

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, 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/](https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/)**

**IN THE FAMILY COURT
AT NEW PLYMOUTH**

**I TE KŌTI WHĀNAU
KI NGĀMOTU**

**FAM-2017-043-000248
[2022] NZFC 1042**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[ERIN PEARCE] Applicant
AND	[LOUIS BIRD] Respondent

Hearing: On the Papers

Counsel: K Briggs for the Applicant
L Waddell for the Respondent
M Cochrane as Lawyer for the Children

Judgment: 10 February 2022

JUDGMENT OF JUDGE A S GREIG

[1] Issues have arisen between the parents of three children, [Elise] aged 12, [Logan] aged 11 and [Luke] aged eight.

[2] The issues are:

(a) Should [Logan] and [Luke] be vaccinated against COVID-19?

- (b) Should Mr [Bird]'s contact with [Luke] and [Logan] continue to be suspended whilst he remains unvaccinated?

Background

[3] Mr [Bird]'s contact became supervised following an interim parenting order made as a result of a without-notice application on 25 February 2021. There had been earlier proceedings between the parties which had resulted in a final parenting order, with the children being in their mother's day-to-day care, and the two younger children, both boys, going to their father every second weekend. The oldest child, [Elise], was allowed contact with her father as she wished.

[4] That order was suspended in February because the mother alleged that the father had lapsed back into drug use and that the children were demonstrating fear of their father.

[5] The father's contact became supervised and funding was approved.

[6] On 25 November 2021, all contact between the children and their father was suspended following a further without-notice application by the children's mother. As a result of [several health issues], [Logan] is particularly vulnerable in the event that he contracts COVID-19. The combined medical advice from both his GP and his specialists are that his medical conditions "would predispose him to severe COVID infection if he were to contract it... it is highly recommended he be vaccinated against COVID-19, his vaccination decreases the chance of contracting COVID infection and reduces the risk of severe COVID infection (requiring hospitalisation/intensive care) if he were to contract it."

[7] [Luke]'s GP goes on to "highly recommend" that [Luke] be vaccinated against COVID-19.

[8] The children's mother continues to oppose their father having any contact with the children, supervised or unsupervised, whilst he and they remain unvaccinated.

[9] That is the first issue for the Court to decide.

[10] The second issue is whether or not the children should be vaccinated against their father's wishes. That is a guardianship issue.

Mr [Bird]'s views

[11] Mr [Bird] does not want his children vaccinated. He does not trust the Pfizer vaccination. He does not trust the science that has been accepted by Governments around the world that say this vaccination is not only safe but will protect against severe COVID. As a result, he does not consent to the children being vaccinated. He says his contact with the boys should continue, even though he is not vaccinated.

[12] The children's mother is a [health care worker] and works at [a health care facility]. This, says Mr [Bird], means that she is the greater risk to the children's health. He, on the other hand, works in the [details deleted] section of a [supermarket]. He does not operate the front counter; he primarily works alone, and he has limited client interaction. His workplace has strict hygiene policies. He is required to wear a mask at all times and, being a [food worker], washes his hands frequently.

[13] Mr [Bird] also believes that the children's mother is seizing on the vaccination issue illegitimately and insincerely as a device to limit his contact with the children.

[14] As regards resuming supervised contact: Mr [Bird] proposes that he takes the following precautionary measures at contact to protect [Logan], namely:

- always wearing a mask;
- sanitising or washing his hands before contact commences;
- not attending contact if he is feeling unwell; and
- ensuring that contact takes place outdoors (if possible) or in a well-ventilated indoor area.

Discussion

[15] I do not know whether Mr [Bird]'s present contact supervisor is prepared to supervise contact with unvaccinated parents. They are entitled to take the position that they do not. I put that issue to one side for the moment.

[16] I am entitled to take judicial notice of the research adopted by the New Zealand Governments, and Governments around the world, that the Pfizer vaccine is safe to be administered to children. It is safe.

[17] I accept that [Logan] is at severe risk of serious illness/hospitalisation/death in the event that he catches COVID-19.

[18] I accept that the children's mother, as a [health care worker] and in particular as a [specialised health care worker], will take all possible precautions not to become infected with COVID-19 and not to pass it on to her children.

[19] Both of these decisions must be made in terms of ss 4, 5 and 6 of the Care of Children Act 2004. I must bear in mind the children's wishes, giving such weight to their wishes as their age dictates, and must make a decision that accords with their welfare and best interests. It is in the children's best interests to have the closest possible relationship that it is safe for them to have with their father.

[20] Safety denotes physical safety; it also includes psychological safety and, in the particular case of [Logan], it includes protecting him from the risk of catching COVID.

[21] The risk of [Logan] developing serious illness in the event that he catches COVID-19 will be significantly diminished if he is vaccinated. The science in support of that contention is overwhelming. Indeed, if [Logan] was in the care of two parents who were refusing to vaccinate him, I would consider having him removed from their care until such time as he could be properly vaccinated.

[22] I order that [Logan] and [Luke] are to receive whatever number of vaccinations against COVID-19 that his General Practitioner recommends.

[23] The precautions that Mr [Bird] advances as being safe for [Logan] might be safe: masking, washing, having contact outdoors and not attending contact if he is feeling unwell.

[24] There are, of course, further steps he could take such as: having a rapid antigen test 24 hours to contact taking place and maintaining a two-metre distance from the children. All of those might be necessary. I would, however, need advice from both the contact supervisor and one of [Logan]'s medical professionals to be sure. For the moment I am not prepared to take the risk.

[25] Mr [Bird]'s contact with all three children is suspended until all three children have been vaccinated to their General Practitioner's satisfaction. At the point that they have been fully protected this matter is to be referred back to me to review the position and, hopefully, reinstate Mr [Bird]'s supervised contact. It should not take too many weeks.

[26] Any applications for the costs of making these applications are to be filed within 14 days. Mr [Bird] will have seven days in which to reply.

Judge AS Greig
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 10/02/2022