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

NOTE: PURSUANT TO S 139 OF THE CARE OF CHILDREN ACT 2004, 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 PALMERSTON NORTH

I TE KŌTI WHĀNAU
KI TE PAPAIOEA

FAM-2019-054-000628
[2021] NZFC 6006

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[COURTNEY BRENNAN] Applicant
AND	[NOAH TURNER] Respondent

Hearing: 28 June 2021

Appearances: G Woollaston for the Applicant
Respondent appears in Person
J Logie for the Open Home Foundation
C Linton to Assist the Court
F Devlin as Lawyer for the Children

Judgment: 30 June 2021

DIRECTIONS AND DECISION OF JUDGE J F MOSS
[Regarding exercise of the Court's guardianship]

Should these children these children be vaccinated?

[1] The [Turner]/[Brennan] children, [Stefan], [Pauline], [Collette] and [Howard], were placed under the guardianship of the Court in January 2020. [Stefan] is 17, [Pauline] is 16, [Collette] is nine and [Howard] is four. They have not been vaccinated.

The routine childhood vaccinations which most New Zealand children receive, and which are recommended as a public health protection, are tetanus, diphtheria, pertussis and poliomyelitis. All four diseases have, historically, cut through populations of children, with many fatalities, many serious chronic disabilities, and a greater number of slow and disabling recuperations. New Zealand is privileged to be almost free of poliomyelitis. Tetanus, diphtheria and pertussis are now rare, but do occur. The dosing, intervals, and measures for protection of health in general, are carefully researched and implemented. All of the vaccinations are fairly routinely administered, starting in infancy, by general practitioners or their staff. Some families take exception from an ethical perspective to mass vaccination. Some believe that there are dangerous but hidden side effects. In particular, there are some who believe that these vaccinations lead to onset of, or exacerbation of, autism. Another cohort in the adult population object to vaccinations on religious grounds.

[2] Finally, a smaller percentage of health vulnerable children are not vaccinated because of existing medical vulnerabilities.

[3] These children have not been vaccinated. Their father objects to them being vaccinated. The agent of the Court, the Open Home Foundation, now asks that the Court approve vaccination of the children to assure adequate immunity from these diseases. Variants from the general intervals and dosing of vaccination will be required, because the children are no longer infants.

[4] The mother, not a guardian, abides the decision of the Court. The father, not a guardian, objects to vaccination based on his assertion of vulnerability of each of the children in terms of their health, and also based on an ethical objection.

[5] Counsel to assist and lawyer for the children, support vaccination.

Litigation history

[6] These children have been under the wardship of the Court since January 2020. They have resided away from either of their parents. [Howard] and [Collette] now live with their [close family member]. They spent more than a year in the care of

nonfamily members. [Pauline] resides with nonfamily caregivers. [Stefan] now resides with his mother.

[7] The father has no contact with the children.

[8] The father has objected to every intervention by the Court in relation to the children. These objections include:

- The mother's application for interim parenting order made prior to the wardship order and placement of the children continuing with Open Home Foundation foster caregivers.

- The enrolment of [Collette] in a particular school.

- The manner of provision of healthcare, and in particular, the choice of medical practitioner.

- Open Home's approach and the Court's approach to various other medical matters related to the children's vulnerability to the condition known as porphyria.

[9] During the middle months of 2020, the children's medical care was compromised by the father's insistence that they should be tested for porphyria, and that he should be present at medical attendances, and the right of veto in relation to any treatment, because of the risk of reaction to treatment (which he fears would be fatal) because of the incomplete diagnosis in relation to the porphyria.[1]

[10] The family is awaiting a fixture to resolve issues of contact. Although supervised contact at Barnardos has been approved for the father, he has not continued that contact. From the point of view of Barnados he was not prepared to abide by the rules of the supervising agency. Until [Collette] and [Howard] moved to live with their

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[1] This summary of litigation history should be read with the Court's minutes and judgment of 20 March 2020, 20 April 2020, 1 July 2020, 8 September 2020, 3 November 2020 and 26 May 2021.

[close family member], the mother was having regular weekly contact. Now that the children are living with [their close family member], the contact is more informal.

The father's opposition

[11] In a memorandum filed on 17 June, the father recorded his objection to the vaccination of the children on a number of grounds. The memorandum was late. Filing a memorandum rather than affidavit as directed was irregular. In order to advance progress in the matter, however, I permitted the filing of this material. In a brief appearance on 28 June with all counsel, I again advised the father that his access to the Court is by of affidavit only, and not by memorandum.

[12] However, to resolve the issue of the immunisation, I have considered his memorandum in full. There are a number of factual assertions which, according to evidence on the Court file, are wrong. These are:

(a) That the mother and he are opposed to the vaccines – the mother has confirmed that she abides the decision of the Court.

(b) Secondly, that although the children are wards of the Court, it is international best practice to follow parents' wishes regarding culture and religion – this bare assertion is not elaborated and does not accord with this Court's practice. Sadly, the need for wardship tends to prove, in and of itself, that the Court has found that the purported exercise of guardianship responsibilities by the parents have fallen short of welfare and best interests. There are no specific matters relating to culture and religion which are raised other than the bare assertion of opposition on religious grounds.

(c) Thirdly, the one religious matter raised, as a bare assertion, is that manufacturing of the vaccine involves using aborted foetal tissue. This is incorrect. Development of the vaccines, at research point, do employ DNA strands extracted from aborted foetus'. This is an approved international practice, with ethics and consent processes being rigorous.

The manufacturing process relies solely upon synthesised strands to replicate the properties found in the research phase.

(d) Fourthly, the father asserts that the mother had a negative reaction from a tetanus vaccine in adolescence. There is no evidence of that. I reiterate, the mother does not oppose provision of the tetanus vaccine.

(e) Fifthly, the father asserts the children are recognised as having porphyria. This is incorrect. Final genetic testing has not been possible, because the father will not provide the DNA sample required. However, although an early test for [Pauline] was positive, she subsequently tested negative. The other children have tested negative, to the extent that they have currently been tested.

(f) Sixthly, the father tenders articles which show vaccines leading to death. The articles provided do not establish the proposition the father asserted. In particular, the first article specifically notes no medication prior to the onset of the illness, and records after extensive investigations some form of porphyria and a diagnosis of Posterior Reversable Encephalopathy Syndrome and Systemic Lupous Erythematosus.[2] The second article also considers the coexistence of Systemic Lupous Erythematosus and severe hepatic porphyria. These articles do not show "vaccines as leading to death".

(g) Seventhly, the father asserts the DTP vaccine is linked to deaths and serious side effects in other articles. One article, with the headline "Pertussis Immunisation and Serious Acute Neurological Illness in Children" published in May 1981, is provided by way of abstract only and has neither persuasive nor probative value. The next article headlines, published May 2003:[3]

> Clustering of cases of type 1 diabetes mellitus including 2-4 years after vaccination is consistent with clustering after

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[2] Dahlgren – 2011 – *Arthritis Care and Research Volume 63*, *Issue 1*, at 165.
[3] Journal Paediatric Endocrinal Metabolism, April-May 2003.

infections and progression to type 1 diabetes mellitus in autoantibody positive individuals.

This article is provided by abstract only. It reports temporal observation with the commencement of population-wide DTP and onset of type 1 diabetes mellitus and similarly, temporal reduction in type 1 diabetes mellitus after cessation of DTP. This observation has neither persuasive nor probative value. The full article is not available. The abstract observes only temporal connection.

(h) The father's eighth proposition is that porphyria suffers have an allergy to sulfa based medications. He says that DTP contains neomycin sulphate, and that oldest children have been diagnosed with Arthus reactions. He provides extracts to articles related to the MMR vaccine and neomycin allergy, and a table of adverse cutaneous reaction to vaccines. The MMR vaccine is not in the Court's contemplation, although neomycin sulphate is the excipient for the vaccine. The article related to cutaneous reaction refers to a hypersensitivity reaction, not an allergy reaction, which is sometimes called the Arthus type reaction, which is a rare severe local reaction. The time for resolution is not recorded in the incomplete extract provided by the father.

The father believes that neomycin sulphate should be avoided as a precautionary principle. He refers to the porphyria safe medications list, saying that all medications should be considered unsafe until proven otherwise, with sulfa medications a particular cause for concern.

(i) Finally, the father objects to the tetanus vaccination because tetanus is vanishingly rare in New Zealand, with one case per million, typically in the older age group, and occurring when a risky injury presents. As he points out, at that point, people are generally vaccinated for tetanus.

[13] By way of contrast, and at significant expense of time and cost to the State, Ms Linton has undertaken significant searching to look at the reliability of the propositions of the father, and to obtain clinical advice.

[14] Dealing first with the issue around neomycin sulphate, the database for acute porphyria specifically notes that this vaccine is classified as "probably not porphyrinogenic, and advice for prescription is provided as "used as a first-hand choice, no precautions needed". Specifically in relation to the vaccine, the drug database describes it thus:

> Based on the pharmacokinetics of the diphtheria, pertussis, poliomyelitis, tetanus vaccine, there are no conceivable porophyrinogenic effects.

[15] Considering these children in an individual clinical way, the gastroenterologist in Palmerston North, who is responsible for the treatment of patients with porphyria, advised Ms Linton that he would expect there to be very little information, if anything, on the issue because there are no links or concerns with which he is aware.

[16] Ms Linton examined the medical file of [Pauline] and of [Stefan], the two older children, and there is no record of an Arthus reaction. The porphyria organisations in New Zealand and Australia confirm they have no medical or academic reports on the issue related to this vaccination.

[17] Finally, in addressing the concerns raised by the father, Ms Linton confirmed that the reassurance she obtained through research and consultation with the porphyria organisations, was in line with [Dr A]'s advice. He is the children's general practitioner. Choosing [Dr A] was specifically what the father sought.[4]

[18] In terms of medical risk, I reject the proposition advanced by the father that there are risks to the children from this vaccine. I consider the material provided to the Court has been inaccurate and misleading.

[19] The other substantial matter of objection relates to the development of the vaccine using aborted foetus'. The father states that, in principle, he is opposed to this

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[4] See my judgment *[Brennan] v [Turner]* [2020] NZFC 2631.

on religious grounds. No doctrinal or theological advice was provided. I am unable to conclude that there is substance based on doctrine in the father's objection.

[20] Rather, as with other matters in the history of the litigation, I am satisfied that the father's opposition is opposition for its own sake, rather than based in the finely nuanced consideration which the Court expects parents to give to the health of their children. It is proper to some extent for the Court to consider the points of view of parents. However, where, as here, this has been used to further the father's general opposition to any intervention relating to his children, the need for the Court to assume guardianship is yet again established.

[21] In line with the submissions of lawyer for child, of Open Home Foundation and counsel to assist, I consider that it is proper that the children are immunised. Exactly how that will be done is a matter for decision by their general practitioner. I ask Open Home Foundation to liaise with [Dr A] to ensure that the immunisation takes place at proper intervals and in proper circumstances.

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Judge JF Moss
Family Court Judge

Date of authentication: 30/06/2021
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