shortly. I then stood the matter down for a further half an hour to enable me to come back with my decision.

[3] I am grateful to all the whānau that have been able to participate on the telephone today. We are in unique circumstances where everyone has appeared by way of teleconference as opposed to a face to face hearing because of the current COVID-19 situation that grasps the country at the moment.

[4] On the telephone participating at 11 o'clock and as I give this oral decision is the paternal grandparents of [BR], [GR] and [HR]. On the telephone together is [BR]'s dad, [XR] and his mother, [TQ]. I also have on the telephone counsel for Oranga Tamariki, Ms Mutavadzic as well as social worker Claire Garvin and two supervisors, Rena Ashby and Yvette Ewert. Counsel for [XR], Ms Anderson-Ulu, has also participated and lawyer for child, who is Mr Telford. I also record that Mr Blaine Hoete from Waikato-Tainui was on the telephone at 11 o'clock but has asked to be excused for the issuing of my decision at 12.30 pm due to other commitments that he has.

Issue

[5] The issue for determination today is whether or not the Court is satisfied that a s 78 temporary custody order should be made in favour of Oranga Tamariki.

[6] The Court needs to be guided by the principles of the Act at s 5 and s 13 as well as the section 4 purposes and s 4A well-being and best interests of the child. The Court also needs to be satisfied that the s 78 order is the only alternative available in terms of protecting the child, [BR] (s73).

Background

[7] By way of background a number of issues have been raised about [BR]'s mother, [TQ], and Oranga Tamariki have outlined their concerns in terms of her ability to safely care for [BR]. The issues that arise in relation to her include previous Oranga Tamariki involvement with two older children, at the end of December last year a s 18(B) determination in relation to those children not returning to her care was made, current criminal charges that she is facing that are yet to be determined, as well as current parole conditions in relation to not being able to have a child under 16 in her care or have any contact with. There are also issues around drug use.

[8] This is balanced against what I have read has been a somewhat traumatic background for [TQ] in terms of her own upbringing and trauma that she has experienced.

[9] In terms of the father, [XR], one of the prime concerns raised by Oranga Tamariki is that he is still in a relationship with [TQ] and therefore this raises some concerns about his current ability to care for [BR]. Oranga Tamariki also identify that he may not be able to manage a new born baby unassisted from information that they say they received from [GR] and [HR].

[10] At this stage he has not completed a hair follicle test but his counsel has said that funding has been sought from legal aid for this and that a test should be completed in due course.

[11] With that background in mind there are concerns about [BR] being with his parents. However, there was a family plan that was put in place for him to be with his paternal grandparents, [GR] and [HR]. What seems to have derailed the whānau plan in relation to [BR] being with his grandparents is information that was received by the social worker that residing in the home currently of the grandparents is another adult son who has criminal convictions for sexual offending against a minor. This combined with the current difficulties with the COVID-19 situation resulted in Oranga Tamariki seeking a place of safety warrant on 3 April 2020 and being granted that and then uplifting [BR] from the grandparents' home on [date deleted].

[12] As part of the background [BR] was born on [date deleted]. There was a birthing plan that was provided to the hospital that attached the place of safety warrant. The hospital discharged [BR] into the care of his paternal grandparents on [date deleted]. The grandparents were understandably unhappy and distressed when [BR] was uplifted from their care [the next day].

Discussion

[13] When the matter first came before me I was somewhat perplexed in terms of why [BR] was not able to be in the care of his grandparents suddenly as there was limited information about the sexual offending of the adult son as well as what seemed to be an inconsistency about safety in their home given that another child, [AR], who is an older child of [XR], remained in the home of the grandparents and no issue was raised about that. As a result of this I sought further information.

[14] At the hearing I was informed that there was a whānau hui that occurred on 23 March and a plan put in place for [BR] when born to be with his paternal grandparents. Unfortunately, that plan was not attached to any documentation given to the Court as part of the without notice application made by Oranga Tamariki. Counsel for Oranga Tamariki said that was an oversight, this oversight is notable from my perspective in terms of being able to give the Court a full picture of the involvement of the whānau when making decisions for their mokopuna – such plans should be included in without notice applications.

[15] The social worker informed the Court that it was subsequent to that meeting that the information came out to her about the adult son of [GR] and [HR] being in the home and his convictions.

[16] I wish to record that [BR] is a child of both Māori and Cook Island Māori descent. I understand that he has links to both islands of Rarotonga and Manaia as well as to [four iwi deleted]. This is a rich cultural heritage for this little boy and no doubt his whānau wish to be integrally involved in terms of his care arrangements. This is also what is provided for under the legislation.

[17] When I turn to what I need to consider, the general principles when exercising powers under the Act, s 5 sets this out and I have been assisted by Mr Telford drawing my attention to these principles. He places the emphasis on the principle of the child needing to be protected from harm. That decision should be made in a prompt and appropriate timeframe for the age of the child and that a child's wellbeing (I infer he was referring to the mana tamaiti principle) should be protected by recognising their whakapapa and whanaungatanga responsibility for their family, whānau, hapū, iwi and family group.

[18] Turning to the positions of the parties, Oranga Tamariki are seeking a s 78 order as it is their view that given the background of the parents and in particular the information that they have received about the adult son in the home of [GR] and [HR], that they require a custody order in their favour because there would be too much risk to [BR] if he was to be returned back to the family now.

[19] The risk in terms of the grandparents is that there needs to be further assessments in relation to their living arrangements with their adult son.

[20] For the parents I record that [XR] through his counsel has indicated a consent position to a s 78 order being made. He has, through his counsel however, made it clear that he wants to be considered to care for [BR] and in fact his daughter as well. She is not formally a part of these proceedings.

[21] In terms of [BR]'s mum, [TQ], she was unable to, understandably, fully put forward her position as to whether she fully agreed or disagreed with the formal order that was sought but did state clearly that she wanted [BR] to be with his dad and/or with the grandparents.

[22] In terms of [GR] and [HR], they have clearly expressed their love, care and consideration not only for their moko, [BR], but also for their adult son. They have stated quite articulately to me through this hearing the detail that they have gone through as a whānau to work through the offending of their adult son and the work that they have done to manage him as a safety risk. They said they have worked through the good, bad and ugly as a family. They are not ready to put their son out on the road. They have also expressed their distress at having [BR] removed from their care during the lockdown of the country and that [BR] is an important member of their whānau and that they would like him back with their whānau. Added to the consequence of what has occurred is the fact that their granddaughter [AR], is now not in their home, she is with a whānau member a Great Aunty who has stepped up to look after her in these difficult circumstances.

[23] Mr Hoete from Waikato-Tainui who is supporting the whānau emphasised that his organisation, Waikato-Tainui, is there to ensure that there is support for [BR] and a plan put in place for [BR] to be repatriated with his whānau in a safe and appropriate way.

[24] Turning to the submissions of lawyer for child, as I have stated earlier he pointed to the s 5 principle and that what needs to be balanced is the safety of this child with also being with his whānau. He made submissions that there needs to be further assessments in terms of risk and there are still questions around the adults that may be in the home and further assessments needing to be done in relation to [XR], his brother and the grandparents.

[25] Obviously, some matters have been hampered by the fact that there has not been the ability to have any face to face kōrero or even telephone conversations with the whānau before today due to the speed in which matters have progressed and the lockdown situation that we are in. His position was that the risks around Mum have

been captured and that Dad was still a real contender in the future, though questions around his drug use needed to be addressed.

[26] He also submitted that this is a situation where a family group conference needs to be allocated urgently notwithstanding the lockdown situation and his submission was that he was supportive of a s 78 order being made unencumbered as to placement.

[27] I have considered matters carefully and determined that a s 78 order should issue as there is unassessed risk to [BR] with his uncle in the home of his grandparents. There is risk with a return to his parents. However, in doing so I wish to make it clear that there needs to be urgent work undertaken to continue to kōrero and discuss with the whānau to get assessments done in a timely fashion and to look immediately at what can be done to ensure [BR] is back in the embrace safely with whānau members. Whether that is [GR] and [HR], or another whānau member that is identified, or even the possibility of his father.

[28] I know that there are challenges with the current situation that we have, however, [BR] is a young baby that needs to have decisions made quickly for him. I do not want to see a situation that we are three months down the track and there are still assessments pending, he remains in long-term care and there has been no contact with whānau members. That would be untenable.

[29] Even with the challenges of getting face to face contact, I urge that there be the option of looking at having whānau hui electronically or over the phone and working in particular with Mr Hoete of Waikato-Tainui to ensure that there can be a plan put in place which sees [BR] being in the embrace of his whānau safely.

[30] In terms of the family, I noted that there were two homes currently between the family. There is the home of [GR] and [HR], and if I understand it, a separate home for his parents. Of course, I cannot say what the whānau are to do in relation to that, but perhaps there can be some kōrero about whether the adult son at some point after lockdown is able to go into a separate home so that there are options available for [BR] to be with whānau. Alternatively there is an aunty but, of course, I do not have any information as to what her capacity is to take on [BR].

[31] I acknowledge that this may not be a decision that sits well with the whānau, but there are strengths in this whānau. I do wish to record that in terms of the child, [AR], the information I had from the social worker is that she has received excellent care between her father and her grandparents and certainly no issues have been raised by the school about her and I understand that she may not have come to the attention of Oranga Tamariki while in that care arrangement. What I inferred from what I heard is that but for the adult son and his convictions, Oranga Tamariki were comfortable with [BR] being with his grandparents.

[32] The whānau has armed themselves with support through Waikato-Tainui and they are to be commended for that in terms of working together to get a plan. I ask that Oranga Tamariki continue to work with the whānau as they have to date even in the current difficult circumstances, and the social workers continue to work through best options for [BR] to be back with whānau.

[33] Therefore, what I am going to do is as follows:

- (a) I make a s 78 order.
- (b) I ask that this matter be set down for another judicial conference by Friday 24 April and I ask the registry to arrange a half hour conference before me.

[34] It is likely that that will be needing to occur again by telephone or if the registry can explore whether video conferencing is at all an option, that would assist. The registry will provide a specific time in due course. I have asked that it come back in a short timeframe because I do not want this file to languish, even though the circumstances are unusual with the lockdown.

[35] I also ask that this matter be allocated an urgent family group conference. Even if the family group conference is not able to be held before that date, my expectation is still that we will have the judicial conference so that Oranga Tamariki can provide an update as to how [BR] is going in his placement, what arrangements have been put in place for whānau contact and contact being not necessarily face to face if we are

still in lockdown, but also looking at all the electronic options available in terms of that and the exchange of photos et cetera and what process is in place for assessments. Hopefully in that period, if not a family group conference, that there has been a further whānau hui to look at what other whānau options are available in the meantime.

[36] It will also give an opportunity for lawyer for child to talk to the parties as he would ordinarily do, and to provide a further report to the Court that may assist in terms of matters moving forward.

Addendum: I indicated at the beginning of my dictation that ‘As part of this oral decision I may be required to make some amendments to the background and/or flesh out the details in relation to the law but the substance of my decision will not change’. I confirm that there have been some amendments from what was orally dictated but the outcome has not changed.

Judge KMSH Tan
Family Court Judge

Date of authentication: 20/04/2020

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