

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

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**IN THE FAMILY COURT
AT PALMERSTON NORTH**

**I TE KŌTI WHĀNAU
KI TE PAPAIOEA**

**FAM-2021-054-000405
[2023] NZFC 2167**

IN THE MATTER OF	THE ORANGA TAMARIKI ACT 1989
BETWEEN	CHIEF EXECUTIVE OF ORANGA TAMARIKI—MINISTRY FOR CHILDREN Applicant
AND	[VIOLA HENDERSON] Respondent
AND	[RYAN HENDERSON] born on [date deleted] Child or Young Person the application is about

Hearing: 28 February 2023

Appearances: I Hitila for the Chief Executive
Respondent appears in Person supported by G Cook as McKenzie
Friend
H McKenna as Lawyer for Child
J Cotton – Social Worker
B Fry – Witness

Judgment: 17 March 2023

RESERVED DECISION OF JUDGE D G SMITH

[1] Oranga Tamariki made an application for a care and protection order for [Ryan Henderson] ([Ryan]) on 30 January 2023.

[2] [Ryan] is the son of [Viola Henderson] ([Ms Henderson]). He has no registered father. He was conceived by way of a sperm donation through a fertility clinic.

[3] On 15 February 2022, [Ryan] was placed in the custody of the Chief Executive pursuant to s 102 interim custody order. That order was renewed on 9 August 2022 and then subsequently varied 29 September 2022. It expired on 9 February 2023.

[4] On 8 September 2022, an application for a care and protection order was filed seeking the making of a s 101 custody order.

[5] A hearing was set down for two days, commencing on 29 September 2022. Evidence was heard from Mr Fry, a psychologist who had completed a s 178 report and from Mr Trainor, a psychologist employed by Oranga Tamariki to support their application.

[6] As I noted in my oral decision, after that evidence was heard, the parties felt they could work their way through the issues without further evidence or cross-examination being undertaken.¹ That took some time.

[7] As I noted:²

[5] There was not agreement by [Ms Henderson] that there should be a s 101 order, ... [Ms Henderson] really wants to prove that she is able to undertake [Ryan]'s care, and has been concerned that Oranga Tamariki are not serious when they say that there is a realistic possibility of return to her care.

[6] What became obvious, though, from the evidence particularly of Mr Fry and supported by Mr Trainor is that [Ms Henderson] needs to undergo some serious work for schema before she would be in a position to have full day-to-day care of her son. I have no doubt that she has every intention to undergo that work, but we need to see the outcomes of that before the Court would be comfortable in there being an order in her favour in that way.

¹ *Chief Executive of Oranga Tamariki v [Henderson]* [2022] NZFC 10070.

² At [5].

[8] The s 102 order was varied to extend it out to the full six-month period available, taking it to an expiry date of 9 February 2023.

[9] It was intended that by 9 February 2023 work would have been undertaken by [Ms Henderson].

[10] As I recorded in that decision, there had been discussion about Ms [Amy Fadden], [Ms Henderson]'s cousin and who was [Ryan]'s then current caregiver for approximately three weeks, being considered to have the s 101 order in Ms [Fadden]'s favour. I noted that was a matter which could be address by a submissions only hearing prior to 9 February.

[11] I emphasised in para [11] that unless there was sign-off by the people working with [Ms Henderson] otherwise, a s 101 order will be made this year. If it is not in favour of Ms [Fadden], it would have to be in favour of Oranga Tamariki.

[12] An amended plan was produced by all parties by consent. It provides for the reporting on both [Ms Henderson] and [Ryan] as to how they are progressing.

[13] A directions conference was scheduled for late January 2023. It was to address what the new plan or orders were to be in light of the amended plan and the comments that I made in the minute. I had emphasised to counsel Oranga Tamariki would need to have documents filed as soon as the new year starts, and everybody would need to be fully up to speed because of the s 102 expiry on 9 February.

[14] I recorded the Ministry consented to a s 101 order being made in favour of Ms [Fadden] in February provided everything is progressing as intended and that [Ryan] is still in a safe and well place. I further noted [Ms Henderson]'s indications she wished for any s 101 order to be in favour of Ms [Fadden] was an acknowledgement that care and protection issues exist and that such an order is appropriate. I recorded that is a position from which [Ms Henderson] cannot resile when we came to February this year.

[15] Matters did not progress at the speed necessary for this proceeding to be concluded on or before 9 February.

[16] The proceeding came before her Honour Judge Moss on 8 February 2023. Her Honour took the view (with which I concur) this matter was part heard as of 29 September 2022. She noted that I expected the matter would progress as planned and there would be substance about the return home plan. As it has transpired, that has not been possible. Her Honour considered that to permit the s 102 order to expire without the exercise of the Court's jurisdiction under s 78 would be contrary to the needs and welfare and best interests of [Ryan]. Her Honour noted:

There is no evidence before the Court that the mother has addressed any issues which appeared to adversely impact in [Ryan]'s care, prior to this move to foster care in February 2022, and, further there is no evidence of gains made in any therapeutic programme.

[17] Her Honour issued a s 78 order in favour of the Chief Executive of Oranga Tamariki and a one-day hearing was allocated before me on 28 February 2023 for review of the order, in order for [Ms Henderson] to file a response and to have further directions made to finalise the matter.

[18] Oranga Tamariki's application for a care and protection order filed on 30 January 2023 is referred to as a pro-forma application by Ms Sherrie Mitchell, the Oranga Tamariki social worker supervisor. That is an appropriate description. The only reason for the need of this further application was because the time limits under the legislation had expired before the work which was supposed to happen was discussed and agreed to by all, including [Ms Henderson].

[19] The hearing before me on 28 February 2023 is the hearing that was supposed to have taken place on or before 9 February 2023. It was to determine in whose favour a s 101 custody order should be made and the question of additional guardianship which was included in Oranga Tamariki's application.

[20] [Ms Henderson]'s approach has been contrary to the concessions and agreements she had made in previous hearings, and in the hearing before me in September 2022.

[21] [Ms Henderson] has dispensed with the services of her lawyer and represented herself. She has taken the formal application filed by Oranga Tamariki on 30 January 2023 as a whole new application and seeks to relitigate all the matters that have previously been dealt with over an extensive period of time.

[22] [Ms Henderson] filed an extensive affidavit and attempted to file two affidavits by Ms [Fadden] and by Ms [Sophie Simpkins]. All three affidavits were out of time and required leave before the Court would accept them for filing. I reserved my decision on the affidavits to the hearing date, primarily to give me the opportunity to read them.

[23] I refused leave for the affidavits by Ms [Fadden] and Ms [Simpkins] to be put before the Court. Most of those affidavits are hearsay, the content is not factually directed but are, in essence, submissions on behalf of [Ms Henderson]. They do not assist the Court in anyway whatsoever. To have admitted them into evidence would have required cross-examination and that it would have meant the hearing could not concluded within the day allocated. Given the Court's current backlog, it may have been some months before a longer hearing time could be accommodated.

[24] [Ms Henderson]'s affidavit suffers from similar defects to those of Ms [Fadden] and Ms [Simpkins]. It is primarily argumentative, forming a long and rambling submission about all the matters with which she disagrees. I permitted the affidavit to be accepted by the Court primarily because its denial would have meant that [Ms Henderson] did not have anything before the Court as to her position. Counsel for Oranga Tamariki sought to go through the affidavit, striking out the parts that they did not consider were appropriate. I refused to allow counsel to do that on the basis that I can make those assessments on my reading of the affidavit and take account of those parts which may have some relevance or not.

[25] [Ms Henderson]'s affidavit demonstrates her lack of appreciation of the issues that need to be considered by the Court. If [Ms Henderson] disagrees with a conclusion that a social worker or other witness has made, they are, in her view, lying and collaborating against her with others. A strong conspiracy theme is evidenced by her affidavit.

[26] [Ms Henderson]’s position is there are no care and protection issues for [Ryan] when he is in her care and that he should be returned to her immediately. In making that claim, [Ms Henderson] denies matters which she has agreed to in the past. She has resiled from working to address issues that she has primarily on the basis that Oranga Tamariki has failed to provide them and therefore they are not serious in their statements that return to home is their goal. She has a large mistrust of Oranga Tamariki and has, particularly in the last few months, ceased work with them in any constructive way.

[27] Given the way matters have proceeded and the new evidence placed before the Court, I need to determine whether care and protection issues still exist and if so, what the appropriate order or orders should be.

[28] [Ms Henderson]’s approach has been to minimise the past. In my view, the current situation needs to be considered together with the history of [Ryan]’s involvement with the Ministry and the concessions and statements of [Ms Henderson] in the past.

[29] Concerns were first raised with Oranga Tamariki regarding [Ryan] in March 2015. He was then four years old. The concerns were unresolved, and no steps were then taken.

[30] [Ryan] has been in the custody of Oranga Tamariki since 26 February 2021. He was then 10 years old. He came into the Ministry’s care under a s 140 agreement signed by [Ms Henderson] on that day.

[31] The initial concerns were [Ryan]’s home was detrimental to his health and unfit for him to live in. Further concerns alleged [Ryan] was being smacked and that [Ms Henderson] was aggressive with him; that she screamed at [Ryan] and that he was locked in his room. It was further alleged that [Ryan] urinates in his bedroom when he is locked in there and that he was given an ice cream container to use overnight. There were allegations that [Ryan] was not being adequately fed and that [Ms Henderson] kept a running tally of the money that [Ryan] “owes her” for “stealing food”.

[32] [Ms Henderson] now attempts to either deny or minimise those allegations, particularly during the hearing on 28 February 2023. Her own previous affidavits though provide corroboration of those allegations.

[33] In her affidavit of 8 October 2021, [Ms Henderson] said that from her perspective the worries for [Ryan] related to his behaviour at home and [Ryan]'s behaviour (including aggressive outbursts to others and damaging property) at school, and concerns in relation to her parenting of [Ryan] which she did not accept.³

[34] She accepted that [Ryan]'s behaviour was out of control at home and at school.⁴

[35] She stated:⁵

I have not made this application [before] as I accepted [Ryan] needed the assistance which I was unable to provide for him.

[36] She further added:⁶

I feel somewhat vindicated that [Ryan]'s behaviour at school is continued to persist so I felt I was blamed for [Ryan]'s behaviour rather than recognising in my view [Ryan] has neurological issue that affects his behaviour.

[37] In her affidavit of 15 November 2021, [Ms Henderson] said that she had attempted to the best of her ability to manage [Ryan]'s behaviours. She acknowledged that her past actions had not been enough with helping manage [Ryan]'s behaviour but that she had clearly sought intensive support for [Ryan]'s behaviour.⁷

[38] As to the allegations that she did not provide enough food for him, her evidence was that [Ryan] regularly tipped out his lunch into his bag. She discovered this when she found food at the bottom of his bag, requiring her to buy several bags. In her view it was likely that [Ryan] discarded the contents of his lunch and that therefore appeared she was not providing adequate food for [Ryan]. In her view, for a five to eight-year-

³ Affidavit of [Viola Henderson], 8. October 2021, para 8.

⁴ Paragraph 12.

⁵ Paragraph 16.

⁶ Paragraph 21.

⁷ Affidavit of [Viola Henderson], 15 November 2021, paras 17-19.

old, a sandwich, a piece of fruit, crackers and “brainfood” such as nuts or carrots, and were needed to provide at least five items in his lunchbox.⁸

[39] [Ms Henderson] set out [Ryan]’s behaviour at home.⁹

It started with hitting and repeatedly screaming. As [Ryan] got older, his behaviour digressed to include damage of property and hurting animals. Also the frequency of [Ryan]’s behavioural outbursts increased with age. The behaviour started to include weapons such as knives and lighting fires. On or about the age of 6/7 years old, [Ryan] urinated and defecated throughout our home. Mostly [Ryan] urinated and defecated in his room.

[40] [Ms Henderson] accepted that there had been times during his outbursts when she tried to physically restrain him from hurting her or himself and there had been the odd occasion when she was overwhelmed and applied physical force to him. She says this was rare and no more than four times. She denies that physically punishing was frequently done. She accepts that comments she made at times were unwise and stuck out in his mind. She recalls on one occasion after trying multiple strategies to assist [Ryan] not stealing, referenced that in other countries hands were chopped off for stealing. She accepts in hindsight it was a terrible remark to make to a child.¹⁰

[41] The issue of lunches for [Ryan] was raised by [school 1] and then raised three times by his current school at [school 2].

[42] In her affidavit of 3 June 2022, [Ms Henderson] stated:¹¹

[Tammy] [[Tammy Prentice], social worker] lied to me about what [Ryan] had disclosed on 17th February 2022 when she said that [Ryan] disclosed, “He did not want to come home because I was punching and kicking him”. That is in my view a terrible thing to say to a mother.

[43] On what basis [Ms Henderson] believes Ms [Prentice] had lied to her is not set out. This is a common theme throughout the evidence filed by [Ms Henderson]. If she disagrees with a deponent, then they are lying or conspiring against her. This is seen in exhibit B to the same affidavit of 3 June 2022, where [Ms Henderson] has gone through the CYRAS notes and set out what she says is bias or a patronising tone.

⁸ Paragraphs 118-122.

⁹ Paragraphs 123-126.

¹⁰ Paragraphs 131-137.

¹¹ Affidavit of [Viola Henderson], 3 June 2022.

[44] By way of example:

(a) A CYRAS note made on 5 February 2021:¹²

We have emails from [Viola] regarding [Ryan]. Unfortunately, we don't know if the information that she is telling us is correct as we haven't had any communications as to what's happening from anyone other than [Viola].

Oranga Tamariki are required to seek out corroborating evidence. It cannot operate on the unverified statements of any one individual.

(b) Objection is also taken to the statement made 16 February 2021:¹³

... is her inability to understand life from [Ryan]'s perspective or take into consideration his point of view. [Viola] downplays and minimises the impact that her parenting style has on him ...

[45] In her affidavit 23 February 2023, [Ms Henderson] states:¹⁴

I had informed the school as I was concerned about [Ryan]'s behaviour. [Ryan] tied a cord around his neck twice, not three times as implied by Mr Cotton's affidavit.

[46] [Ms Henderson] went on to say:¹⁵

I did not request that [Ryan] was removed from my care on 12 February 2021, I asked whether he can be placed in respite for the weekend as I was continually refused support with his behaviour and him tying the cord around his neck twice was scary. The reason I had shut myself in my room was because [Ryan] had been attacking me, and the closed door did not stop him getting in my room to attack me.

And further:¹⁶

When [Ryan] was on top of me holding my arms and screaming in my face, I was able to manoeuvre and jab him with the pen I was holding to get him to let me go. This only happened once.

¹² CYRAS notes, 5 February 2021, p 411.

¹³ CYRAS notes, 16 February 2021, p 471.

¹⁴ Affidavit of [Viola Henderson], 23 February 2023, para 53.

¹⁵ Paragraph 54.

¹⁶ Paragraph 57.

[47] The CYRAS notes support the concerns that Oranga Tamariki expressed. On 21 March 2016, it was recorded:¹⁷

We received a report of concern from the school regarding [Viola] ringing the school and asking them to withhold food from [Ryan] as he had been naughty. Also he is going to school with inappropriate lunches like dry Weetbix and nothing else, and then another day left over tea from the night before. Also parents have heard [Viola] screaming at [Ryan].

[48] The social worker's concerns at 6 March 2019 were:¹⁸

The household is cluttered and unhygienic, putting [Ryan]'s health at risk.

[Ryan] does not always have access to appropriate bedding and blankets.

[Ryan] does not receive enough food to support his development, physically and mentally.

[Ryan] does not have regular contact with his family.

[Ryan] is not participating in extracurricular activities.

[Viola] has unresolved historical trauma that affects her relationship with [Ryan] and her parenting skills.

[49] The affidavit of Ms [Prentice] sets out her concerns and the basis for them.¹⁹ Her concern was for [Ryan]'s safety if he was to be returned to [Ms Henderson]'s care due to her lack of insight and the trauma inflicted on him with her use of harsh parenting strategies. She also understood that [Ms Henderson] did not to have [Ryan] in her care until he is "medicated" and he "stops hurting" her.²⁰

[50] A child protection protocol referral was made on 1 April 2015. It was agreed that the report of concern did not meet the child protection protocol and that it was more beneficial for it to be dealt with as a Child and Family Assessment (CFA).

[51] The outcome of the CFA identified [Ms Henderson] having a hoarding issue and she also admitted to smacking [Ryan] occasionally. [Ms Henderson] further confessed to locking [Ryan] outside a couple of times to manage his behaviours. She had stated that once she locked [Ryan] in his room from 5 pm until 10 am the next day

¹⁷ CYRAS notes, 21 March 2016, p 43.

¹⁸ CYRAS notes, 6 November 2019, p 130.

¹⁹ Affidavit of [Tammy Prentice], 12 October 2021.

²⁰ Paragraph 16.

“about a year ago” (roughly 2014). The other concerns reported were unable to be substantiated.²¹

[52] Another report of concern was received on 15 March 2016 from the school. The school reported that [Ms Henderson] rang the school and requested them to withhold food since [Ryan] had been naughty at home. [Ryan] had not had food before he left home and was starving.²²

[53] When the social worker, Ms [Carolyn Jerram], contacted [Ms Henderson] on 21 March 2016 and 6 May 2016, [Ms Henderson] expressed her concerns and frustrations with the school in providing [Ryan] with food when she clearly asked them not to. She was advised not to use food as a punishment for children.²³

[54] On 25 January 2018, a third report of concern was lodged by [Ms Henderson] and [Ryan]’s counsellor from Methodist Social Services. The notifier stated that [Ryan] disclosed in the counselling session with his mother being present that his mother has hit him and he felt hurt about this. It also stated that [Ms Henderson] acknowledged it happened and that she was working on it through therapeutic counselling.²⁴

[55] A report of concern on 16 July, raised concerns as had the previous reports of concerns in relation to food, hoarding and physical harm at what was described as an alarming level. That became a CFA, there were unannounced home visits, consultation with professionals involved and the school confirming ongoing concerns of parenting that raised care and protection concerns for [Ryan] in [Ms Henderson]’s care. Those concerns included [Ms Henderson] not ensuring [Ryan] had appropriate bedding and blankets and that he had been made to go to the toilet outside or use a container. [Ryan] was not being provided with proper nutritious food for his age, use of physical punishment to discipline and unhygienic and cluttered home environment.²⁵

²¹ Paragraphs 22-23.

²² Paragraph 24.

²³ Paragraph 25.

²⁴ Paragraph 26.

²⁵ Paragraphs 28-29.

[56] Whilst appropriate supports had been put in place, it was decided a family group conference was necessary.

[57] A further report of concern was lodged by [Ryan]'s social worker from Te Ohu Mental Health Services on 26 January 2021. The report discussed an incident on 25 January 2021 when [Ms Henderson] reported to the social worker, Mr [Martin Vale], that [Ryan] tied a cord around his neck when the situation between his mother and him escalated. When Ms [Donna Karepa], social worker, visited [Ms Henderson] on 29 January 2021, [Ms Henderson] alleged that based on her observations and experience with [Ryan], he had opposition defiant disorder (ODD) and conduct disorder (CD).

[58] On 3 February 2021, there was a police callout from [Ms Henderson]. The National Contact Centre (NCC) note recorded:²⁶

[Officer A] has attended a job at [Ryan]'s home. He has attempted suicide three times. [Ryan] has been involved with Oranga Tamariki. There was an FCG held but [Officer A] does not know the outcome. [Ryan] lives with his mother with no family support.

[59] [Ms Henderson] takes objection to the statement that there were three attempts, saying it was only two. From the Court's position, any such attempt is a concern, whether it be one, two or three.

[60] On 5 January 2021, [Ryan]'s school reported a similar incident where [Ryan] tied a cord around his neck when he was escalated. Further, on 12 February 2021, there was another such similar incident. The NCC report stated:²⁷

[Viola]'s child [Ryan] is under [Donna], a social worker in Palmerston North. Every evening, [Ryan] is screaming for about four hours. He also attacks [Viola]. Police were called out on Monday and Tuesday. Police calm him down but as soon as they leave, [Ryan] will escalate again. On Wednesday, [Viola] asked her friend to come over. Yesterday [Ryan] attacked a child at school. [Viola] has shut herself in the room and [Ryan] is wondering around the house.

[61] On the follow up call by NCC on 12 February, the reported states that [Ms Henderson] rang the police and was waiting for them to reply. The reported stated:

²⁶ Paragraphs 37-38.

²⁷ Paragraphs 38-39.

[Viola] has already rung the police. When the police arrived, [Viola] will tell the police that she cannot manage [Ryan] and that she wants him to be placed at either Tai Matai or with Oranga Tamariki.

[62] [Ms Henderson] struggled to deal with [Ryan]’s behaviour. It was made apparent on 17 February 2021 when [Ryan] was interviewed disclosing the punching and kicking. He also stated that [Ms Henderson] had a knife and that she would cut him with the knife, pointing to a scar and stated [Ms Henderson] cut him during and escalation with a pen.

[63] Ms [Prentice] noted that she was concerned the ability of the school or any other organisation involved with [Ryan] have depended on the ability of those agencies to agree with [Ms Henderson].²⁸ She noted that with what happened with [School 1], they felt it was overwhelming to deal with [Ms Henderson]’s constant complaints after she learnt the school had made the report of concern and they struggled to put supports in place for [Ryan] due to this. Ms [Prentice]’s concern was that [Ms Henderson] did not have any insight into the needs of [Ryan] and that her focus was always on controlling the situation, giving less thought about the needs and aspirations of [Ryan]. In her view, [Ms Henderson] has made decisions for [Ryan] that were not in his best interests on several occasions.

[64] [Ms Henderson]’s approach to this litigation verifies Ms [Prentice]’s concern that her focus is always on controlling the situation. As stated previously, she does not appear to understand the issues required to be resolved to deal with the needs of [Ryan] to ensure that [Ryan] is returned to her care.

[65] The focus of the discussion which took place at the September hearing last year, as recorded in my minute, was to ensure that [Ms Henderson] did undertake the work necessary to be able to take care of [Ryan].

[66] [Ms Henderson]’s approach in the February 2023 hearing was because matters have not panned out the way in which it was anticipated, it therefore was the fault of Oranga Tamariki and that justifies the return of [Ryan] to her.

²⁸ Paragraph 70.

[67] From the Court's perspective, unless there is clear evidence that [Ms Henderson] is in a position to care for [Ryan] and to deal with his issues, as and when they should arise, there is a clear concern as to his care and protection until that work has been carried out and verified.

[68] It is frustrating that the work which commenced was unable to be completed but it would appear from the report of Lila Bosman, clinical psychologist, that [Ms Henderson] presented in a defensive and argumentative manner.²⁹ While she presented as intelligent and very committed to the process, her presentation was clear that she felt prosecuted and spoke in a blaming manner and used factual statement to try and elicit sympathy for her situation. It is noted that [Ms Henderson] is very aware that she lacks effective parental control in her relationship with [Ryan]. In her recommendations, Ms Bosman stated:

[Viola] is not currently in a position to take sole responsibility for [Ryan]'s care but if she feels like she is being treated fairly and with clear guidelines, she is likely to be one of the more stable figures in [Ryan]'s life. A structured, wraparound service is recommended.

[69] Ms Bosman also recommended [Ms Henderson] continued to receive ongoing therapy.

[70] Following Ms Bosman being no longer available to work with [Ms Henderson], she was referred to Mr Steven Buhr. In his report of 17 February 2023, he reported that [Ms Henderson] holds a significantly hostile opinion of Oranga Tamariki, one that she further links to anyone who has been or is involved in the case pertaining to [Ryan] and her, such as previous psychologists, Court officials and the like.³⁰ [Ms Henderson], in his view, can always provide reason to be angry with, and hostile towards, Oranga Tamariki and related parties. It was expressed in therapy that he was associated by her with Oranga Tamariki and hence she could not be fully engaged and open in therapy, as it would be detrimental to her getting [Ryan] back into her care.

²⁹ Exhibit A, affidavit of J Cotton, 22 February 2023.

³⁰ Exhibit B, affidavit of J Cotton, 22 February 2023.

[71] Mr Buhr's recommendation was that [Ms Henderson] and [Ryan] engage in parent-child therapy with a suitable therapist.

[72] It is concerning to the Court that the work which was identified in September 2022 to be done by [Ms Henderson] has not really got off the ground. That leaves the Court in a situation where its concerns are that there is still a care and protection issue as so far as [Ryan] is concerned.

[73] [Ms Henderson] in the court hearing wished to attack Ms [Prentice]'s affidavit and to cross-examine her. At her request, Oranga Tamariki had arranged for Ms [Prentice] to be present at the court. I was not prepared to allow cross-examination of Ms [Prentice] because that opportunity was present at the hearing in September 2022 and it was determined by [Ms Henderson] through her counsel, that no further cross-examination was required. The view that I take is I am entitled to take note of the statements made by Ms [Prentice] in her affidavit.

[74] [Ms Henderson]'s view is that any matter which was agreed in the September hearing when she had counsel appearing for her, she is not bound by because she no longer engages that lawyer to act for her. It would be impossible for this case to ever be concluded if [Ms Henderson] or any other party wishes to relitigate matters which have already been determined. If [Ms Henderson] takes issue with matters previously, then her course of action is through the appeal process not by asking this Court to rehear matters because she does not now like the outcome.

[75] One of the issues which [Ms Henderson] continually raises is the question of [Ryan]'s relationship with Mr [Leyland]. Mr [Leyland] was introduced to [Ryan] through [Ms Henderson]. He is reputedly the sperm donor that led to [Ryan]'s conception. I have not seen any statement from any organisation which confirms that information. [Ms Henderson] now maintains as that has not been verified, we cannot say that Mr [Leyland] is [Ryan]'s father.

[76] The Court is not concerned with determining whether Mr [Leyland] is [Ryan]'s father or not. The issue is that due to the introduction that [Ms Henderson] made between [Ryan] and Mr [Leyland], Mr [Leyland] became an important person in

[Ryan]'s life. Further, Mr [Leyland] is understood to have been the sperm donor to the conception of a child by a Ms [Staines] and now Ms [Staines] and her daughter have become important persons in [Ryan]'s life also. [Ryan] has in his reports to Mr Fry, made it clear how important they were to him.

[77] As the relationship between those persons has increased, [Ms Henderson]'s antipathy to them has also increased. She is now intent on destroying any such relationship at all.

[78] In Mr Fry's reports he has set out the importance that [Ryan] placed on these people. Approximately two months before this hearing came, a text was sent on [Ryan]'s phone to Mr Cotton, which stated that he did not wish to see Mr [Leyland] anymore. As Mr Fry points out in his second report, it is concerning this change of attitude took place so suddenly.

[79] The way in which that transpired leaves the Court in no doubt that text was either written by or at the behest of [Ms Henderson]. It is apparent she has been talking continually with [Ryan] about the issues that are before the Court and seeks to destroy the relationship he has with Mr [Leyland].

[80] That [Ms Henderson] would use [Ryan] in this way to get the result that she wants in this proceeding, heightens the concern that the Court has as to her parenting abilities. She is prepared to psychologically abuse her son for her own means. That is a care and protection issue.

[81] The reports of Mr Trainor and Mr Fry support the above statement.

[82] Mr Trainor provided a report annexed to his affidavit of 1 February 2022. He was cross-examined at the September 2022 hearing. His focus was on identifying any mental health conditions being experienced by [Ms Henderson] and if necessary, make recommendations as to what might be done to address these.³¹

³¹ Paragraph 1.5, Report 1 February 2022.

[83] Mr Trainor reported [Ms Henderson] deeply held internalised beliefs (schema) which indicate that she has significant difficulty with emotional awareness and healthy regulation, is often suspicious and mistrustful, adheres to a set of inflexible internalised rules and standards she expects others (unrealistically at times) to achieve. Her inflexibility likely serves as a method for [Ms Henderson] having as much certainty and perhaps control as possible. This is often underpinned by an intolerance for unpredictability and ambiguity which can be experienced as threatening, stressful and anxiety provoking.³²

[84] Mr Trainor was of the opinion [Ms Henderson] would benefit personally from engaging a (schema) therapy to improve her awareness of how her past has created her internalised beliefs, how these are triggered, and how they can be modified and softened so that repeated, unhelpful, and even damaging patterns are disrupted. In Mr Trainor's view that is a necessary step before [Ms Henderson] and [Ryan] lived together full time again.³³

[85] [Ms Henderson] has not engaged in such therapy, possibly through no fault of her own but certainly not assisted by her. The actions she has taken since the September 2022 hearing demonstrate her schema are as strong as ever. The result though, whatever the reason is it is still an issue which she needs to address.

[86] Mr Barry Fry provided two reports on 27 September 2022 and on 22 February 2023. He was cross-examined in September 2022 and again on 28 February 2023 after hearing the cross-examination of [Ms Henderson] and other deponents.

[87] Mr Fry reported:

193. In my perception, a change in the nature of adult dynamics is [Ryan]'s first priority. Counselling, even reunification counselling as mother termed it, without attention to his primary need would be only marginally successful.
194. In my view, [Ryan] presents a number of other significant areas of need:

³² Paragraph 7.2.

³³ Paragraph 7.5.

- A positively orientated management style in which his productive behaviour, is received with approval and appreciation.
- A quiet and measured response to emotional outbursts or opposition to directions. A parental outburst will serve only to escalate a confrontation.
- The provision of outside support for [Ryan], in the nature of [his mentor].
- The avoidance of interpersonal tensions among the adults in [Ryan]'s life. The perception of such will aggravate [Ryan]'s existing anxiety and consolidate his felt need to compartmentalise his feelings and relationships.
- He needs to see and hear the adults in his life living and working in harmony.
- He needs to have his self confidence and esteem nurtured.

[88] The tension as to [Ryan]'s contact with Mr [Leyland] and Ms [Staines] was by then an issue. It was clear to Mr Fry [Ryan] did not share his mother's views and judgements of them. [Ryan] valued their influence and companionship, as well as Ms [Staines]'s daughter [Virginia].

[89] In his report 22 February 2023, Mr Fry reported [Ryan] drew very little distinction between the strength of his emotional attachments with his mother, Ms [Fadden], [a previous caregiver], Mr [Leyland], Ms [Staines] and [Virginia] indicating a strong and affectionate attachment.

[90] As stated in [78] above, a text [Ms Henderson] said [Ryan] sent to Mr Cotton, [Ryan]'s social worker, stated he did not wish to see Mr [Leyland] anymore. There was only a month or so between the text and Mr Fry interviewing him.

[91] Both counsel and [Ms Henderson] filed written submissions. There is no disagreement as to the legislative requirements as to the basis for a determination. [Ms Henderson]'s approach in her submissions has not been of assistance.

[92] Oranga Tamariki rely on s 14(1)(a) of the Act which defines a child or young person as in need of care or protection if the child or young person is suffering, or is likely to suffer, serious harm in the circumstances described in s 14AA(1), or having regard to the circumstances described in s 14AA(2).

[93] The circumstances described in s 14AA(1) include that the child or young person is being, or is likely to be, abused (whether physically, emotionally, or sexually) deprived, ill-treated or neglected.

[94] Section 14AA(2) states that other circumstances that may constitute serious harm, or establish the likelihood of serious harm include:

- (a) A child or young person's development or physical or mental or emotional well-being is being, or is likely to be, impaired or neglected, and their impairment or neglect is, or is likely to be avoidable.
- (b) The child or young person has been exposed to family violence (within the meaning of s 9 of the Family Violence Act 2018).

[95] Section 4 sets out the purposes of the Act, including supporting and protecting children and young persons to prevent them from suffering harm (including harm to their development and well-being), abuse, neglect, ill-treatment, or deprivation or by responding to those things.³⁴

[96] Section 4A(1) requires the well-being and best interests of the child or young person to be the first and paramount consideration, having regard to the principles set out in ss 5 and 13.

[97] Counsel for Oranga Tamariki referred to *MEM v Chief Executive of the Ministry of Vulnerable Children*,³⁵ where her Honour Judge MacKenzie outlined a three-tier test:³⁶

- (a) consider the original care and protection concerns;
- (b) consider the child's current situation including the presence or absence of care and protections concerns;

³⁴ Oranga Tamariki Act 1989, s 4(1)(b).

³⁵ *MEM v Chief of the Ministry of Vulnerable Children* FC Rotorua FAM-2001-019-000230 22 June 2009 MacKenzie FCJ.

³⁶ At [18].

- (c) an assessment of the consequences for the child if protective orders are no longer in place.

[98] I accept and adopt her Honour's test. An expanded analysis by His Honour Judge Callaghan is set out in Oranga Tamariki's submissions but in which case is not provided. Nonetheless the analysis is essentially the same.

[99] As set out above, the original care and protection concerns have been established. [Ms Henderson], by her own statements, was incapable of caring for [Ryan]. [Ms Henderson] has done little to address the issues which led to [Ryan] leaving her care.

[100] Furthermore, [Ms Henderson] has shown she is incapable of putting [Ryan]'s needs above her own. It is clear she has had adult conversations with [Ryan] to assist with her obtaining his return. She has placed him in a situation of conflict between her views and his own as to those people who are important to him. Mr Fry's belief is [Ryan] will have zero contact with those people, even if he is with Ms [Fadden], if Oranga Tamariki did not have input he believes Ms [Fadden] will not encourage [Ryan] to have contact with those people. I accept that view.

[101] There can be no confidence [Ryan] would be safe in [Ms Henderson]'s care.

[102] At the hearing in September 2022, one of the reasons for delay in a determination was to see if the placement with Ms [Fadden] would meet [Ryan]'s needs. As a relative of [Ms Henderson], she was a whanau placement.

[103] Regrettably, Ms [Fadden] has shown she will follow [Ms Henderson]'s wishes and accepts at face value [Ms Henderson]'s statements. I accept the submission of the lawyer for [Ryan] Ms [Fadden] is an 'ally' of [Ms Henderson] and that [Ryan]'s best interests and well-being will take a back seat to the interest of [Ms Henderson].

[104] In my view [Ryan] needs to be in the care of Oranga Tamariki.

[105] The following directions and orders are made:

- (a) The interim custody order dated 8 February 2023 is discharged.
- (b) A s 101 custody order is made in favour of Oranga Tamariki.
- (c) A s 110(2)(b) additional guardianship order is made appointing the Chief Executive of Oranga Tamariki an additional guardian.
- (d) The s 128 plan dated 22 February 2023 is adequate. It is to be reviewed by 17 June 2023 with the documentation filed by 1 June 2023.

Judge D G Smith

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 17/03/2023