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IN THE FAMILY COURT
AT HUTT VALLEY

I TE KŌTI WHĀNAU
KI TE AWAKAIRANGI

FAM-2019-096-000508
[2021] NZFC 6161

IN THE MATTER OF	THE ORANGA TAMARIKI ACT 1989
BETWEEN	CHIEF EXECUTIVE OF ORANGA TAMARIKI—MINISTRY FOR CHILDREN [IAN ADAMSON] [CASSANDRA JONES] Applicants
AND	[KATE JONES] [JAMES ROBINSON] Respondents
AND	[ALICE JONES] born on [date deleted] 2017 Child or Young Person the Application is About

Hearing:	22-25 June 2021 (Heard at Wellington)
Appearances:	R Dean for the Chief Executive Applicants [Adamson] and [C Jones] Appear in Person Applicant/Respondent [K Jones] Appears In Person L Barry for Respondent [Robinson] M Baker as Lawyer for the Child
Judgment:	6 July 2021

RESERVED JUDGMENT OF JUDGE T M BLACK

Introduction

[1] These are proceedings in relation to [Alice]. [Alice] is three. She is currently in the custody of the Chief Executive of Oranga Tamariki pursuant to an order that I made under s 78(1) of the Oranga Tamariki Act 1989 ("the Act").

[2] [Alice]'s mum, Ms [Jones], and her maternal grandparents, Mr [Adamson] and Ms [Jones] Senior, seek discharge of the Oranga Tamariki orders. In other words, they seek the return of [Alice] to Ms [Jones]'s care. Mr [Adamson] and Ms [Jones] Senior also apply for appointment as additional guardians of [Alice].

[3] The applications of Ms [Jones] and her parents are opposed by Oranga Tamariki and by Mr [Robinson], [Alice]'s dad.

[4] I am required to decide whether [Alice] is a child who continues to be in need of care and protection and that is the first issue. The second issue is whether I should make orders which effectively provide for [Alice] to return to her mother's care, that is the second issue. The third issue is whether I should appoint Mr [Adamson] and Ms [Jones] Senior as additional guardians. That is what this case is about.

[5] I want to be clear what this case is not about. It is not about whether [Alice]'s mum and grandparents love her, they clearly do, it is not about whether Ms [Jones] and her parents want the best for [Alice], they clearly do and neither for that matter is this case about whether Mr [Robinson] and his mum love and want the best for [Alice], they clearly do, and lastly this case is not about whether [Alice] loves her mum, her dad, her grandma and her maternal grandparents, she clearly does.

[6] The structure of this decision is as follows: Firstly, I will detail the relevant background, secondly, address the hearing process, thirdly, address the positions and submissions of each party and lawyer for child, fourthly, I will analyse the evidence set against those legal principles and that will lead me finally to a result.

Background

[7] By way of relevant background, Care of Children Act 2004 proceedings between [Alice]'s parents have been on foot since early 2018. Those proceedings were effectively about what contact Mr [Robinson] should have with [Alice]. In November 2019, staff at the [Hospital A] made a report of concern to Oranga Tamariki. That report of concern cited medical concerns for [Alice] regarding poor growth secondary to inadequate oral intake and poor eating behaviour, Ms [Jones] discontinuing feeds against medical advice and generally failing to follow medical advice in relation to [Alice]'s medical needs.

[8] As a result of the investigation which followed that report of concern, the Chief Executive filed on notice applications in December 2019. As prosecuted subsequently, those applications were effectively for appointment of the Chief Executive as additional guardian.

[9] A family group conference was held on 19 February 2020. Both parents attended, as did Mr [Adamson], Ms [Jones] Senior and Ms [Robinson], [Alice]'s paternal grandmother. Agreement was reached that [Alice] was in need of care and protection and a plan was formulated. That plan included, among things, a commitment from [Alice]'s maternal family to follow the medical plan. The plan envisaged the making of a s 110 additional guardianship order in favour the Chief Executive.

[10] Events overtook that plan, however. [Alice] was admitted to hospital in early March 2020. On 30 March 2020 Ms [Jones] discharged [Alice] from hospital against medical advice. As a result of that the Ministry sought and obtained a place of safety warrant which was executed. [Alice] was uplifted from Ms [Jones]'s home, where she lives with her parents, and returned to hospital.

[11] On 3 April, on the Ministry's without notice application, I made an interim guardianship order in favour of the Chief Executive and a s 78 order in favour of the Chief Executive. [Alice] was subsequently discharged from hospital and has been

placed since discharge with her paternal grandmother, Ms [Robinson]. Mr [Robinson] lives in the same household.

[12] A s 178 psychological report was directed and was received in July 2020.

[13] Ms [Jones]'s initial response to the s 78 order was to apply to discharge it. Subsequently she indicated that she wished to work with Oranga Tamariki to secure the return of [Alice] to her care and she discontinued that discharge application.

[14] Subsequent to that Ms [Jones] resiled from that position. She dismissed her counsel and filed fresh applications for discharge and rescission. Subsequent to that, Mr [Adamson] and Ms [Jones] Senior filed their own applications for discharge and the application for appointment as additional guardians.

[15] Earlier this year s 178 medical reports were commissioned from [doctor 1], [Alice]'s current paediatrician, and [doctor 2], the previous paediatrician.

[16] A number of other applications have been dealt with during the course of the proceedings and leading up to this fixture. A hearing took place on 26 March in relation to an application by Ms [Jones] for access. By decision dated 13 April 2021, I dismissed that application.

[17] The Ministry had applied for an order attaching a condition to the s 78 order prohibiting Ms [Jones] from recording access. The Ministry had also asked me to deal with the s 110 application on the basis that two interim orders had been made and the order would expire prior to a fixture being allocated.

[18] With the agreement of all parties, those issues were dealt with on a chambers' basis following the filing of submissions. On 11 April 2021, I made both orders as sought by the Ministry.

Hearing process

[19] At the hearing I heard evidence from a number of witnesses. I had the benefit of a hearing bundle running to something over 1,000 pages, and I heard evidence in

person from [doctor 2], from Ms [Jones], from Mr [Adamson], from Ms Cunningham, from Ms Tesoro, the social worker, from [doctor 1], from Mr [Robinson] and from Ms [Jones] Senior.

[20] I have had the benefit of oral submissions from counsel for the Ministry, counsel for Mr [Robinson], from Ms [Jones], from Mr [Adamson], and from Ms Baker, who is lawyer for child.

[21] I have considered all of the available evidence and submissions.

Positions/submissions

[22] In terms of the positions in submissions made by counsel and the parties, I deal with them in order. The Ministry submits that [Alice] continues to be a child who is in need of care and protection on the basis that [Alice] is a child who is likely to suffer serious harm, on the basis that [Alice] is likely to be abused or neglected on the basis that her development is likely to be impaired or neglected and that impairment or neglect is likely to be serious and avoidable and also that serious differences exist between [Alice]'s parents and guardians.

[23] Ms Dean submits that the evidence clearly establishes that the care and protection concerns which led to the granting of the s 78 order continue to exist and that there are real risks to [Alice]'s welfare if protective orders are discharged. The Ministry opposes Mr [Adamson] and Ms [Jones] Senior being appointed as additional guardians on the basis that such appointment is not necessary because [Alice] already has three guardians and also that such an appointment will create further difficulties in circumstances where the Ministry says [Alice]'s medical care has already been compromised because of the differences which exist between the existing guardians.

[24] Ms Dean submits that Ms [Jones] and her parents are unable to form therapeutic relationships with health professionals or that when relationships are able to be formed, they are unable to be maintained. In that regard she relies on the evidence of the paediatricians, including [doctor 2] whose evidence was that Ms [Jones] and Mr [Adamson] exhibit poor judgement when it comes to medical issues.

There is a pattern of failing to follow plans and recommendations from medical professionals. The high watermark, Ms Dean says, is the discharge from hospital against medical advice. The conflict between Ms [Jones] and her parents and the medical teams has led to the medical teams agreeing to compromise outcomes to avoid or deescalate conflict and that has compromised [Alice]'s progress. Ms Dean points to [doctor 1]'s evidence that [Alice] has made good progress since discharge, points to Ms [Jones]'s evidence that she could not accept that she has made good progress. Ms Dean submits that the evidence of and questions asked by Ms [Jones] and her father demonstrate that Ms [Jones] and her parents continue to demonstrate a lack of insight.

[25] Ms Cunningham made a number of recommendations in her report, including that Ms [Jones] undertake a psychiatric assessment. Ms [Jones] has declined to do so, she does not see the need to do it. Ms Cunningham's opinion is that Ms [Jones] and her father in particular demonstrate confirmation bias thinking which creates risk in terms of [Alice]'s medical treatment, education and relationships among other things.

[26] Therapeutic interventions can only work if Ms [Jones] and her family show insight and Ms Dean submits that they do not demonstrate insight, in fact quite the contrary. Ms Dean submits that the fact that Ms [Jones] and her father submit that Mr [Robinson] and his mother should only have video contact with [Alice] after return to them, demonstrates a lack of insight to the importance of [Alice]'s relationships with those persons. She submits that the extensive social media posts which Ms [Jones] and her family have published in relation to [Alice]'s situation have the potential to be harmful to [Alice], they demonstrate a lack of insight into their potential for harm. They see those posts as simply their efforts to obtain justice and to put the truth of the matter as they see it, out there.

[27] In terms of how [Alice]'s ongoing care and protection needs can be met and monitored if she is in the care of mother, the submission is made, that would be impossible given that the position of Ms [Jones] and her parents is that they decline to work with Oranga Tamariki.

[28] On behalf of Mr [Robinson], Ms Barry submits that the evidence supports a finding that [Alice] would suffer serious harm if she were returned to her mother and grandparents. That submission is based on what Ms Barry submits is clear evidence of the maternal family's reluctance and/or refusal to heed medical advice. There are the same concerns expressed across a significant period of time by a number of medical staff, including the three previous paediatricians. Ms Barry also relies on Ms Cunningham's report and evidence in relation to the confirmation bias reasoning and the beliefs that the maternal family have which are damaging to [Alice].

[29] Ms Barry submits that consistent with that confirmation bias reasoning, the maternal family have attempted to focus on snippets of information in relation to Ms [Robinson], a focus on Ms [Robinson]'s smacking of [Alice] and unwillingness to accept the subsequent assessment that notwithstanding that smacking, [Alice] is safe in her grandmother's care. Ms Barry submits that the evidence demonstrates that many of the interactions between the maternal family and the health professionals and Oranga Tamariki amount to harassment.

[30] She acknowledges there is occasional positive interaction. She submits that the maternal family have no insight, have refused to engage with the central issues in this case and submits that if [Alice] were returned to her mother's care she would likely regress.

[31] Mr [Robinson] is opposed to the appointment of the maternal grandparents as additional guardians, is concerned about the level of control exerted by Mr [Adamson] and is concerned about his behaviour and how he could work positively with the existing guardians.

[32] Ms [Jones] submits that on the basis of the evidence provided by her, the cross-examination of the witnesses during the hearing, the various recordings produced in evidence, I can be satisfied that she has followed medical advice. Ms [Jones] submits that when [Alice] was in her care she made sure her needs were met. She contends that the self-discharge or discharge against advice was in the best interests of her daughter because the medical treatment had failed to reverse [Alice]'s health issues. She seeks that I rescind the s 78 order and s 110 order or alternatively

that I discharge them. That would, as a matter of law, mean that [Alice] would be in Ms [Jones]'s custody or care pursuant to the existing interim parenting order which has been suspended while the s 78 order has been in force. Ms [Jones] effectively seeks a variation of that order to provide for Mr [Robinson] to have video contact. That is on the basis of what she says is the violence and trauma inflicted on [Alice] in the [Robinson] household. Ms [Jones] confirmed that she does not consent to and opposes any ongoing involvement whatsoever from Oranga Tamariki.

[33] Mr [Adamson] submits that the Oranga Tamariki orders should be discharged. If those orders are discharged, they would want to be appointed as additional guardians under the Care of Children Act. Mr [Adamson] submits that there is no evidence before the Court that Mr [Robinson] has done the things he agreed to do at the family group conference. [Alice] has been subjected to trauma in the [Robinson] household, her needs are not being met. He supports the submission that there should be only video contact with Mr [Robinson]. He agrees with his daughter that there should be no further Oranga Tamariki involvement with [Alice]. He submits the evidence establishes that [Alice]'s developmental needs have declined during the period of OT custody. He submits that [Alice]'s needs can be met in his household and in response to the submission that he tends to dominate matters, he says he is simply trying to get the best outcome for his granddaughter.

[34] Ms Baker, on behalf of [Alice], outlines that in a situation where [Alice] is too young to provide views, a submission with which I agree, given that [Alice] is only three and a half years old, her role is to independently advocate for [Alice]'s welfare and best interests, having regard to all of the available evidence. Ms Baker submits that having regard particularly to the independent expert evidence, it is in [Alice]'s best interests for the custody order in favour of Oranga Tamariki to remain. She emphasises that if that custody order remains and becomes a s 101 order in due course, that is not a position which necessarily lasts forever because it is subject to ongoing review, but for now the custody order should remain. Ms Baker relies, she says, not on her own views of the situation but on the expert evidence assessing the situation. She places particular emphasis on Ms Cunningham's report in relation to belief systems and assessments. She submits that Ms [Jones] needs to reconsider her

position in relation to assessments and she does not consider that it is appropriate for Mr [Adamson] and Ms [Jones] Senior to be appointed as additional guardians.

[35] She submits that Mr [Adamson] is the primary instigator of difficulties and that may be because of his belief system, and his beliefs may be genuinely held but nonetheless they create significant risks for [Alice]. The medical and psychological evidence should be relied on and Ms Baker submits that [Alice] appears to be doing well with Ms [Robinson]. [Alice] needs both sides of her family but Ms [Jones] seems to be unable to acknowledge that.

Legal issues

[36] I turn to the legal issues that I am required to have regard to. The first matter of general application is that when considering matters, I have to have regard to the s 4A principle that the wellbeing and best interests of [Alice] are the first and paramount consideration, having regard to the ss 5 and 13 principles and those principles are a backdrop to this case.

[37] Under s 14 a child is in need of care and protection if she is suffering or is likely to suffer serious harm. Under s 14AA [Alice] is likely to suffer serious harm if she is being abused, deprived or neglected. Other circumstances that may constitute serious harm include that [Alice]'s development, physical, mental or emotional wellbeing is being or is likely to be impaired or neglected and that impairment or neglect is or is likely to be avoidable and that serious differences exist between [Alice]'s parents or guardians.

[38] Under s 14AA(3) serious harm may occur either as a result of an incident or two or more incidents, which taken on their own would not be serious enough to constitute serious harm, but the cumulative effect of which are serious enough to cause serious harm, or the co-existence of different circumstances.

[39] Under s 73, the Court cannot make a care or protection order unless it is satisfied that care and protection cannot be provided to the child by any other means.

[40] Under s 125, an eligible person, and Ms [Jones] and her parents are clearly eligible persons, may apply for the discharge of orders.

[41] When discharge of orders is being contemplated by the Court, the task of the Court is as follows: Firstly, to identify what care and protection concerns led to the making of the orders. Then to consider whether those circumstances still exist. Then to consider whether if those circumstances do still exist, the circumstances of relevantly in this case, Ms [Jones] and her family have changed or they propose protective mechanisms such that it is appropriate to discharge the orders. In other words, what will be the consequences for [Alice]'s wellbeing and best interests if the orders are discharged.

[42] Additional guardians may be appointed under s 110 (or under s 27 Care of Children Act). As a general principle, a grandparent is unlikely to be appointed where they are in conflict with one or both of the child's parents.[1]

[43] Lastly, in relation to legal issues, I want to say something about some evidential issues. Firstly, I refer to my ruling of 22 June in relation to Ms Lawrence's evidence and secondly, I want to talk more generally about the hearsay rule which provides that hearsay evidence is not generally admissible unless it can come in under one of the exceptions in the Evidence Act 2006 or any other Act. Hearsay evidence is evidence of a statement made by a person who is not a witness in the proceedings which is offered to prove the truth of that statement. There are exceptions in terms of unavailability. There are exceptions in terms of business records.

[44] Thirdly, I want to talk about opinion evidence. Opinion evidence is not generally admissible. It is admissible only the circumstances set out in the Evidence Act or any other Act.

[45] Expert opinion evidence is admissible if the fact-finder (me) is likely to obtain substantial help from the opinion in understanding other evidence or in ascertaining any fact which is of consequence to the determination of the proceeding.

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[1] Usha Patel and others Brookers Family Law - Child Law (online looseleaf ed, Thompson Reuters) at CC27.09.

[46] Non-expert opinion evidence is generally inadmissible. It is only admissible if it is necessary for the witness to describe or the fact finder to understand what the witness saw, did or perceived.

Analysis

[47] The first issue to consider is whether [Alice] a child in need of care and protection and really that issue is entirely bound up with the medical evidence. From a young age [Alice] has had a number of health issues, they all relate to growth issues, issues with feeding and global developmental delay. I do not propose in this decision to traverse in detail the medical evidence because from my perspective it is the themes which emerge which are important. The reason I say that is because I agree with the submission made by Ms Barry that in effect the maternal family have attempted to cherry pick aspects of the medical evidence which support their case or do not support Oranga Tamariki's position but ignore the thrust or preponderance of other medical evidence available.

[48] To the extent that the medical evidence is expert opinion evidence about [Alice]'s diagnosis, treatment, and possible causes of her presentation, that evidence is uncontradicted by expert evidence called on behalf of the maternal family (no such expert evidence was called) and unshaken to the extent that cross examination addressed it.

[49] The theme which emerges from the medical evidence is this. Ms [Jones] and her family have had difficulty engaging appropriately in a consistent way with the medical teams. It is significant that over the course of [Alice]'s treatment she has had four paediatricians involved, [doctor 3], [doctor 4], [doctor 2] and [doctor 1]. In the case of the first three paediatricians and their associated teams, the therapeutic relationship has either not been established or has not been able to be sustained and in each of the cases the medical teams report that is because of Ms [Jones] and her family's non-compliance with medical recommendations, refusal to take advice, thinking they know better, sourcing information from other unreliable sources and those sorts of issues together with unhelpful interpersonal interaction styles, which is

a polite way of saying that the medical staff have felt abused[2] and harassed by Ms [Jones] and her family[3].

[50] [Doctor 1] has a similar experience with Ms [Jones] and her family.

[51] Ms [Jones] and her family say that the difficulties they have experienced with medical teams is because those people do not appropriately respect their role as whānau, do not listen to them, do not explain things to them adequately. It is a remarkable coincidence that this has happened not once but four times. It is beyond remarkable, it is stretching the bow of coincidence beyond breaking point.

[52] Some of the material provided by Ms [Jones] and her family demonstrates the issues. For example, Ms [Jones] claims that they secured firstly advice from Starship Hospital and then agreement from [doctor 4] that it was all right for them to feed [Alice] a homemade blenderised mix rather than the prescribed formula.

[53] In support of that, the Court was provided with a copy of the fact sheets and flowcharts provided to the family by Starship Hospital. It should be noted that that information was provided by an administrator, not by a medical professional and it was provided without that person having any access to [Alice]'s medical history or records but simply in response to a request for information from Mr [Adamson] but even then a closer analysis of the information provided indicates, for example, in terms of the flowchart, that blenderised food should not be used because of the diameter of the NGR tube.

[54] Notwithstanding that, Mr [Adamson] and Ms [Jones] continued to claim that [doctor 4] had agreed with the blenderised food being provided and a recording was played in relation to part of an interaction between the family and [doctor 4] ostensibly to demonstrate this agreement. It did no such thing. What the recording showed and the surrounding material demonstrated[4], was that [doctor 4] had been presented with

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[2] An example of the alleged abuse is Ms [Jones] snr calling Wellington hospital staff "cunts" at the time of Ms [Jones]'s removal from Wellington hospital on 27/4/20 – Bundle A page 123

[3] For a summary of the referral to Wellington hospital, see [doctor 2]'s report, 26/5/21, paragraphs 2-7

[4] For example, [doctor 4]'s clinic letter dated 17/12/19 (typographical error in date, reads 2020), first page, last paragraph – annexed to [doctor 1]'s report, and [name deleted]'s email at Bundle A, page 18

a fait accompli by the family and was doing his best to negotiate a compromise to mitigate the harm being caused by the family's refusal to follow the feeding plan devised by the medical team.

[55] [Doctor 1]'s expert opinion of the actual and likely causes of the problems experienced by [Alice] are set out at pages 3, 4 and 5 of [doctor 1]'s report. That evidence was not challenged in any meaningful way by either Ms [Jones] or Mr [Adamson] and indeed neither of them are qualified to challenge that evidence. Similarly, [doctor 2]'s expert opinion evidence that [Alice] was in starvation mode when admitted to hospital in March 2020 was not challenged by Ms [Jones] and Mr [Adamson].

[56] The evidence clearly establishes that [Alice] was very seriously at risk when she was admitted to hospital. Ms [Jones]'s decision to discharge [Alice] from hospital against clear medical advice to the contrary was irresponsible and clearly contrary to [Alice]'s wellbeing and best interests. That is why the hospital immediately notified Oranga Tamariki when the discharge occurred, that is why Oranga Tamariki then immediately applied for a place of safety warrant, that is why I granted that application for a place of safety warrant and that is why [Alice] was uplifted from her grandparents' home in the middle of the night and returned to hospital. I regret that [Alice] was uplifted from her grandparents' home in the middle of the night but the responsibility for that having occurred rests at the feet of her mother, not at the feet of Oranga Tamariki.

[57] [Doctor 1] gave evidence of what he considered to be a good example of the difficulty in working with Ms [Jones] and her parents. The situation is that [Alice] is close to being at the point where her nasogastric tube will be removed. She has had issues with constipation and has been receiving laxatives through the tube which are ground up tablets. [Doctor 1] suggested that the tablets should be changed for drops, sodium picosulphate. The rationale for that change is that the Senna tablets are unpleasant tasting and there is some risk that [Alice] might refuse to take those tablets orally which risks her constipation worsening, which risks her being reluctant to eat which risks the progress that she has made since discharge from hospital evaporating. The drop alternative is pleasant to take and without those risks. Notwithstanding what

is in effect a minor change in the form of laxative medication to be administered to [Alice], Ms [Jones] refused to consent to that medication and it has therefore not been prescribed. The evidence in relation to that matter is set out at paragraphs 19 to 21 of [doctor 1]'s report.

[58] Illustrative of the tone approach of Ms [Jones] and her family to these matters, is that Ms [Jones]'s correspondence in relation to this matter was copied by her to the Chief Executive of Oranga Tamariki, the Minister for Children, the Children's Commissioner, and various others[5]. A consistent theme in the family's interactions with the medical team is them making demands of medical professionals and threatening complaints to the Medical Council and in one instance a High Court action for medical neglect.

[59] A further example of the family's mistrust of authority is their persistent allegations of collusion between medical professionals, Oranga Tamariki and lawyer for child. I describe a number of examples of this view and behaviour below. I make no attempt to be exhaustive.

[60] Conflict occurred at a review of [Alice]'s progress at [Hospital A] on 12 February 2021. Ms [Jones] and her family were not permitted to be in the weighing room, because of its small size. They interpreted that as the staff wanting to hide or alter data[6].

[61] During the hearing, Ms [Jones] complained that Ms Baker was seen on the morning of 23 June, walking around the corner with Ms Cunningham, the s 178 psychological report writer. She wondered aloud what they may have been discussing (ie what they may have been colluding about). On the morning of 24 June Ms [Jones] renewed her complaint on the basis that Ms Baker had been seen escorting [doctor 1] into the Court premises. I pointed out to Ms [Jones] that the lawyer for child best practice guidelines make it a requirement of Ms Baker to ensure the attendance of the Court's witnesses at the hearing.

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[5] Bundle B, page 506. More generally, see Affidavit of Ms Tesoro, sworn 11/6/21, Bundle A, page 202, paragraphs 38-39

[6] Clinic letter 12/2/21, page 6, appended to [doctor 1]'s report 26/5/21

[62] A further example of the family's attitude to those in authority can be gleaned from their recording of various conversations, in many instances without the knowledge of the other parties to the conversation and in some instances in circumstances where the other parties had expressly declined consent to recording. Those recordings were put in evidence by Ms [Jones] and Mr [Adamson]. In some instances those recordings have found their way onto the Internet. A particularly egregious example of such a recording is the visit to the [location A] office of Oranga Tamariki which was livestreamed on Facebook by Ms [Jones]. Ms [Jones] and her parents barged their way into the office, they demanded to see the site manager, they recorded the entire interchange, despite [name deleted] telling them that he did not consent to them recording him and requiring them to desist. They swore at [name deleted], impugned his integrity and behaved in an appalling way. For Mr [Adamson] to then submit and cross-examine witnesses on the basis that collaboration is a two-way process is risible.

[63] I want to say in relation to the social media postings generally, that they were and are inappropriate. I agree with the evidence of Ms Cunningham and Ms Tesero that if [Alice] were to become aware of those recordings in future years, it could cause confusion and distress. I do not accept the assertion made by Ms [Jones] and her father that she might be pleased because those recordings tell "the truth".

[64] A final example of the maternal family's attitude to authority figures is the ongoing recording of video access sessions. Despite my order prohibiting recording, recording has continued and was presented by Mr [Adamson] to the Court. Taken to task, Ms [Jones] stated that she did not record the access. Taken to task, Mr [Adamson] (correctly) pointed out that my order did not name him, but seemed unable to acknowledge that his behaviour clearly breached the spirit of my order.[7]

[65] Notwithstanding Mr [Adamson]'s submission that [Alice]'s needs are not being met in Ms [Robinson]'s household, the evidence establishes that they are. Her weight has slowly improved and the other treatment goals are being achieved. She is presenting to the paediatric nurse, Ms Baker, and others as happy and contented.

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[7] NOE, page 136 line 15 – p140

[66] I need to deal with the matter of smacking. Ms [Jones] and her family say that [Alice] has been abused by her grandmother because her grandmother has smacked her on six or seven occasions. I accept the evidence establishes, on the balance of probabilities, that smacking has occurred. The smacking has consisted of taps on the hand or a light smack on the outside of her nappy. The smacking has been investigated twice by Oranga Tamariki, on each occasion Oranga Tamariki has found that [Alice] is safe in her grandmother's care. On each occasion Oranga Tamariki has found that the smacking, while substantiated, did not meet the threshold for intervention, in other words the smacking did not of itself mean that [Alice] was unsafe in her grandmother's care, having regard to all other matters relating to that care and to Ms [Robinson]'s commitment not to repeat the smacking. I acknowledge that there was a repeat after the first report of concern. I also acknowledge that smacking children is against the law and is unacceptable. Whether smacking is physical abuse is a question of degree. The evidence does not establish that the smacking was of such a frequency or nature so as to be physical abuse.

[67] I expressly reject the assertion that [Alice]'s night terrors are indicative of her being traumatised by the smacking. The uncontradicted evidence of [doctor 1] is that there is no evidence to support the proposition that night terrors reflect trauma.

[68] Similarly there is no expert evidence to establish that [Alice]'s behaviours during contact are indicative of trauma in the [Robinson] household[8]. The assertion that they are is inadmissible non expert opinion. Indeed all current professional observation is that [Alice] is thriving in her grandmother's care.

[69] The evidence establishes that [Alice] is safe in her grandmother's care, and even if I were to determine that [Alice] is not safe in her grandmother's care, it does not follow that she must be returned to her mother's care, if I find that she would be unsafe in her mother's care.

[70] On the basis of all of the evidence, I am satisfied and I determine that [Alice] continues to be a child in need of care and protection because of her health needs

[8] See Ms Tesoro's affidavit sworn 11 June 2021, bundle A, page 198 paras 17-19 and Bundle B, page 567-571

which need to be carefully managed and the difficulties which exist between her families.

[71] Can [Alice]'s care and protection needs be met by other means? I am satisfied they cannot. While a family group conference was held and reached agreement, Ms [Jones] now says that that agreement was given under duress and furthermore she resiles from the plan. Ms [Jones] will not agree to any ongoing Oranga Tamariki involvement, whether by way of orders or even otherwise. There is no mechanism to ensure that [Alice]'s care and protection needs are monitored and met, other than by the making of care and protection orders under the Act.

[72] I turn to the discharge applications. It will be apparent from the analysis above that they cannot succeed. The care and protection concerns first identified remain extant. The family has done nothing to address those concerns. If anything the family are less willing to work with the medical team and Oranga Tamariki than they were at the time the orders were made. If [Alice] were returned to her mother's care, I am certain that her progress would be significantly at risk. I am also certain that her relationship with her father and grandmother would be significantly at risk.

[73] It is not in [Alice]'s wellbeing and best interests to discharge the Oranga Tamariki orders at this time.

[74] I turn to the grandparents' application for appointment as additional guardians. Appointment of additional guardians is generally only appropriate where the existing guardians are not undertaking their guardianship responsibilities or where there is disagreement between existing guardians and an additional guardian might provide some useful mediating influence or input. [Alice] has two natural guardians, her mother and her father and one court appointed guardian, the Chief Executive. I do not consider that an appointment of further guardians is necessary. If such an appointment were necessary, I would not consider that Mr [Adamson] and Ms [Jones] Senior would be appropriate persons to hold that office because of their hostility towards Oranga Tamariki and their hostility towards Mr [Robinson]. Any such appointment would likely lead to further protracted litigation. There is already litigation on foot between the existing guardians in relation to [Alice]'s attendance at early childhood education.

I cannot see how adding Mr [Adamson] and Ms [Jones] Senior into that mix could possibly be in [Alice]'s best interests.

Result

[75] I am satisfied and determine that [Alice] is a child in need of care and protection. I am further satisfied and determine that her care and protection needs can only be met by the making of a care and protection order.

[76] Ms [Jones]'s applications for discharge and rescission are dismissed. Mr [Adamson]'s and Ms [Jones] Senior's applications for a discharge of the Oranga Tamariki orders are dismissed. Mr [Adamson]'s and Ms [Jones] Senior's application for appointment as additional guardians is dismissed.

[77] The matter of disposition now needs to be progressed. The Ministry should file a s 186 report and plan by 30 July 2021. The parties should file any response to the plan by 27 August 2021. The matter should be allocated a 30-minute fixture with me as soon as possible after that to deal with disposition. For the avoidance of doubt, I will not entertain argument about the form of disposition orders, the application is for a s 101 order. That order will be granted, and the s 110 order will be continued. The disposition hearing will be in relation to whether the plan is adequate in terms of s 130 of the Act.

[78] I want to say something to the [Jones] whānau, acknowledging that this decision will be bitterly disappointing to them. The best outcome for [Alice] in the longer term will be that she is in a form of shared care between the maternal and paternal whanau, in a situation where her medical needs are being consistently managed in each household. For that to be possible, Ms [Jones] and her parents need to reflect on their approach to these proceedings, they need to stop recording access, they need to stop putting stuff on the Internet, they need to stop turning up to Oranga Tamariki and abusing the staff there. They need to stop sending angry emails to politicians and news organisations. In short, they need to stop behaving in ways which confirm the proposition that they are unable to work collaboratively and co-operatively with anyone in authority, and they need to start listening to and respecting

the advice of experts. They also need to understand that Mr [Robinson] and his whānau are vitally important to [Alice]. [Alice] is half of each of her parents and I would have hoped, given the contents of the cultural report, that of all people, Mr [Adamson] and Ms [Jones] Senior might understand how incredibly harmful it is to a child's development to be deprived of a meaningful relationship with their whakapapa.

[79] Ms [Jones] needs to reflect on Ms Cunningham's recommendation about further assessment. Mr [Adamson] needs to reflect on Ms Cunningham's recommendation of further assessment.

[80] For [Alice]'s sake, what needs to happen is that peace needs to break out, and these comments are intended not as criticism but as encouragement.

Judge T M Black
Family Court Judge