

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

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**IN THE FAMILY COURT  
AT CHRISTCHURCH**

**I TE KŌTI WHĀNAU  
KI ŌTAUTAHI**

**FAM-2010-009-002341  
[2022] NZFC 715**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[NICOLE LOVELL] Applicant
AND	[RYAN METCALF] Respondent

Hearing: 26 January 2022

Appearances: R Bellolio-Roth for the Applicant  
M Roestenburg for the Respondent  
C Gibson as Lawyer for Child

Judgment: 28 January 2022

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**RESERVED JUDGMENT OF JUDGE T E MCKENZIE**

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[1] Currently before the Court is an application pursuant to s 46R Care of Children Act 2004 filed by Ms [Lovell] for directions from the Court in relation to a dispute between guardians relating to the couple's son, [Nanui], to receive COVID-19 vaccinations. This is opposed by the respondent.

## **Background**

[2] There exists a parenting order made in May 2014 following a long cause hearing that occurred in January 2014. That order provides for contact between [Nanui] and his father upon the completion of various conditions. There also exists a final protection order made in August 2010.

[3] Notwithstanding the above orders, the reality is that [Nanui] has had little, if any, contact with his father for the past eight years, although there appears to have been a recent text exchange between father and son since these proceedings have been issued.

[4] Running alongside this application is a separate application filed by [Nanui]'s father seeking to re-establish his relationship with his son.

[5] The hearing today, however, must concentrate on the issue of COVID 19 immunisation.

[6] Counsel for the applicant submitted a number of reasons she claimed supported her client's view that [Nanui] should be vaccinated:

- (a) [Nanui] has indicated that he wishes to be vaccinated and I will return to his views later.
- (b) He has contact with his grandparents and young cousins, both sets of family are particularly vulnerable and his family also include contact with an immune-compromised diabetic adult.
- (c) As he is unvaccinated he will stand out from his other school friends. His school require him to wear a mask during all school activities, including break and lunchtimes.
- (d) He cannot attend restaurants and other outings with his family.

- (e) He cannot attend any social activities with his friends, including the movies, the swimming pool and, more relevant to him at this moment, he cannot take his girlfriend out for dinner on Valentines Day.

[7] In submissions Ms Roth, Counsel for the Applicant conceded that there were risks to the vaccination but submitted that those risks were smaller than the risks currently being presented by Omicron.

[8] Mr [Metcalf] claims that [Nanui] should not be vaccinated.

[9] In support of that he asserts that [Nanui] does not have sufficient maturity for the Court to place any real weight upon his views. He bases that assessment upon the text exchanges that he has had with his son in the last few months.

[10] He submits through his Counsel:

- (a) The Court should decline the application because there are many serious risks that the COVID vaccination may have on [Nanui]. He did not identify in any detail what he regarded as specifics of those risks
- (b) He does not “relent to New Zealand government to decide which pharmaceuticals are to be injected into his son’s body”.
- (c) He does not accept that there are any health risks to [Nanui] were he to contract COVID.
- (d) He sees that the risk of being vaccinated outweighs the reward.
- (e) He is concerned at potential future complications and is aware, he claims, that four Pfizer vaccine test patients have developed Bells Palsy, which he claims is as a result of the vaccine.
- (f) He is concerned that [Nanui] may have a particular sensitivity to medication.

## **Medical evidence**

[11] Attached to Lawyer for Child's report is a letter from Dr [Caldwell]. Dr [Caldwell] confirmed that as at 15 December 2021 he had been the general practitioner for [Nanui] since 2011. He concluded that [Nanui] did not have any conditions or allergies that would exclude him from being immunised and further concluded that the risk of COVID infection would be significantly greater than any risk related to the vaccine.

[12] In her submissions Ms Roestenburg questioned whether the general practitioner was qualified to make such a statement as the father did not accept that he was the general practitioner for [Nanui] for the relevant period.

[13] Lawyer for Child explained to the Court that counsel had been given the opportunity to question the doctor's report. She reported that both counsel had accepted the position of the general practitioner and that there had been no request by counsel for him to be present and cross-examined.

[14] In any event, his letter clearly states that for at least the last 11 years [Nanui] has been his patient. I am completely satisfied that I can rely upon the evidence of Dr [Caldwell]'s report.

## **[Nanui]'s View**

[15] [Nanui] attends [location 1] School. He resides with his mother in [location 1]. He was spoken to by his lawyer, Ms Gibson. She confirmed in her report of 16 December that she had had discussions with him. She reported that [Nanui]'s view was that he would like to be vaccinated like all his friends. He complained that he was being disadvantaged by not being able to attend Time Zone, shops and restaurants. He also disclosed that he had been spoken to by his father. He explained that his father had stated that if Court did not go his way he would move out of [Nanui]'s life. [Nanui] was obviously upset about this.

## **The Law**

[16] In decisions of this nature I must consider the wellbeing and best interests of [Nanui] as the first and paramount consideration now and into the future. Decisions are, of course, quite specific to the circumstances of the case before it.

[17] I must have regard to all matters that are relevant but, in particular, to the principles of s 5 of the Act. Finally, I am required by s 6 to give [Nanui] the opportunity to express his view and I must take those views into account. I acknowledge that those views are not necessarily determinative but I am permitted and indeed required to assess them and balance the weight against the factors of his age and maturity.

## **Discussion**

[18] I have regard to the Ministry of Health recommendations that children between the ages of 12 to 15 ought to be vaccinated against COVID-19. As Lawyer for Child has helpfully pointed out in her report, that position is supported by the World Health Organisation and by Dr [Caldwell].

[19] In addition, and in a more child-focused way, [Nanui] himself seeks to be vaccinated. He does not wish to be singled out at school as the child wearing a mask. He seeks to be able to go swimming, to attend movies and to take his girlfriend out without having to seek alternative venues. He does not wish to be house-bound.

[20] His mother seeks for him to be able to maintain family relationships and, of course, pursuant to the principles of the Act he is entitled to do so.

[21] The respondent has questioned [Nanui]'s level of maturity in making this decision and whether the mother is unduly influencing him. I reject that. The respondent is not able to assess [Nanui]'s level of maturity in the limited text exchange that he has enjoyed with his son. Particularly so given [Nanui] has reported to having withdrawn from the relationship due to the comments made by his father.

[22] Whilst I acknowledge that there may be some risks attached to the immunisation, as with any health intervention, these risks have been appropriately measured and assessed. On that basis I direct that [Nanui] is to be vaccinated against COVID-19.

### **Additional Matters**

[23] The respondent added that if the decision of this Court is for the immunisations to occur, he would wish to be advised and permitted to be present. Further he required that it occur in Christchurch as he does not have sufficient funds to travel to [location 1] where [Nanui] himself lives.

[24] I note that the principles of the Act require ongoing communication and consultation between guardians and that there is in existence a final protection order. That protection order does not preclude communication between guardians.

[25] From [Nanui]'s perspective there would be limited value in him having his father present whilst he is being immunised. [Nanui] is aware that his father does not support the vaccine process. He has also been told that his father will walk away from him if matters do not go his way. There is also no advantage to [Nanui] in being required to travel from his home in [location 1] to a venue in Christchurch simply to enable his father to be present.

[26] I do, however, direct that the applicant is to advise Ms Gibson when the vaccination has occurred and whether there has been any adverse reactions by [Nanui] to that vaccination. I would ask Ms Gibson to pass that information on to Mr [Metcalf]'s counsel.

### **Orders**

[27] I direct that:

- (a) The application to settle a dispute between guardians is granted.

- (b) That [Nanui] is to be vaccinated for all COVID-19 vaccinations as soon as possible.
- (c) That [Nanui] receive any booster vaccinations that are required to be administered; and
- (d) That the applicant advise Ms Gibson once the vaccination has taken place.

Judge T E McKenzie  
Family Court Judge | Kaiwhakawā o te Kōti Whānau  
Date of authentication | Rā motuhēhēnga: 28/01/2022