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[SQUARE BRACKETS]

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AND S 139 OF THE CARE OF CHILDREN ACT 2004,
ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C
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**IN THE FAMILY COURT
AT INVERCARGILL**

**I TE KŌTI WHĀNAU
KI WAIHŌPAI**

**FAM2020-025-000035
[2021] NZFC 12008**

IN THE MATTER OF THE ORANGA TAMARIKI ACT 1989

BETWEEN CHIEF EXECUTIVE OF ORANGA
TAMARIKI—MINISTRY FOR
CHILDREN
Applicant

AND [LINDA MILNER]
[MICHAEL MOWERY]
Respondents

AND [JEFF MOWERY]
born on [date deleted] 2012
Child or Young person the application is
about

FAM-2021-025-000316

IN THE MATTER OF THE CARE OF CHILDREN ACT 2004

AND BETWEEN [MICHAEL MOWERY]
Applicant

AND [LINDA MILNER]
CHIEF EXECUTIVE OF ORANGA
TAMARIKI—MINISTRY FOR
CHILDREN
Respondents

Hearing: 29 November 2021

Appearances: A Robles for the Chief Executive
No appearance by or for the Respondent [Milner]
J R Pringle for the Respondent/Applicant [Mowery]
S L Munro as Lawyer for the Child

Judgment: 29 November 2021

ORAL JUDGMENT OF JUDGE C M DOYLE

[1] These are Oranga Tamariki and Care of Children Act proceedings in respect of [Jeff Mowery], who was born on [date deleted] 2010, and so is 11 years old, about to turn 12 on [date deleted] 2022. He is the son of [Linda Milner] and [Michael Mowery].

[2] Ms [Milner] is not present in court today. She has taken no steps in respect of the Oranga Tamariki Act proceedings for some time, to the extent that on 2 September I struck out her application to discharge the s 78 interim custody order held by Oranga Tamariki and barred her from taking any further steps in these proceedings without further direction from the Court. She has also taken no steps in relation to the most recent applications which have been made by Mr [Mowery] under the Care of Children Act. Time for her to file a response has been abridged because it was important that the Care of Children Act applications were resolved at today's hearing at the same time as Mr [Mowery]'s application to discharge the s 78 interim custody order and to have the Oranga Tamariki Act proceedings brought to a conclusion.

[3] Mr [Mowery] and his wife join us by AVL today. Mr [Mowery] has confirmed that he wishes for the Oranga Tamariki proceedings to come to an end and for a parenting order to be made in his favour. He is also seeking a guardianship direction which will confirm that [Jeff] is to live in Australia. Although there is no formal application for that guardianship direction before the Court, it is implied in the application for a parenting order that any change of care for [Jeff] where he would go into the care of his father would mean that he is relocating to [location 1], Australia.

[4] Who is present on behalf of the maternal whānau is [Marie Milner], who is [Jeff]'s maternal grandmother, and someone who has been a consistent caregiver for [Jeff] for most of his life. That has been on a full-time basis, at least as far as I can see, from 2017. Although Oranga Tamariki have had a s 78 interim custody order since February 2020, [Jeff] has remained in the care of his grandmother with the support of the maternal family. Also present is [Mary Shirley], who is [Jeff]'s maternal aunt, and a sister of [Linda Milner].

[5] It is a bittersweet day for [Jeff] because there is to be a significant change in his life, but not one that he is opposed to. For some time there have been concerns about his mother's ability to care for him, which has resulted initially in the family taking steps to make arrangements, and more recently the State intervening to ensure that [Jeff] remains in the care of his grandmother.

[6] [Jeff] has been aware of these proceedings for some time because he has had Ms Munro acting for him throughout the time the proceedings have been before the Court, which is since 26 February 2020. Even before these proceedings came before the Court, there have been several temporary care agreements in the past and there was also a period of time when [Jeff] was in the custody of Oranga Tamariki from 30 June 2010 to 26 February 2012. What is clear from this history is that [Jeff] is well and truly due some certainty and finality in terms of his care arrangements.

[7] [Jeff] knows that his dad wants him to come and live with him in Australia. [Jeff] has some familiarity with his dad's place in Australia because he has visited there. [Jeff] also knows that that is where his full sibling, [Joanne], lives. She has elected not to return to New Zealand after visiting their father in December 2019 and remains in the care of Mr [Mowery]. That appears to be going well for [Joanne] and she would very much like [Jeff] to join her.

[8] The fact that [Joanne] has been encouraged to maintain contact with the maternal whānau is a good indicator that [Jeff] will also be encouraged to maintain contact with his grandmother, cousins, half-siblings, grandfather, and aunts.

[9] I set the Ministry's applications down for a two-day hearing back in September but in fact a hearing has not been required today because there is general agreement amongst those who are participating that the orders sought by Mr [Mowery] are the appropriate orders to be made today. More than that, there have also been discussions about how these orders will be given effect to, and what is the best way to ensure that [Jeff]'s wish to go "now" is able to be implemented, particularly in these uncertain times where COVID-19 plays such a big part in terms of determining whether international travel is allowed.

[10] In an ideal world [Jeff] would be able to complete his schooling here this year, which means remaining at school locally in [location 2] until 15 December. He says he would then like to have a last Christmas with his maternal grandmother, who he loves dearly, and his family here, but then that he would have his 12th birthday in Australia, which would be on [date deleted] 2022. However, [Jeff] himself has identified the fact that there is a risk in that proposal and that not only is that there is a risk that there may be some limitations on overseas travel, if not even more significant lockdowns or prohibitions on travel, but he has also identified that once he turns 12 he will be required to be vaccinated in order to be permitted to travel on Air New Zealand flights.

[11] For all of these reasons, and despite feeling a great deal of sadness that the end has not occurred in the way that [Jeff] would like, he is clear and has expressed his views, both through his social worker and also through his Court appointed lawyer, that he needs this to happen now. He will miss his grandmother terribly; he will also miss his grandfather and the other members of his family. He needs some reassurance about how he is going to maintain contact with them. He will also miss his mother but he is pragmatic about the fact that she will be "all right now". He has previously been reluctant to leave her because he has been concerned about her situation, but he can now identify at least two or three whānau members who will be able to support Mum and he is also aware that she has a lot of friends who are there for her.

[12] I have invited the maternal grandmother to speak with me today about whether there are any things that she is concerned about. She is concerned about how [Jeff] is going to go at a much bigger school and that will need to be managed quite carefully.

He has a different personality than his older sister and may find it much harder than her to integrate to [location 1] and to a different school. She is also concerned to ensure that she still has a way of being able to visit him, and him visit her, and for them to be able to see each other and maintain a relationship. She has confirmed to me that she is happy to continue to provide care for [Jeff], as she has done on numerous occasions in the past, until these orders can be given effect to, and that she will work directly with Mr [Mowery] to ensure that there is as smooth a transition as possible for [Jeff].

[13] Importantly, she has also confirmed that if there was any difficulty with [Jeff] establishing himself in [location 1] or in the care of his father, she would be very happy to have him back in her care in the future, if that was of any assistance to Mr [Mowery] and [Jeff].

[14] Mr [Mowery] has confirmed that he has a working relationship with Mrs [Milner] and that he is open to [Jeff] maintaining a relationship not just with her but also with the maternal grandfather. It appears to me that there is a lot of goodwill here and that both sides of this family are going to do what they can to ensure that [Jeff]'s welfare and best interests remain at the fore of their thinking.

[15] Ms Munro, on behalf of [Jeff], confirms [Jeff]'s wishes are for there to be a change in his care arrangements. He is prepared to give Dad "a go". That is not inconsistent with his earlier views, the earliest of which were expressed through the report provided by the social worker at the time that the original plan and report was filed back in December 2020.

[16] I am satisfied that the orders and directions now agreed to are consistent with the welfare and best interests of [Jeff] and that it is important that he now joins his sister [Joanne] and his father in Australia. I am satisfied that his connections with his maternal family are going to be maintained through the goodwill which exists between Mr [Mowery] and Mrs [Marie Milner]. [Jeff]'s [iwi deleted] cultural connections will be able to be maintained through his relationship with his maternal grandfather.

[17] There are no safety concerns for [Jeff] in the care of his father. Although the report Oranga Tamariki wished to obtain from their Australian counterparts has not been provided to the Court in time for this hearing, there is nothing in the evidence

before me which would suggest that there is even a hint of concern about Mr [Mowery]. He has filed affidavit evidence from himself and his wife, from his parents, from his brother, from friends, and from [Joanne] herself, confirming information about him. The fact that [Joanne] remains in his care and is doing well also indicates that he has the ability to provide safe and appropriate care for his children.

Orders and directions

[18] I am, therefore, satisfied that the following orders and directions should be made and make them now:

- (a) The s 78(1) interim custody order made in favour of the Chief Executive on 26 February 2020 is discharged.
- (b) The Ministry's application for a s 101 custody order and for any other orders under the Oranga Tamariki Act are discontinued.
- (c) Mr [Mowery]'s application for a s 101 custody order and any other orders he has sought under the Oranga Tamariki Act are also discontinued.

Ms [Milner]'s application to discharge the s 78 interim custody order has already been discharged, but for clarity any other application she may have made in the Oranga Tamariki Act proceedings are also discontinued. What that means is that there are now no longer any orders under the Oranga Tamariki Act and no applications under that Act which require resolution. That concludes the Oranga Tamariki Act proceedings.

[19] In respect of the Care of Children Act proceedings:

- (a) I am satisfied on a formal proof basis that any previous parenting orders made under the Care of Children Act should be discharged and now discharge those.

- (b) I make a final parenting order in favour of [Michael Mowery] confirming that [Jeff] is to be in his day-to-day care and confirming that there shall be contact reserved for [Marie Milner] (that is, the maternal grandmother) as agreed between Mrs [Milner] and Mr [Mowery].
- (c) I also reserve contact between [Linda Milner] and [Jeff] as agreed between Mr [Mowery] and Ms [Linda Milner], on the basis that Mr [Mowery] will have the sole right to determine how and when that contact occurs, including whether it should be supervised or otherwise monitored or supported in order to ensure [Jeff]' safety in the care of his mother.
- (d) I also grant the oral application made by Mr [Mowery] for a guardianship direction which records that [Jeff] is to reside in Australia.
- (e) Leave is reserved for Mr [Mowery], Ms [Linda Milner], or Mrs [Marie Milner] to make an application to the Court within two years of today's date if there is any need to vary the terms of the parenting order, particularly in relation to the contact provisions which may require further or better definition. My hope certainly is that there would not need to be an application and that everyone would be able to work together to come up with a good arrangement, but to ensure that any dispute does have a place where it can be resolved, leave is reserved for that purpose.
- (f) What that means is that for now, for the next two years, this court will continue to have jurisdiction in relation to [Jeff]. After that, this court's jurisdiction in respect of [Jeff], who will have been living in Australia for two years at the end of that leave period, will be at an end.
- (g) That concludes the Care of Children Act proceedings which means that Ms Munro's appointment as lawyer for [Jeff] is terminated with the thanks of the Court.

- (h) No cost contribution orders are made in respect of these proceedings.
It would be inappropriate in all of the circumstances for that to occur.

Judge C Doyle
Family Court Judge

Date of authentication: 30/11/2021

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