

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 CHRISTCHURCH**

**I TE KŌTI WHĀNAU
KI ŌTAUTAHI**

FAM-2015-006-000112

[2020] NZFC 2250

IN THE MATTER OF	THE ORANGA TAMARIKI ACT 1989
BETWEEN	CHIEF EXECUTIVE OF ORANGA TAMARIKI – MINISTRY FOR CHILDREN Applicant
AND	[HT] First Respondent
AND	[DN] Second Respondent
AND	[QN] born on [date deleted] 2013 [PN] born on [date deleted] 2014 Children or Young Persons the application is about

Hearing: 20 March 2020

Appearances: R Williams and J Wu for the Chief Executive
M Sandom for the First Respondent
No appearance by or for the Second Respondent
M Barrell as Lawyer for the Children
No appearance by K McCarthy as Social Worker
G Dennehy as Social Worker (Via Telephone)

Judgment: 20 March 2020

ORAL JUDGMENT OF JUDGE J A MCMEEKEN

[1] This has been a hearing to determine the parenting arrangements for [PN] who will be six in [month deleted] and [QN] who will be seven in [month deleted]. Their mother is in Court to hear my decision. I have already told her the results, I will understand if she does not wish to sit in and hear all of what I am going to say.

[2] This is not the first time that the Court has been asked to determine what will happen for [PN] and [QN]. The history of their parenting arrangements is as follows. Both of the girls lived with their parents together until [date deleted] 2015. At that time [QN] was not quite two and [PN] was a year old. From [dates deleted], that is about 10 months, the children lived with their father. The children were then removed from their father in [date deleted] 2016 and for the next six and a half months they lived with caregivers, [SS] and [TS].

[3] In [late 2016] when [QN] was [three] and [PN] was [two], they were transitioned back to their mother's care and they stayed with her for about 22 months until October of 2018 when with the mother's agreement they were placed with [Oranga Tamariki caregivers]. They were with them from [dates deleted], that is for about seven months, then in [2019] the children were placed with [SS and TS] again in [location A]. So the summary in respect of these girls is as follows. They lived with their mother and father to begin with, then for 10 months they lived with their father, then for 22 months they lived with their mother, they lived with the [Oranga Tamariki caregivers] for seven months, they lived with [SS and TS] for six and a half months and then for 10 months.

[4] This disrupted parenting is very relevant to the determinations that I have got to make today. What is also very relevant to the determinations I have got to make today is the five day hearing that took place in 2016.

[5] Oranga Tamariki became involved with the girls because of concerns that they were being exposed to family violence and the alcohol abuse and mental health issues

of their parents. In 2015 the mother told the police and Oranga Tamariki that she and the father had been using methamphetamine. The parents separated in [date deleted] 2015 and the children remained in the care of their father. In September 2015 a declaration was made by consent and a s 78 interim custody order was made and the children remained in their father's care until they were removed in [2016] because of concerns about the father's living environment and his use of methamphetamine. The children were then placed with [SS and TS].

[6] In 2016 it was Oranga Tamariki's position that there was no realistic prospect that either parent would be able to safely care for the children within a time frame that met their needs and they proposed that the children be placed in a permanent home for life placement. The parents disagreed and so the matter went to Court for a hearing. Her Honour Judge O'Dwyer heard the matter for five days. In her decision Judge O'Dwyer noted that the mother accepted she had assaulted the father during fights, she accepted what she did was violent and excessive and the mother said her depression and mental health had deteriorated during her dysfunctional relationship with the girls' father and through the use of P.

[7] Her Honour found there was a pattern of abusive controlling and aggressive behaviour from the father towards their mother during the relationship that contributed to her depression, her drug taking and the escalation of physical violence. Judge O'Dwyer noted that the mother openly admitted using alcohol to excess during the relationship and using P or methamphetamine from October 2014 when [PN] was [under one year] old until 2015 when her relationship with the father ended.

[8] Oranga Tamariki at that time sought a s 101 and s 110 order to enable the Ministry to place the children with permanent foster parents. It was their case that a point had been reached when it was in the welfare and best interests of the children for them to be with permanent caregivers.

[9] Judge O'Dwyer also referred to Dr Staite's comments, he is a psychologist who had prepared two s 178 reports in 2016. It was Dr Staite's view that the mother had potential as a parent but she must obtain therapeutic help to address her individual psychological problems and get parenting support.

[10] Judge O'Dwyer also referred to evidence from a social worker who said the mother had made significant positive changes in her life since she separated from the girls' father. The social worker confirmed the mother was engaging with community social services, with the stopping violence programme, and with an addiction counsellor and the social worker believed the mother was learning to understand the impact that family violence and drug and alcohol abuse had on her and on the children.

[11] Judge O'Dwyer did refer to an area that she said was a justifiable concern and that was the mother's propensity to abuse substances to relieve stress. The Judge noted, however, that the mother had not used drugs since July of 2015. However, Judge O'Dwyer did note the mother's abuse of alcohol was more longstanding and that it was a risk that required monitoring.

[12] In 2016 Judge O'Dwyer said the mother presented well in evidence, that she readily acknowledged her failings in exposing the children to family violence and drug and alcohol use and that the mother accepted she needed therapeutic help. It was Judge O'Dwyer's view the mother was highly motivated to care safely for her children and Judge O'Dwyer was concerned that the children would be faced with further psychological upheaval if they were to be placed in a new permanent home for life foster care arrangement. Her Honour found that such a placement should only be taken as a last resort. Ultimately Judge O'Dwyer found the children should be returned to the mother while she was receiving therapeutic help and guidance and Her Honour made a s 101 custody order in favour of the Chief Executive but with a condition pursuant to s 103 that the children were to be returned to their mother's care by [month deleted] of 2016.

[13] That order was reviewed in June of 2017 and that order and the s 110 additional guardianship order were continued. The file was back for further review in May of 2018 and at that time Oranga Tamariki were seeking a discharge of the s 101 and s 110 orders and in their place were seeking a support order. There was a social work report prepared on 13 February 2018 which noted the mother was getting home based support, that she was open to those supports but also noted she had entered a new relationship and had another daughter, [JT], who was born on [date deleted] 2017.

[14] On 28 May 2018 Judge Walsh granted the applications and made a s 91 support order. However, the situation then deteriorated. In July of 2018 there was a notification about concerns relating to family violence and dysfunction, worries about the mother's mental health and reports that her drinking had increased. In [month deleted] of 2018 the mother attempted a prescription drug overdose and was hospitalised. There were multiple attempts by Oranga Tamariki to create safety plans with whānau and professionals and, among other things, a referral was made to [a support service]. A family meeting was held on 29 October 2018 and there was a plan for the mother to attend inpatient detox for two weeks. The ultimate plan was for the mother to continue parenting the children. However, on 30 October it was reported that the mother had arrived at preschool to collect the children and had been intoxicated. That same day the mother agreed with social workers that the children could be placed with Ministry caregivers and the mother would attend inpatient detox.

[15] On 19 November 2018 the mother was released from that detox but there were concerns very soon thereafter that she was continuing to drink. A family group conference was held on 5 December 2018 where there was a consent to a s 101 custody order being made and for the children to be placed with Ministry caregivers. In late December there were further concerns about the mother's mental health and concerns she was not following her treatment plan. On 9 January 2019 the mother advised the social worker that she had not attended any of her appointments and that she had been drinking. This led on 17 January 2019 to Oranga Tamariki applying on notice to discharge the s 91 support order and have a s 101 custody order made in its place.

[16] It was, therefore, abundantly clear to the mother from the whanau meeting from the family group conference in late 2018 and from the application made by Oranga Tamariki on 17 January 2019 that there were significant concerns about what was happening for her. There were plans in place to support the mother. After making their application in January Oranga Tamariki continued with their oversight and on 13 March 2019 they applied without notice for a s 78 interim custody order pending determination of their January application. This was granted by the eDuty Judge noting there were concerns the mother was drinking to excess which left her unpredictable and volatile and there was a concern that the mother could remove the children from their current placement.

[17] Oranga Tamariki were concerned when they made that March application that the mother was not undertaking a rehabilitation programme and appeared at that time to have no intention to stop drinking. The mother had indicated that she wanted until December of 2019 to work on her issues and access support. Oranga Tamariki were concerned the children had experienced significant trauma through witnessing abuse, violence, neglect, substance and alcohol consumption and they noted the mother had not been able to sustain sobriety since their return to her.

[18] There were certainly similar concerns in March of 2019 to the concerns in 2015.

[19] The application before the Court is one made by Oranga Tamariki on 17 January to discharge the s 91 support order and replace it with a s 101 custody order. I note that in submissions there has been reference to the making of a s 110 additional guardianship order in favour of the Chief Executive as well but as the mother's lawyer correctly pointed out, the application made on 17 January 2019 only seeks to discharge the s 91 support order and to make a s 101 custody order in favour of the Chief Executive.

[20] There is no evidence that the father has been served with this application. I note in respect of earlier Care of Children Act 2004 proceedings an order was made on 28 May 2018 dispensing with service on the father because at that time he could not be found. I note the children were in the father's sole care in 2015, 2016 but I understand he has not seen the children since [2016] and no-one currently involved in this case has an address for him. I am satisfied that the father clearly knows Oranga Tamariki are involved with his children and I am easily satisfied that if the father wanted to see the children, then he knows he would have to contact Oranga Tamariki and he could do that easily. He has not done so. There has been no contact between father and Oranga Tamariki. The children's current lawyer, despite attempts, has never met with the father. It is a great shame that the father has decided to leave the children's lives, but it is very clear that he has done so. The situation at the hearing was that no-one knew where the father was and the mother has had no contact with him for some years. I, therefore, make an order dispensing with service on the father and I note again that I am satisfied that the father knows the children are involved with

Oranga Tamariki and if he wished to make contact with them, he would be able to do so through that state agency.

[21] The mother has been served. She opposes the application. She wants the situation to revert back to her having day-to-day care and having the assistance of a support order. It is, therefore, for the Court to determine today much as it was required to do in 2016, as to whether the children can return to their mother's care or whether in this case they should remain with their current caregivers.

[22] I set out all of the background because in my view it is highly relevant and looking simply at the mother's position, I can summarise the situation in this way. In July of 2015 which is not quite five years ago, the mother had been living in a dysfunctional abusive relationship, she was abusing drugs including methamphetamine and her children were exposed to those abuses and as a result they were removed from her care. By August of 2016, so just about a year later the mother was sober, she was seeking help for her own issues and she was working with agencies and she wanted to be a good parent.

[23] In [2016] the children were returned to the mother's care. At that time she had just entered another relationship and ultimately she had another child to that new partner in October of 2017. In mid late 2018 it was clear that the mother was now in an abusive relationship and that the relationship that she had entered into just before her children were returned to her did not turn out as she hoped. [JT]'s father was abusing alcohol and their relationship was dysfunctional. The mother was hospitalised after a suicide attempt and she was abusing alcohol. The children, that is [PN] and [QN] were exposed to those abuses. Oranga Tamariki became involved, there was a family meeting, there was a family group conference but in early 2019 the mother knowing what was required of her for her to parent the children was still abusing alcohol and Oranga Tamariki determined that the children could not be returned to the mother's care.

[24] Now in March of 2020 the mother is saying she is sober, that is working with professionals and that she wants to be a good parent. Importantly, that was the mother's position in August of 2016. There are many similarities and sadly in many

respects, history is repeating itself. After the children were returned to the mother in [2016], she entered into another dysfunctional relationship. Yet again, partly out of that dysfunction the mother began abusing alcohol to help her cope and sadly the children were disadvantaged and impacted by this.

[25] Oranga Tamariki's position is that in accordance with the law, the children's wellbeing and best interests must be to the forefront and that because of the mother's actions and decisions, the children cannot be returned to her care. The Ministry refer to clear evidence of the mother's abuse of alcohol since 2016 and the dysfunction in her home because of her relationship. They refer to the mother's mental health issues and to the suicide attempt and to her lack of insight or ability to prioritise the children's wellbeing. Oranga Tamariki say the mother is unable to protect the children. They say the children need consistent care and unconditional commitment which the mother cannot provide. Oranga Tamariki refer to reports about the children and stress the importance for them of having stability. Mr Williams noted this saying that past conduct is the best indicator of future behaviour and he refers to the matters I have just referred to, that is similarities between 2015 and 2016 and today.

[26] Oranga Tamariki acknowledge the mother's good intention but they question her insight and her understanding of the children's needs. They, therefore, seek a s 101 custody order in favour of the Chief Executive with the children remaining in their current placement and with defined contact for the mother. It is their submission the mother should not be given another chance.

[27] The mother's current situation is that she has proceedings before the Family Court in respect of her 13 year old son [RT]. They are between her and [RT]'s father. The mother ultimately hopes for a week-about parenting arrangement and in respect of her relationship with [RT], that seems to be moving forward because she now has [RT] in her care three nights a week. That has been since January. The mother also different proceedings before the Family Court in respect of [JT] who is now [two years old] and [JT]'s father. The mother currently has professionally supervised contact with [JT] for two hours a week but ultimately wants to have day-to-day care of her. The mothers' evidence is she lives in a two bedroom home in [location B]. The evidence is she has been sober now since last year, that she has ongoing involvement

with a drug and alcohol counsellor who she used to see weekly, but now is seeing fortnightly although the counsellor is available to her anytime. The mother says she is not in a relationship and the mother wants the children back in her care under any order but suggested it could be under the existing parenting order and that she would benefit from support. The mother is using similar arguments that persuaded the Family Court in 2016 that she could care for the children.

[28] However, after the children returned to the mother's care at the end of 2016, she made a series of decisions. Just before their return, she decided to obtain accommodation in a relatively isolated area with no really close neighbours and she decided to begin a relationship with a man who already had [children] who he cared for at times. The mother decided early on in that new relationship to have a child with that man and she was pregnant within three or four months. When that relationship proved to be an unhealthy one, when the mother became aware, for example, that the new partner was drinking a lot, when she felt that as well as caring for her own children she was having to look after his [children] as well, the mother still stayed with him. When that relationship was in real difficulty and after [JT]'s birth she became pregnant twice more which resulted in two terminations which understandably had a significant impact on her mental health.

[29] At times when I am satisfied that assistance was being offered to the mother or was available, she possibly was not honest with those people or did not reveal all of the information to them that she could have and so she did not get the assistance that she so clearly needed. That series of circumstances led to a situation where the mother began drinking heavily and ultimately to Oranga Tamariki having increasing concerns and led to the children with the mother's consent being placed with caregivers.

[30] Those concerns were clearly made evident to the mother by Oranga Tamariki at least by the time of the family meeting in October and certainly by the time of the family group conference in December and then again by the application made in January.

[31] Ultimately the mother did not work with those people who were there to assist her, she did not go into rehabilitation when she first could have and after she did, she

quickly relapsed. When the s 78 interim custody order was made, there were so many similarities to the 2015 situation. The mother must have known that if the situation stayed the way it was, Oranga Tamariki would again be saying the children needed to be placed in care away from her.

[32] The starting point for the decisions that I have to make is s 4A of the Act which clearly states that the wellbeing and best interests of the children are the first and paramount consideration but that the Court also has to have regard to the principles that are set out in s 5 and s 13. I note that the standard of proof is on the balance of probabilities.

[33] Section 5 sets out the general principles that have to be applied when the Court is considering any application under the Oranga Tamariki Act 1989. Section 5(1)(b) reaffirms really what is referred to in s 4A, it says that the wellbeing of the children must be at the centre of decision making. That section refers to the following principles:

- (a) That the children have a need for a safe, stable and loving home;
- (b) That decisions should be made and implemented promptly and in a timeframe that is appropriate to the age and development of children. It says a holistic approach should be taken.

[34] That section also has, as one of the principles, that children's place within their family should be recognised and that the primary responsibility for caring for children lies with their family. The section also says that wherever possible children's families should participate in the decision making about them.

[35] The section 13 principles are principles that are applied in respect of care and protection cases such as this and again it reaffirms s 4A and says that every Court must adopt as its first and paramount consideration the wellbeing and best interests of the children.

[36] Sub-section 2 notes that it is desirable that early support and services are provided to improve the safety of children. It is also a principle that children should be removed from the care of their family only if there is serious risk of harm to those children and that if children are removed, then decisions made about them must be consistent with the principles set out in s 4 and s 5 and it also states that it is desirable for children to live with family or if that is not possible, in a family like setting. What these sections mean is that as Judge O'Dwyer said in 2016, state intervention which goes so far as to place a child away from the child's family must be shown to be demonstrably necessary and required.

[37] The application by Oranga Tamariki is for an order that continues the children's placement in the home that they have now been in for the last 10 months, and for 16 months in total, although acknowledging that it is not with family.

[38] I make the following findings:

- (a) It is highly relevant that the Court gave the mother the opportunity to parent again in 2016 and I find that the mother as a result of all that occurred in 2015 and 2016 knew what was required of her and that assistance and oversight was provided to assist her.
- (b) I find that the mother made a series of decisions. Those decisions I have referred to around the time the children were returned to her including a decision to start a relationship which ultimately compromised her ability to parent them;
- (c) I find that the mother could not or did not prioritise the welfare and best interest of these girls after they were returned to her care;
- (d) I find that there was support provided, but that the mother did not make the most of that. It was clear from the 2016 Court case that the mother needed to do considerable work and needed to access assistance. Her decision to enter into that new relationship and have another child did not assist;

- (e) I find that the mother does not fully understand what is required for the girls to be brought up in a healthy safe and stable environment;
- (f) I accept that the mother is now sober. She has done very well to get sober and stay sober but she has done that in the past. I accept that alcoholism is a disease and I note that the mother has had issues in the past with both methamphetamine and alcohol. The mother's ability to deal with stress without recourse to alcohol and drugs remains a concern;
- (g) I do not believe that the mother is appropriately set up for the return of the girls right now. She is in a two bedroomed home that she shares with her son. That could not accommodate the girls, there was no evidence about potential new homes or where they might be and that is relevant giving the situation of her son;
- (h) I have concerns about the mother's understanding of the girls' needs. For example, when it was put to the mother at page 78 of the notes of evidence, that the girls were exposed to neglect and abuse when they were in their mother's care, their mother said that she had never neglected or abused the children. The mother said that even in the state she was in, which was referring to her drinking, she was always caring for the children. She said they always had a roof over her head and they were loved. When it was put to the mother that when she was intoxicated or drunk she would not be in a position to properly care for them or meet their needs, the mother's reply was that she always did care for them no matter what state she was in and she added, "I was always there for my children no matter what state I was in". The reality is that the mother abused methamphetamine for many months in 2014 and 2015 and that she was drinking heavily in 2018, 2019. On at least one occasion she drove the children after she had been drinking and the evidence was that the mother needed assistance in her home to get the children up in the morning. The reality is that a drunk parent or a

hungover parent cannot be doing the best thing for their children despite their intentions and it is of concern that the mother thinks that she can;

- (i) I accept that Oranga Tamariki have made considerable inquiry to try and locate whānau who could care for or assist in caring for the girls. Sadly, the father has walked away. The mother herself in her evidence said that her mother and sister who do know the girls, but because of their own personal circumstances cannot care for them, and indeed at times they were not even available to provide the mother with respite. I accept that there is no realistic family option;

- (j) I note the girls have some behaviours that require extra skills from their caregivers. [PN] has a diagnosis of being on the fetal alcohol disorder spectrum although I do note that the mother was not involved in that assessment. [PN] does show behaviours that are associated with attachment and trauma based issues. [QN] is described as having periods of anger when she becomes enraged and a danger to others. The changes in placement and the experience these girls have undergone as a result of their parents' alcohol and drug abuse and the dysfunction in their home, it must be clearly accepted has impacted on them. I did not meet with the girls, they are in [location A] and I did not want a special trip undertaken for me to see them. Their views were presented at some level by their social worker. I have read the report from lawyer for the child's agent in [location A] dated 17 February 2020. She did not directly seek the children's views, but she reported that they appeared to be thriving, that they were living in a supportive environment and were closely attached to the caregivers. The school reports from this year supported the views that the girls are making good progress;

- (k) I also note the time period that the girls have spent in their mother's care. They have spent 22 months in her sole care. They also spent time with their mother and their father after their births. They have spent now some 16 ½ months in the care of their current caregivers. The girls

were last in their mother's care in October of 2018. They were placed with their current caregivers in [month deleted] of 2019.

[39] Having made those findings and applying the law, I consider that despite the mother's present sobriety and good intentions, that it would not be in the girls' best interest for them to return to their mother's care at this time. The risks, given the mother's parenting history, are just too great. Even if considerable support was available and taken, in my view that would not mitigate these risks. These children are clearly settled in their current placement where they have been for the last 10 months. In part they have been there for so long because the mother wanted time to get herself ready to parent them again. Things did not, therefore, move in a timeframe that was even appropriate for these girls.

[40] Having considered all of the evidence in this file, I note that there have been really positive comments about the mother's abilities when sober and healthy. I note the mother did so well that Oranga Tamariki thought a reduction in orders from a s 101 and s 110 orders down to a s 91 support order. The social worker said in her evidence at page 18 of the notes of evidence that when the mother is sober, they have seen that she is a really good parent.

[41] It is my view that the mother was clearly given a chance to get things back on board. Oranga Tamariki certainly did not simply rush in and remove the girls. When there were concerns in the July, they tried to put supports in place around the mother and work with her. They held a family meeting in October. They had a family group conference in December of 2018 and the plan still was for the girls' return to their mother but satisfactory progress simply was not made. So I am satisfied now that a s 101 custody order should be made in favour of the Chief Executive and that the girls should remain in the care of the Chief Executive and in their current placement. The mother had a chance to parent these girls but for the girls that did not end well. Their wellbeing would be seriously adversely affected if another chance was given and it did not work and I cannot be satisfied from the evidence today that such an opportunity would be successful.

[42] The mother clearly has some good abilities as a parent and she has things to offer these girls as their mother. It is important that the girls maintain contact with their mother. It is unfortunate in my view that the caregivers live so far away but I consider that the children must see their mother at least once a month as has been occurring. I consider that unless they were assisting with access, there is no need for the children to maintain contact with their earlier caregivers.

[43] There needs to be a careful plan for access given that I find the girls need to maintain contact with their mother and also with their siblings. They have a relationship with both their older and younger siblings and that needs to be maintained.

[44] I direct that a s 178 plan is to be prepared within eight weeks with clear proposals so that an access order can be made and that order needs to be structured so it is the best option for the girls.

[45] I acknowledge that this will cause the mother much sadness, but as I have said, she remains the girls' mother no matter what the girls call their caregivers, the mother remains their mother. She must work with her support people so that she can be a positive influence in these girls' lives even though it is not in the way that she seeks.

[46] I make the following orders. The s 91 support order and the s 78 orders are discharged. I make a s 101 custody order in favour of the Chief Executive. I direct that a new plan is to be filed within eight weeks and that the children's lawyer, Ms Barrell is to report on that plan. I will then make directions in Chambers for the matter to be dealt with further.

[47] I extend Ms Barrell's appointment as the girls' lawyer at this time. She may instruct her [location A] agent if that is necessary and the issue of the children's lawyer going forward can be determined when this next plan is filed.

J A McMeeken
Family Court Judge