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**IN THE FAMILY COURT  
AT AUCKLAND**

**I TE KŌTI WHĀNAU  
KI TĀMAKI MAKĀURAU**

**FAM-2020-004-000505  
[2023] NZFC 4035**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[MYO THU] Applicant
AND	[SHAAHIRA KHIN] Respondent

Hearing: 19 April 2023

Appearances: Applicant appears in Person  
S Worboys for the Respondent  
K Swadling as Lawyer for the Children

Judgment: 19 April 2023

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**ORAL JUDGMENT OF JUDGE K MUIR**

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[1] This case today concerns [Hakam Thu] who is 11 years old, his brother [Siddeeqi] who is [nine years] old, and [Muneera] who is [six years] old.

[2] Neither [Hakam], [Siddeeqi], nor [Muneera] have had any contact with their mother since their mother left New Zealand to travel to [country 1] for a short period of time in 2022. The children came into their father's care at that time and from what

I have heard today I infer that they have not spoken with their mother by telephone let alone seen her at all since then.

[3] Mr [Thu] represented himself today and when he spoke to me in submissions, he made it clear that he did not think he could or should promote a relationship or contact between the children and their mother.

[4] That is a significant concern to me in terms of the rights the children have ss 5(b), (c), and (e) of the Care of Children Act 2004. However, when the children were in the care of their mother it is clear that they were not supported in having a constructive relationship with their father either.

[5] One thing that Mr [Thu] and Ms [Khin] need to understand is that the conflict between them is causing real and probably lasting harm to their children. The longer that conflict continues and the longer that the children go without a solid relationship with both parents the greater the harm to them.

[6] These children have a right to be safe under s 5(a) of the Care of Children Act and their exposure to conflict between their parents and the parents' refusal to support a relationship with each other is entirely contrary to the children's safety.

[7] In fact what has happened in this case to these children, what these parents are doing to these children, is so serious that I genuinely consider there is a care and protection issue here in the sense that phrase is used in the Oranga Tamariki Act 1989. Something needs to change and it needs to change quickly.

[8] These children have a right to have these matters determined within a timeframe that is meaningful to them. These children have a right to have their relationship with both of their parents restored as soon as possible.

[9] I also have the benefit of a cultural report under s 133 that tells me that [Muneera] has a particular need to have a strong relationship with her mother. Indeed under the Muslim Myanmar cultural expectations, the expectation would be that

[Muneera] would be living with her mother and would be principally raised by her mother.

[10] We are here because at the end of 2019 Ms [Khin] and Mr [Thu] separated and Ms [Khin] moved to [location A].

[11] [Hakam] was in the care of his father from 2019. [Siddeeqi] came into the care of his father in February 2021. Apart from contact visits they were not otherwise in the care of their mother from then on and [Muneera] joined her brothers in their father's care in September 2022.

[12] In July 2021 the parents agreed to an interim parenting order allowing the boys to live with their father in Auckland and their daughter to live with their mother in [location A]. The order allows the children to be together during the school holidays and to have weekly video contact with the parent they are not with.

[13] Each parent also agreed to a final protection order being made against the other.

[14] There was to be a hearing in the middle of last year because the interim parenting order was not working well but that hearing could not proceed because Ms [Khin] was stuck in [country 1]. Ms [Khin] had left [Muneera] in the care of [Muneera]'s maternal grandmother, but she ended up in Mr [Thu]'s care and Ms [Khin] was not able to return to New Zealand until September 2022.

[15] A number of applications have been filed by both parties but the purpose of today's submissions only hearing was to decide whether [Muneera] was to be returned to Ms [Khin]'s care and what contact Ms [Khin] should have with the children.

[16] At the start of the hearing Ms Worboys acting for Ms [Khin] made an oral application for an order under s 31 appointing the Court as guardians for the children. We needed to consider how this matter might progress to a hearing, what further information would be needed including a report from an expert psychologist.

[17] Some of the concerns that the Court has for the welfare of the children are set out in the minute that Judge de Jong issued on 12 July 2022 and that should be read along with this minute.

[18] Judge de Jong made a referral under s 19 of the Oranga Tamariki Act at that time and while a report has not been received there has been a report received from a social worker dated 17 October 2022.

[19] The Oranga Tamariki report said:

It was believed that the family needs monitored supports to help repair the emotional harm that has been caused to the children from both of their parents. This support is imperative for the mental, physical health, and wellbeing for the children.

[20] I agree. Those concerns are consistent with the concerns that Judge de Jong held for the children last year. As I have said I agree with Judge de Jong that there are care and protection concerns under s 14(1)(d)(1) and s 14AA(2)(a)(c) and (d) of the Oranga Tamariki Act.

[21] Following the referral there was to be a family group conference. That conference could not proceed because Ms [Khin] was overseas and because Mr [Thu] refused to co-operate.

[22] Oranga Tamariki are aware that there was previously going to be an application under s 31 of the Care of Children Act and had indicated that they would support that. It is a pity that they failed to file the s 19 report that should have been filed but here we are.

[23] Ms Swadling the children's lawyer in her memorandum of 17 April explained that she was unable to meet with the children because Mr [Thu] refused to bring the children to her office during the school holidays and: *"Indicated he does not agree to me seeing the children."*

[24] A summary of what Ms Swadling reported is as follows:

- (a) [Hakam] tends to be the family spokesman. His views appear to be significantly influenced by who he is with at the time. He presently wants all three children to stay with their father but when he was with his mother he did not want to go back.
- (b) [Siddeeqi] has complex medical needs. There have been issues in the past about whether those needs have been adequately supported by his mother. [Siddeeqi] wants the children to stay together with their father.
- (c) [Muneera] has remained in Mr [Thu]'s care since Ms [Khin] went overseas and is currently having no contact with her mother. Her views about living with her mother has changed since she has been living with her father. Whether or not [Muneera] returns to Ms [Khin]'s care there are significant complex issues that make it essential that a psychological report be obtained under s 133.

[25] It was clear from listening to Mr [Thu] when he gave submissions today that he does not believe that he can compel the children to have any contact or any relationship with their mother. It is clear that he does not think he should try.

[26] Some level I could accept Ms [Khin]'s assurances that she will facilitate a relationship with their father if the children come to her care, but I am concerned about doing that without any recent information as to what the boys in particular genuinely and objectively want.

[27] Under s 32 of the Care of Children Act I should not make an order appointing Oranga Tamariki as the officer of the Court and the Court as a guardian unless Oranga Tamariki has been given an opportunity to be heard but I can make that order if I am satisfied that the delay caused by giving notice would or might entail serious injury or undue hardship to the children.

[28] I am satisfied that any delay would very likely cause serious injury to the children, in particular psychological harm from their continued exposure to conflict

between their parents and in any event Oranga Tamariki know what was intended today and they previously indicated they supported it.

[29] Both of these parents need to understand that there is a court order in place that was made by consent that has not been varied and that needs to be complied with. Since Mr [Thu] believes that he cannot persuade the children to comply with the terms of the court order it is clear that he will need assistance and it is another reason why appointing the Court as guardian is necessary.

[30] I agree that in an ideal world these children would stay together. I agree there is some evidence that is what they want. However, I cannot achieve that today and I am persuaded that as best we can, we should return to the position that existed previously, the position that the parties agreed to. That should happen as soon as possible, but it should happen in a way that makes sure that the children are adequately supported and understand what is happening.

[31] In the long-term it may be necessary for the care of all children to change in some way and if either the children's father or the children's mother continues to resist the orders that the Court is making it might be necessary for that change to happen sooner rather than later.

[32] I am making the following orders and directions:

- (a) I note that the consent order from July 2021 stands and it is to be complied with.
- (b) With that in mind [Muneera] should be returned to the care of her mother as soon as is practicable.
- (c) Before that happens Ms Swadling to have an opportunity to meet with all of the children and explain as best she can the decision that I have made today and update the Court as to their views.

- (d) I record that Mr [Thu] for what it is worth indicated that he had no opposition to her meeting the children in school. That means that the change is unlikely to happen within the next two weeks.
- (e) For the avoidance of doubt I make a direction under s 46R that Ms Swadling may meet with the children to ascertain their views and that direction applies not just for the current meeting but for future meetings.
- (f) Secondly, I am satisfied that it is necessary for an order to be made placing the children under the guardianship of the Court and I make that order under s 33(1).
- (g) I appoint the Chief Executive of Oranga Tamariki as the Court's agent for the purpose of facilitating this order. I note that Mr Ong of Oranga Tamariki has been involved as counsel before.
- (h) Oranga Tamariki are to facilitate compliance with the current court order. I note that some resource may be necessary to ensure that the children are able to have contact with their parents as the order requires. It is my hope and expectation that that funding would be available including finance for the purposes of contact if the parents require it but I make it clear to Mr [Thu] and Ms [Khin] that it is their job to ensure that their children have good contact with the other parent.
- (i) As part of the s 31 direction Oranga Tamariki are to endeavour to organise a family group conference and the parties are expected to co-operate.
- (j) Oranga Tamariki are also to consult with Ms Swadling and the children and if necessary report to the Court as to any additional supports that are required to ensure that all of the terms of the order are complied with including the requirement for regular video contact.

- (k) It is my expectation that Oranga Tamariki would carry out Gateway assessments for these children as a matter of urgency and that they would report to the Court and to Ms Swadling if there were any urgent needs or supports that could or should be put in place for these children.
- (l) I direct that a report be obtained through an expert psychologist under s 133 of the Act. I am satisfied that that report is essential for the disposition of these proceedings and that all of the other requirements of s 133(6) are met.
- (m) I ask that Ms Swadling file a draft brief for the psychologist and it can be referred to me in-chambers once the parties have had an opportunity to comment on it.
- (n) I note that Ms Worboys' client is legally aided. Therefore there is no immediate issue as to costs in relation to this decision.
- (o) I close by simply observing that it is essential, vital, and urgent that Mr [Thu] and Ms [Khin] start to focus on the needs of the children and ensure that they do their best to foster the relationship of the children with both of them.

[33] I note that Judge de Jong had rightly declared this file to be a complex file and directed that he case manage it. Unfortunately Judge de Jong is about to leave us. I direct that I am to case manage this file from now on.

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Judge Kevin Muir  
Family Court Judge | Kaiwhakawā o te Kōti Whānau  
Date of authentication | Rā motuhēhēnga: 26/04/2023