

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 WAITAKERE**

**I TE KŌTI WHĀNAU  
KI WAITĀKERE**

**FAM-2020-090-000340  
[2023] NZFC 6832**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[LOGAN NISBETT] Applicant
AND	[AUDREY NISBETT] Respondent

Hearing: 21 June 2023

Appearances: C O'Donnell for the Applicant  
B Glasgow for the Respondent  
P Singh on behalf of L Gray as Lawyer for the Children

Judgment: 21 June 2023

---

**ORAL JUDGMENT OF JUDGE R VON KEISENBERG**

---

[1] Today has set down as a submissions only hearing to determine a s 46R dispute between the parents [Logan Nisbett] and [Audrey Nisbett] as to whether their three children [Mason] aged 10, [Lucy] aged eight, and [Leon] aged six should receive their childhood immunisations as recommended by the Ministry of Health.

[2] Her Honour Judge Morrison was expected to have heard this matter having determined other parenting issues before her in September 2022. She declined to determine the issue about immunisations on the basis that more information was required. She subsequently directed a s 133 medical report from the children's GP [Dr McNeill] as to whether there were any medical reasons why the children could not each receive their childhood immunisations.

[3] [Mr Nisbett] the applicant seeks orders that the three children are vaccinated. Today I have had the benefit of hearing from both counsel and from lawyer for child Ms Singh who stands in for Ms Gray.

[4] [Ms Nisbett] is strongly opposed to the children being vaccinated. She has filed several affidavits in this matter. In her first affidavit she wrote that: "Morally I cannot consent to the children being immunised against MMR" however for the purposes of the court hearing she then said she did not object. In her affidavit of June 2022 as I have heard from her counsel Ms Glasgow today, she qualified this statement by saying that she does not consent but if the court orders this she would comply with such orders.

[5] Her grounds for opposition which I have heard about at some length today through her counsel Ms Glasgow is that when she and [Mr Nisbett] were a couple living together they had agreed they would not vaccinate their children and would take a natural approach. She also relies on the children's views as expressed to her that they were scared and anxious about their father wanting to have them vaccinated.

[6] The mother in her grounds of opposition also relies on the adverse reaction she claims that the firstborn child [Mason] experienced after his first vaccinations. This is set out in her affidavit, at paragraph [41]. She describes the side effects or reactions to this as screaming, sleeplessness, breastfeeding issues, toileting issues, and developmental delay, cradle cap and eczema, development delays on eating, audio and sensory processing issues; oversensitive to loud noises; behaviour akin to children on the autism spectrum disorder.

[7] The mother's opposition is that vaccinations are contrary to her strong religious beliefs based on what the bible states about this.

[8] The only expert evidence available to the Court was contained in the report from [Dr McNeill]. As I noted Judge Morrison directed this s 133 report from the children's GP. He reported on 7 November- his brief was to review the medical reports held by [location deleted] Medical Centre in relation to the children, to consider [Ms Nisbett's] evidence regarding [Mason's] response to the initial vaccination, report on whether there was a specific contra-indication in relation to immunisation for the children, and to report on the safety and efficacy of the treatment.

[9] In his detailed report he addressed each of the mother's objections which I now summarise. He acknowledged that it was not unusual for a child to scream but that "when the child screamed like he had never screamed before" as claimed by [Ms Nisbett] in her affidavit at paragraph [41], [Dr McNeill] said this was consistent with an adverse reaction.

[10] In terms of the other issues she raised regarding sleeplessness, breastfeeding, toileting, swallowing, eating, and sensitivities, [Dr McNeill] could not find any evidence of these being long-term effects of the vaccines which [Mason] had received.

[11] [Dr McNeill] said in his opinion the claims of [Mason's] skin problems -cradle cap and eczema were not caused by the vaccination. In regard to the claim that there was the possibility of autism spectrum disorder being related to [Mason's] vaccination he referred to the research that in the past an association between autism spectrum disorder and mumps, measles, and rubella had been raised but this had been subsequently disproved. In any event he noted that [Mason] had not received this vaccine.

[12] In short he concluded that there were no specific contraindications for any of the children to any of the childhood immunisations in the current New Zealand Immunisation Schedule. In addressing that part of the brief about safety and efficacy he relied on the Ministry of Health website which states that all vaccines approved for use in New Zealand have a good safety record and have ongoing safety monitoring.

[13] He provided a summary of the efficacy of each of those vaccines for childhood immunisation. I do not intend to record these, but I think it is accepted by counsel today that the bottom line in [Dr McNeill's] opinion is that there are no specific contraindications for any of the children in relation to the proposed immunisations.

[14] [Ms Nisbett] filed a further affidavit in response in May. Distilled, her main points were that she reaffirmed her opposition to the immunisation. She stated that in 2019 her children contracted Whooping Cough and decided not to give them antibiotics treating them with Vitamin C. However she accepts the opinion of [Dr McNeill] that the children have not shown any contraindication to vaccinations.

[15] [Ms Nisbett] also argued in support of her opposition to the children being vaccinated that all diseases which children are immunised against, are treatable. I will address that issue later in this decision. She confirmed that the children have had Whooping Cough, chicken pox, and have recovered fully despite not being immunised. Finally, she reaffirmed her position that she cannot morally consent.

[16] At the conclusion of her affidavit, she set out that if the Court determined that the children should be vaccinated, she proposed a vaccination safety protocol which she was advocating for. I address this at the conclusion of this decision.

#### *Views of the children*

[17] Although the children were not approached by their lawyer about the forthcoming hearing today, it was contended by their counsel that their views were obtained in relation to proposed immunisation against COVID-19 and I turn to that 28 March 2022 report from Ms Gray.

[18] At paragraph [26] [Mason] told his lawyer: "I asked [Mason] about COVID vaccinations and if he knew what his parents wanted. He could tell me that Dad wants him to get but Mum doesn't. I asked [Mason] if he knew why that was and he replied, 'Sort of but I really don't want to talk about it'."

[19] At the next paragraph he said:

I asked [Mason] if he had thoughts about whether or not he wanted to get his COVID vaccinations. He said that he didn't want to get it. I asked if he had any reasons for not wanting to get it and he said: "I do know why but I really don't want to talk about it."

[20] [Lucy] was asked (at paragraph [41] of lawyer for child's report) and told her lawyer that:

My dad says yes. My mum says no. [Lucy] thought for herself: "I don't want it because I am scared that it will hurt."

[21] [Leon] when asked (paragraph [55] of the report):

In talking about the COVID vaccination [Leon] said: "Dad wants to get them but Mum doesn't want to get them." [Leon] thought he himself did not want to get the vaccine. He thought initially this was because Mum said it is bad for him but Dad said it is good for him. He wasn't too sure about that though. He's then told me that Dad said it's bad for him but Mum said it is good for him.

[22] Lawyer for child filed a more recent report for today's hearing. She declined to see the children again. She took the view that if the children were all opposed to receiving COVID-19 vaccinations they would likewise be opposed to receiving other childhood vaccinations.

[23] However, at the conclusion of this hearing I heard from Ms Singh in relation to other matters which I will address shortly.

### *Analysis*

[24] Counsel for the applicant, Ms O'Donnell in her submissions quoted as some length from the notes of evidence from the September 2022 hearing. I was not the judge who heard the matter in September 2022, nor have I had the benefit of reading the notes of evidence however the flavour of some of [Ms Nisbett's] responses she gave to counsel were used in support for the hearing today as evidence about the views the mother has reached about vaccinations. In that regard there was nothing surprising or new in any of the responses but merely confirmed what her counsel Ms Glasgow has said on her client's behalf.

[25] What I am clear about having read the evidence and lawyer for child's report, is that the three children are very aware of their parents' views on vaccinations. It tells me this is yet another issue that these parents have embroiled their children in. The parents were separated approximately three years ago and since that time they have amassed a significant body of litigation about their children. I think that is very sad.

[26] For that reason, when I consider the issue of *Gillick*<sup>1</sup> competence as it has been argued on the mother's behalf that I should put some reliance on the children's views. I do not intend in this oral decision to say more on this but I am happy if the parties wish me to elaborate on the standard for *Gillick* competence I will do so in the written version of this decision however I am quite satisfied that I cannot reliably depend on the children's views to inform my decision.

[27] What I mean by this is that although I must take their views into account the weight I give to those views, must be tempered by the fact that both parents have discussed the issue of vaccinations with them either in a good, bad, or indifferent way as evidenced by what they told their lawyer. For that reason, while I take their views into account, but I cannot give them much weight. In summary in my view that the children have been influenced by both parents' strong views about whether to vaccinate or not.

### *Legal principles*

[28] I want to talk briefly about the legal principles which apply. In decisions of this nature as for all decisions under the Care of Children Act 2004 I must consider the wellbeing and best interests of the children as the first and paramount consideration now and into the future. Decisions of this nature are of course quite specific to the circumstances. All counsel accept that is the general hypotheses for such cases.

[29] I must also have regard to all matters which are relevant and in particular the principles of s 5. I am required, as I have already addressed that under s 6 the children

---

<sup>1</sup> *Gillick v West Norfolk & Wisbeck Area Health Authority* [1986] AC 112 House of Lords. The essence of the decision is that children who are under the age of 16 years but have the maturity, intelligence and understanding to be competent to give consent to a particular treatment may give consent for themselves.

have an opportunity to express those views and I must take those views into account. I acknowledge that those views are not determinative, but I am permitted and indeed required to assess them, balance the weight against age and maturity and as I have already outlined the issue of parental influence.

[30] Sections 15 and 16 of the Care of Children Act also apply, that sets out the rights and powers and responsibilities of being a guardian.

[31] At the outset I acknowledge that both parents are loving and caring, however it remains my ongoing concern that the number of issues which have arisen between about their children in a relatively short period of time is an ongoing concern.

[32] I turn briefly to submissions by counsel. Counsel for the applicant notes in her submissions that in the Family Court based on recent decisions concerning vaccinations there has been a tendency to follow Ministry of Health guidelines. There is now a significant body of decisions as counsel have all acknowledged both in the Family Court and in the High Court on immunisation for children. It is a very conflicted issue between parents.

[33] As earlier outlined, counsel for the mother submits that the parties' decision they made as a couple, not to immunise should be given considerable weight. She argues that they came to a decision, and this should be adhered to. She acknowledges in her submissions today that there is no judicial authority in support of this contention.

[34] I have little difficulty, respectfully, in rejecting such a submission that the Court is bound by an agreement the parties might have made when they were together some years ago, particularly in regard to matters which affect the health and welfare of a child. These issues are never static and must be considered in light of all current circumstances.

[35] People are also apt to change their minds and clearly where there is no agreement on such guardianship issues then they must resort to the Court to make that decision for them. It simply cannot be that parents are bound by decisions they make

about their children years earlier when their situation for them or their children might have changed.

[36] I agree with the summary expressed by her Honour Otene in *Stone v Reader*<sup>2</sup>:

The Courts can take judicial notice of the fact that the government agency responsible for the management and development of the New Zealand health system recommends a schedule of vaccination for all New Zealanders based on a body of evidence.

[37] I turn briefly to the evidence before me. As outlined, I have had the benefit of [Dr McNeill's] report pursuant to s 133 of the children and his analysis of the mother's claims. His findings were summarised on the basis that there were no specific contraindications for any of the children to any of the childhood immunisations in the current schedule.

[38] In that regard, the mother filed extensive information across two or three of her affidavits from alternative view holders. Clearly these could not be considered expert evidence; no affidavit evidence was filed from any of the writers nor was there any background on the writers provided.

[39] I also acknowledge that the mother has very strongly held beliefs about what she believes is best for the children based on her upbringing, her religious beliefs, and from what I have heard from Ms Glasgow today, her own research.

[40] However, for the reasons I have given I simply cannot put any weight on these articles or documents which provide a contrary view. As the mother acknowledged herself many of these views are against the weight of traditional or accepted medical research.

[41] I particularly want to respond to [Ms Nisbett's] claim which I debated briefly with Ms Glasgow today is the claim that the diseases for which children are immunised are all treatable.

---

<sup>2</sup> *Stone v Reader* [2016] NZFC 6130

[42] I posited that this cannot simply be correct when we talk about the disease of polio. The New Zealand Ministry of Health website referred to in [Dr McNeill's] report is that there are at least three vaccines that children are vaccinated for at three, five months and so on against polio.

[43] Although this is not strictly a matter for this judgment, I simply comment that I am old enough to have grown up with children who had contracted polio and wore callipers. I mention this in the context of the submission that such diseases are treatable which I reject.

[44] Notably there has been an outbreak worldwide of a measles epidemic. In a well-publicised outbreak in Samoa, there were about 83 deaths in 2019, most of whom were babies and small children out of a population of 200,000. The point I make about such diseases as measles or polio, is simply that these diseases are not mere trifles as suggested.

[45] In summary the only evidence that I can safely rely on is that of [Dr McNeill] who himself relies on the Ministry of Health protocols which he says are based on a large body of research that the vaccines are safe and reliable.

[46] For that reason, taking into account ss 4, 5, and 6 I am satisfied that it is in the best interests for these three children to be immunised in accordance with the Ministry of Health schedule of vaccinations for children.

[47] I now wish to address the mother's submission that if the Court makes these orders for the children to be vaccinated that the Ministry of Health protocol is modified to reflect some changes that she is advocating.

[48] The mother is seeking that the vaccinations are spaced out of no more than one vaccine every six months, never more than one vaccine at a time, and that they are supplemented with extra cod liver oil, vitamin C, B12, and sulphur containing foods such as liver and egg yolk before each shot. She would also like that the children are in her care following vaccinations so she can monitor them for adverse reactions. Thirdly she would like to follow up with homeopathic remedies to administer, to

reduce the toxicity from vaccine ingredients. She also seeks that no Pamol is administered following vaccination. As a fifth requirement she seeks titre testing before and after each dose to check for antibodies. In short, she wants the children to undergo a blood test to determine whether they have immunity to MMR following the first dose.

[49] Although it does not state this in her submission, as I understand it if the testing shows immunity then it being argued that they should not receive that particular vaccination. Finally, she seeks a check for mitochondria function and in particular the MTHFRG mutation. When I queried titre testing and mitochondria function, mother's counsel Ms Glasgow advised that the mother's protocol was based on her own research.

[50] Such a protocol is strongly opposed by the father. His counsel says there is no medical basis for these. Lawyer for child also strongly opposes this.

[51] I address this. Firstly, there is no information before me about the safety of such protocol. I am satisfied that the Ministry of Health who are tasked to oversee the vaccination of New Zealand population, are best placed to inform how the vaccines are administered and the timing of those vaccines.

[52] For that reason, I cannot comment on the mother's protocol in the absence of any contrary expert information other than what has been provided through the Ministry of Health. On that basis, I am not prepared to modify the standard Ministry of Health protocol. I observe that if the mother wants to give the children homeopathic remedies when the children are in her care it is not a matter for the Court. It is simply a parenting decision.

[53] Ultimately it is the Court's task today in its decision making to balance the risk of adverse reaction by the three children to vaccinations versus the risk to the children of not being vaccinated.

[54] Applying the s 5 principles I am satisfied having weighed the risks and benefits, taken into account the parents' views, and the children's views, I am satisfied

that it is in the children's best interests and welfare that they are vaccinated according to Ministry of Health guidelines which recommend vaccination for children 5-11.

[55] Accordingly, the decision I make today is that the three children [Mason], [Lucy], and [Leon] are to be vaccinated as per the Ministry of Health guidelines and to be given any boosters as recommended by Ministry of Health in conjunction with advice of the children's GP.

[56] Finally, as I have already mentioned the mother is seeking that she would like to monitor the children after their vaccinations. The father seeks an order that he is permitted to vaccinate them. I have given this some additional thought, and I am of the view, given the mother's strongly held beliefs that it would be less distressing to the children that the father arrange for the children to be vaccinated. For that reason, I decline to make a direction for the children to be in their mother's care following the vaccination.

[57] What I would prefer to see, and I invite the mother to consider is that despite her beliefs, is to accompany the father and the children when they are being vaccinated as a joint decision. The reasons I think are fairly clear. There has been much conflict around this issue for the children and if they understood that that their mother was supportive or at the very least able to step back because a judge has made the decision, and not their father, they might feel more confident about it.

[58] So finally, my expectation is that the mother will support this decision and explain to the children that a judge that has made the decision and that she will not undermine this decision in any way.

---

Judge R von Keisenberg  
Family Court Judge | Kaiwhakawā o te Kōti Whānau  
Date of authentication | Rā motuhēhēnga: 28/06/2023