

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

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**IN THE FAMILY COURT  
AT AUCKLAND**

**I TE KŌTI WHĀNAU  
KI TĀMAKI MAKAURAU**

**FAM-2020-004-000211  
[2020] NZFC 1998**

IN THE MATTER OF	THE ORANGA TAMARIKI ACT 1989
BETWEEN	THE CHIEF EXECUTIVE OF ORANGA TAMARIKI – MINISTRY FOR CHILDREN Applicant
AND	[VM] [LF] Respondents

Hearing: 13 March 2020

Appearances: P Finau for the Chief Executive  
No appearance by or for the Respondents  
M Headifen as Lawyer for the Child

Judgment: 13 March 2020

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**ORAL JUDGMENT OF JUDGE A M MANUEL**

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[1] I am about to give an oral decision. I reserve the right to make changes to the written signed version before it is released but the result and the reasons will not change.

[2] This is an application under the Oranga Tamariki Act 1989 (the Act) concerning an unborn baby. The baby's estimated date of birth is [date deleted] 2020. The mother is [VM]. The father is [LF].

[3] On 11 March 2020 Oranga Tamariki applied for an order placing Baby in the custody of Oranga Tamariki on the grounds that:

- (a) He or she was in need of care or protection on the grounds set out in s 14(1)(i)(ii) and s 14A(1)(a) and (2)(a) of the Act;
- (b) The immediate need for care or protection could only be met by the making of an interim custody order; and
- (c) It was in the wellbeing and best interests of Baby that a care or protection order was made.

[4] The application was made in reliance on s 78(1) of the Act and rule 222A(i) Family Court Rules 2002. This rule provides that applications made without notice may be granted where the delay that would be caused by proceeding on notice would or might entail serious injury or undue hardship or risk to the personal safety of the child who is the subject of the proceedings.

[5] The application was to proceed on a "Pickwick" basis. A hearing has taken place before me today, but not on a Pickwick basis because it has not been possible to serve [VM] or [LF].

[6] I have heard viva voce evidence from Ms Stafford, an Oranga Tamariki social worker. A number of documents were produced by her. Her evidence supplemented the affidavit evidence of Ms Newby, another Oranga Tamariki social worker. I have also heard submissions from the lawyer appointed for Baby. I will start with the evidence of Ms Newby, then move to the evidence of Ms Stafford, the submissions made, and then give my decision.

[7] Ms Newby set out Mother's history with Oranga Tamariki. This dated back to 2008. [VM] is [under 25] years of age. She has younger siblings who are involved

with Oranga Tamariki due to care and protection concerns while in the care of [the maternal grandmother] and her former partner [the maternal grandfather]. The history included concerns for Mother and her siblings relating to family harm, neglect, physical and sexual abuse, parental drug use and parental mental health issues.

[8] Oranga Tamariki also had involvement with Mother concerning her first child, [DG]. This dated back to [2014], when [DG] was a young baby. The involvement culminated in Mother's elder [sibling], [MF], applying for custody of [DG] in [month deleted] 2018. This was because of concerns regarding Mother's drug abuse issues, neglect of [DG]'s physical and medical needs and family violence between Mother and Father. [MF] was subsequently granted the day-to-day care of [DG].

[9] Then there were family harm incidents involving Mother over 2018. Oranga Tamariki received three contact records, the first involving verbal abuse between Father and Mother followed by two physical abuse incidents by Father towards Mother. Mother denied any physical abuse of herself to the police.

[10] Ms Newby outlined Mother's mental health history. She was admitted as an inpatient at [provider deleted], a local mental health treatment facility, in [month deleted] 2019. At the time she believed she was six months pregnant but physical examinations showed she was not pregnant at all. She was thought to be experiencing a phantom pregnancy. The mother was diagnosed with psychosis NOS. A question was raised about whether this could have been drug induced. A secondary diagnosis of borderline personality disorder was documented. Mother was discharged later in [the same month in] 2019 but there does not appear to have been any follow up treatment because she did not to engage.

[11] Father's criminal history was outlined. This included a range of convictions including but not limited to abduction, rape, male assaults female and aggravated assault. Possession of methamphetamine and drug utensils for methamphetamine also featured. The father was currently on bail conditions not to associate with the mother but the evidence suggested these were being breached.

[12] The situation reached a head after Oranga Tamariki received a report of concern in February 2020. Mother had turned up at [a hospital] on [date deleted] at about 30 weeks pregnant. She had not engaged with any antenatal supports. She required medical treatment but was often off the ward and had to be called back to complete medical assessments and scans. This resulted in a report of concern. At the hospital there was a verbal altercation between the mother and father. The hospital midwife tried to follow mother up and offer antenatal supports but to no avail.

[13] On 22 February 2020 the mother was back at [the hospital] with [medical details deleted]. Staff noted she appeared to be paranoid and frantic but she left before she could receive an assessment by liaison psychiatry. The liaison psychiatry team tried to follow up but to date Mother's mental health status is unclear because there has been no psychiatric assessment treatment completed.

[14] After that Oranga Tamariki sprung into action. They did their best to liaise with the professionals who could assist and with whānau members. An interim safety plan made on 4 March 2020 stated that Mother would need to acquire stable housing and stop using drugs. Once Baby was born a family member would need to be available to supervise mother with the baby. Oranga Tamariki committed to supporting Mother to obtain emergency accommodation (there are also other parts of the plan which I do not propose to outline in detail now).

[15] Unfortunately, Mother was not receptive to the concerns. She did not understand why her whānau or Oranga Tamariki would have concerns about the safety of Baby. She admitted to using methamphetamine daily or near daily and to selling drugs in order to provide for herself. She denied any family violence between herself and the father. The only concern she acknowledged was the lack of a stable home in which to raise the baby.

[16] A further safety plan was compiled on 6 March 2020 after it transpired that mother had left the home of a paternal [relative], [VM], where she had agreed to stay. The mother had moved to live with a [another relative] in [location deleted], but this arrangement did not last for long either. On 11 March 2020 [the relative] asked the

parents to leave her address, apparently because of drug use. Their whereabouts are currently unknown.

[17] In summary, Oranga Tamariki's concerns are about Mother and Father's use of methamphetamine, the lack of a stable home for Baby, the lack of the essentials for a newborn, not keeping appointments or to agreed safety plans, the history of family violence between Mother and Father, and Mother's mental health.

[18] When Oranga Tamariki tried to make arrangements to serve the parents with these papers they contacted [the relative] but unfortunately it was too late. They were told that the parents had left only 30 minutes prior and may be on their way to [another city].

[19] Oranga Tamariki emphasise that they have engaged with the whānau, who are willing to support the parents, but without an acceptance of the care and protection concerns held by both the Ministry and the whānau, Oranga Tamariki has been left with little option but to make this application.

[20] The documents produced by Ms Stafford at the hearing today included Mother and Father's criminal and traffic histories, police records of family harm, family violence summary reports and clinical notes. These have confirmed and supplemented the evidence which was already before the Court.

[21] Lawyer for child supports the order sought being made, and submitted that any question about whether there is jurisdiction to make an order under s 78 of the Act concerning an unborn child has been answered in the affirmative in the case *L v Chief Executive Oranga Tamariki – Ministry for Vulnerable Children*.<sup>1</sup> The Judge concluded at [35] of that judgment that the Act's objectives can only be adequately met by a broad definition of a child (including an unborn child) as had been adopted by the High Court in the earlier case of *Re an Unborn Child*.<sup>2</sup> I accept that submission.

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<sup>1</sup> *L and T v Chief Executive of Oranga Tamariki - Ministry for Vulnerable Children* [2018] NZHC 1420.

<sup>2</sup> *Re an Unborn Child* [2003] 1 NZLR 115 (HC).

[22] Lawyer for child went on to submit that the Court has to consider whether it is in the best interests of the baby that an interim custody order be made as a matter of urgency or it is in the public interest that an interim custody order be made in respect of the child.

[23] In the circumstances of this case I have considered the best interests of the child. I do not consider it necessary to consider whether it is in the public interest for the interim custody order to be made.

[24] Lawyer for child went on to highlight the factors he considered most relevant to the exercise of the Court's discretion:

- (a) The removal of the older child, [DG].
- (b) The contact reports regarding family harm over the course of 2018.
- (c) Concerns about the mother's mental health which continues to be unassessed and untreated.
- (d) Drug use by mother with:
  - (i) a conviction in 2017 for possession of drug paraphernalia;
  - (ii) the query by treating health professionals about whether the diagnosis of psychosis was drug induced; and
  - (iii) the admission that she was or had been using methamphetamine throughout her pregnancy (the mother claimed that she had stopped using drugs only two weeks prior).
- (e) The lack of co-operation, because there had been interventions tried, whānau meetings and safety plans put into place which had been ignored or had failed.

[25] I find that Baby is in need of care or protection on the s 14 of the Act grounds referred to earlier for the period of the order I propose to make. I am satisfied that Baby's immediate need for care and protection cannot be met other than by making an interim custody order. I am also satisfied that it is in the wellbeing and best interests of Baby for the order sought to be made.

[26] The matter has proceeded without notice but I find that the delay that would be caused by proceeding on notice would or might entail serious injury or undue hardship or risk to the personal safety of Baby. If Baby is born to a methamphetamine using mother he or she is likely to require immediate care on and after delivery.

[27] A s 78 interim custody order is made accordingly. This is to continue to 17 April 2020 to allow a family group conference to be held. It is to be reviewed in the week commencing 13 April 2020. The usual 28 day period has been slightly extended because Easter falls this year from 10 to 13 April 2020 and accommodation needs to be made for that.

A M Manuel  
Family Court Judge