

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

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**IN THE FAMILY COURT
AT MANUKAU**

**I TE KŌTI WHĀNAU
KI MANUKAU**

**FAM-2019-090-000758
[2020] NZFC 4305**

IN THE MATTER OF	ORANGA TAMARIKI ACT 1989
BETWEEN	Chief Executive Oranga Tamariki Applicant
AND	UNBORN CHILD OF [SB] Respondent

Hearing: 15 June 2020

Appearances: Mr Ong for Oranga Tamariki
Ms Maplesden for Unborn Child
Ms Keki Eng and Ms Preetika Anshumala Social Workers

Judgment: 16 June 2020

**RESERVED JUDGMENT OF JUDGE J G ADAMS
[Reasons for Judgment]**

[1] On 15 June 2020, I made an interim order under s 78 Oranga Tamariki Act 1989 placing an unborn child of [SB] expected to be born about [date deleted] 2020 in the custody of the Chief Executive of Oranga Tamariki, the order to take effect immediately upon the live birth of the child. This judgment sets out my reasons for doing so.

[2] Noting that a Family Group Conference will need to be held, I directed a 15 minute directions conference as soon as practicable after 1 August 2020.

[3] An interim custody order in respect of an unborn child is a matter of last resort. What in ordinary circumstances would be an offensive and intrusive act is only permissible where there is no other practicable structure to care for the child. In this case Ms [SB] has deliberately avoided taking part in this application. Neither she nor her whanau are capable of taking effective steps to protect the child's welfare. No step other than the interim custody order will adequately shelter the child at its most vulnerable stage of life, the hours, days and weeks after birth.

[4] This application comes within a context that extends to [an under-10-year-old] daughter of Ms [SB]. In respect of that child, I made orders last Monday granting the Chief Executive of Oranga Tamariki custody (s 101) and additional guardianship (s 110(2)(b)). In respect of that child Ms [SB] had not attended the Family Group Conference on 29 November 2019.

[5] Ms [SB]'s lifestyle is erratic and unstable. Her methamphetamine use, and her associated occupation of prostitution, coupled with her association with violent men, interfere with her ability to provide appropriate care for [an under-10 year old], let alone for a necessarily vulnerable new-born child. Police report many incidents of violence in which she had been the alleged victim. For example, [in early] 2020 Police alleged her male passenger punched her in the face twice causing severe bleeding. Police stopped her and spoke to her about the incident. She complained to Police of violence from men on [three separate dates within a one-week period in late 2019].

[6] Although she has not usefully engaged with Oranga Tamariki, I record that the social worker left her a food parcel on 25 March even though Ms [SB] had been trespassed from their office.

[7] Ms [SB] has intermittent and unpredictable contact with her whanau. A maternal uncle, [TB], earlier volunteered to be a conduit to engage her but he has taken no steps and has failed to respond to requests from the social worker, Ms Eng.

[8] The older child's paternity is in question. Mr [MT], an associate of [a gang], has had an association with her since birth but his circumstances and history rule him out from taking any custodial role. His criminal record contains serious charges including aggravated robbery. A number of male assaults female charges against him were eventually withdrawn. Nevertheless, it was his protective concern that led him to bring the [other child] to Oranga Tamariki. Whilst there [in late] 2019, Ms [SB] assaulted Mr [MT] at Oranga Tamariki office. Her [other child] was present. She also threw cups at windows, smashing the cups, before departing with [members of another gang] who were waiting for her.

[9] The older child has been placed with [CR], part of the [MT] whanau. The child regards her as an auntie.

[10] In relation to the unborn child, social worker Ms Eng has gone to great lengths to engage Ms [SB]. Of those she has contacted, none of those who responded can put her in touch with Ms [SB]. Nonetheless, Ms Eng has an email address for Ms [SB] through which she can at least send messages to her. Drawing on the material gathered at the Family Group Conference on 29 November 2019, grandparents and other whanau seem to have no contact with Ms [SB] that would offer any lead to her. Ms [SB] is currently wanted by Police for breach of bail.

[11] Between 28 May and 4 June 2020, Ms Eng attempted to contact Ms [SB] via:

- (a) Mr Wells, a hospital liaison for Oranga Tamariki
- (b) Three members of Community Midwife Service
- (c) Three members of [a support service], an agency that provided emergency accommodation for Ms [SB] during the Covid lockdown
- (d) Police Detective
- (e) Ms Packer, a criminal lawyer for Ms [SB]
- (f) Mr [TB] (twice)
- (g) Email, phone and txt messages to Ms [SB] herself.

[12] Save for Ms Houghton of Community Midwife Service, no lead has been forthcoming. Ms Houghton of Community Midwife Cultural Liaison Service of

Waitemata District Health Board provided an address which, upon checking through a Private Investigator, Ms Eng found was not current.

[13] Ms Eng seemed to have exhausted all practicable leads and therefore, on 9 June, I dispensed with service of the application for a s 78 order. Nevertheless, I delayed making the order that day in order to offer Ms [SB] every last chance to engage. On 10 June, pursuant to my direction, Ms Eng emailed both Mr [TB] and Ms [SB] to inform them of my order and the fact this case was to be called on 15 June. She has had no response. There was no appearance by, or for, Ms [SB] on 15 June.

[14] I now explain the legislative framework in which I made the s 78 order.

[15] One of the purposes of the Act under s 14(1)(b)(i) is to “prevent [children] from suffering harm (including harm to their development and well-being), abuse, neglect, ill treatment, or deprivation or by responding to those things”

[16] Pursuant to s 4A the welfare and best interests of a child are paramount having regard to the principles in ss 5 and 13. Those excellent principles include such desirable outcomes as shoring up parental lacks, providing supports, dealing with a child in their cultural and community settings, having regard to the Treaty of Waitangi, engaging whanau and so on. Regrettably, in this case, most of those principles are unattainable. The principles which apply most keenly are those dealing with vulnerability, age, disability and neglect.

[17] Because Ms [SB] chronically fails to engage, and neither does her whanau, I and the social workers must deal with the situation in stark terms. Ms [SB]’s lifestyle over the past year evidences that she prioritises her desire for drugs well over that of a child in her care. The neglect and situations of dangerous violence were bad for her [under-10-year-old] but will be much more so for a new-born. There is no viable alternative for me. Unless I am prepared to risk the probability of chaotic risk and neglect for the child she is carrying, I must make the s 78 order. Everyone would prefer a viable alternative but in the absence of any engagement by Ms [SB] or her whanau, I must make the order.

[18] For these reasons, I am obliged to make the s 78 order as noted earlier. That order gives the Chief Executive power to take the child if need be. If Ms [SB] chooses to engage child-protectively with the Chief Executive, a range of options would be possible. But, given the risk that she might not, it is important for the unborn child that the child can be protected effectively while the situation is assessed and longer-term plans considered.

J G Adams
Family Court Judge