

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

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**IN THE FAMILY COURT
AT WHANGAREI**

**I TE KŌTI WHĀNAU
KI WHANGĀREI-TERENGA-PARĀOA**

**FAM-2017-006-000008
[2021] NZFC 6035**

IN THE MATTER OF	THE ORANGA TAMARIKI ACT 1989
BETWEEN	CHIEF EXECUTIVE OF ORANGA TAMARIKI–MINISTRY FOR CHILDREN [KT] [ST] Applicants
AND	[RS] [RK] Respondents
AND	[CSK] born on [date deleted] 2017 Child or Young Person the application is about

Hearing: 23 June 2021

Appearances: A Reihana for the Chief Executive
N Fidow for the Applicants [KT] and [ST]
No appearance by or for the Applicant [RS]
No appearance by or for the Respondent [RK]
H Drummond as Lawyer for the Child
G Chapman and P Cunliffe as Social Workers

Judgment: 23 June 2021

ORAL JUDGMENT OF JUDGE L KING

[1] Firstly, I reserve the right to review my decision once it is typed and to add to or edit including to provide further reasons if considered necessary. However, I consider it is important to deliver my decision whilst [KT and ST] and the child's social worker and supervisor are present. So, it maybe abbreviated simply because of time but let us see.

[2] This proceeding concerns [CSK] who is now four years old.

[3] In 2019, the Ministry for Oranga Tamariki applied for the following orders in respect of [CSK]:

- (a) discharge of the custody order in favour of the Chief Executive;
- (b) discharge of the order appointing the Chief Executive as sole guardian;
- (c) an order appointing [KT and ST] as additional guardians; and
- (d) an order appointing [KT and ST] as special guardians.

[4] On 12 September 2019, service was effected on [CSK]'s birth parents, [RS] and [RK]. Neither parent has taken any step in relation to these applications. In fact, my review of the file shows that [RS] and [RK] have not participated in the court proceedings since they commenced in 2017. That does not mean they have not been involved in [CSK]'s life; they have. But that appears to be due to the willingness and responsibility that has been assumed by [CSK]'s whānau caregivers, [KT and ST], and the work undertaken by Ms Cunliffe and Ms Chapman, the Ministry social worker and supervisor respectively.

[5] The Ministry first became involved with [CSK] when he was in utero as [RS] and [RK] had previously had their two older children [MSK], now aged seven and [HSK], aged five, removed from their care. The Ministry had earlier placed [MSK]

and [HSK] with [RK]'s paternal aunt, [SI], and a family group conference had agreed there was no prospect either child would be returned to the care of their parents.¹ That is the basis upon which the Ministry first applied for a declaration and interim custody in 2017.

[6] In January 2017, [KT] was contacted by Oranga Tamariki “out of the blue” and was advised that her niece, [RS], was expecting her third child, there were concerns for the unborn child and that the Ministry wanted to have the baby placed with whanau upon birth. [KT] said she discussed matters with her husband, their three tamariki/children and then put themselves forward to care for baby.

[7] [CSK] was born on [date deleted] 2017. Oranga Tamariki made arrangements for [KT] to travel to [Town A] and on [the day after the birth], a whanau hui was held. [KT] said when she arrived at the hospital with the Oranga Tamariki social worker/s, she asked for them to remain outside the room whilst she went in to talk with [RS] and [RK]; who then handed their newborn son over to [KT].

[8] This was followed up by a family group conference [the following month]. The social worker's evidence is that the family group conference was attended by [CSK]'s parents who gave consent for [CSK] to live with [KT and ST] for the entirety of his life with reference to orders under the Care of Children Act 2004 which has not been pursued.

[9] It has taken some two years to get to this stage as there have been delays along the way, including with the Gateway assessment. That assessment was completed on 1 March this year. There is a preliminary diagnosis that [CSK] may be on the autism spectrum which may be related to foetal alcohol spectrum disorder. It is all too soon to know.

[10] Ms Chapman, the supervising social worker, told me that a referral has been made to the Child Development Centre for a further assessment to be undertaken. The Ministry has assured the court, and [KT and ST] have agreed that notwithstanding

¹ Section 18B(2)(c)

further assessments are required, they have faith and confidence that the Ministry will continue to support that process.

[11] I have confidence in the Ministry because it seems to me the Ministry has done a lot of work in supporting [KT and ST]'s care of [CSK]. I refer in particular to the permanent care support plan dated 12 May 2021, a copy of which has been filed. There have been fairly substantial sums of money set aside to ensure [CSK]'s contact with his birth parents and siblings. That is something that [KT and ST] have been committed to over the four years [CSK] has been in their care.

[12] So that is the background. I now turn to determine the applications.

Discharge of custody and sole guardianship and replace with additional guardianship

[13] The Chief Executive is the sole guardian for [CSK]. Previously, [CSK] was placed under the guardianship of the Family Court with the Chief Executive appointed as the court's agent for the purposes of providing consent to a gateway assessment and for [CSK] to travel to Samoa for a holiday with [KT and ST] and their whanau in June 2018.² At that time, the Court was persuaded that [RS] and [RK] were not forthcoming with their consent and that such an order would advance [CSK]'s welfare and best interests. That order was subsequently discharged and replaced with the sole guardianship order in favour of the Chief Executive.

[14] The Ministry seeks that the custody and sole guardianship orders in favour of the Chief Executive be discharged, and for [KT and ST] to be appointed as additional guardians.

[15] There is no dispute that [KT and ST] are the best people to care for [CSK]. This is recognised, not only by his birth parents and Oranga Tamariki-Ministry for Children, but also [SI] who cares permanently for now three of [CSK]'s siblings. Since [CSK] was born, [RS] and [RK] have gone on to have two more children. As well as [MSK] and [HSK], [SI] also has [JLI], aged two years old, in her care.

² The s 31 guardianship order was made on 18 May 2018

[16] It is an easy decision for the Court to make to discharge the custody and sole guardianship orders and to appoint [KT and ST] as additional guardians. I say it is an easy decision because all of the principles support this combination of orders.

[17] Currently, [RS] and [RK]' rights of guardianship have been effectively suspended in favour of sole guardianship to the Chief Executive. An order appointing [KT and ST] as guardians is a step down from the sole guardianship order. It will reinstate [RS] and [RK] rights as guardians whilst at the same time recognizing the important role [KT and ST] have in caring for [CSK] and in making decisions on his behalf. Their appointment will recognise their love and commitment to have [CSK] remain part of their whānau. Accordingly, I am satisfied that [CSK]'s wellbeing and best interests will be promoted by the three orders proposed by the Ministry Oranga Tamariki. In any event, there is no challenge to such orders.

Special Guardianship

[18] The final order is for [KT and ST] to be appointed as special guardians. Ms Fidow represents [KT and ST]. [KT and ST] propose they hold exclusive rights of guardianship for all medical, schooling, travel, place of residence and also to change [CSK]'s surname from that of [SK] to match their surname, [T]. They also propose that [RS] and [RK] share in the decision-making regarding cultural and religious decisions for [CSK].³ [KT and ST] also propose that there be ongoing face-to-face contact.

[19] Special guardianship has been part of the care and protections laws for nearly five years.⁴ The law has developed and been the subject of High Court authority and I am satisfied there is jurisdiction for me to determine the application in terms of the criteria set out in s 113A. The Court may make an order for special guardianship where such appointment is made for the purpose of providing, in this instance, [CSK], “with a long-term safe, nurturing, stable and secure environment that enhances his

³ The exclusive and shared rights reflect the rights set out in the social worker's initial affidavit filed in June 2019 which was served on [CSK]'s birth parents.

⁴ by virtue of s 22 of the 2014 Amendment which came into force on 30 June 2016

interests.”⁵ The special guardians must also either replace or be in addition to an existing guardian of the child.⁶

[20] There is no dispute that [CSK]’s care arrangements with [KT and ST] are long-term, safe, nurturing, stable and secure. Similarly, [KT and ST]’s appointment as special guardian would be in addition to [CSK]’s parents who are guardians.

[21] In determining whether such an order will enhance [CSK]’s interests, I must determine whether [CSK] wellbeing and best interests will be promoted by the appointment of [KT and ST] as special guardians having regard to the principles contained at ss 5 and 13 of the Act.

[22] In determining [CSK]’s wellbeing, I must have regard to [CSK]’s mana as a tamaiti and to the protection of the same by recognising the whakapapa and whanaungatanga responsibilities of his whanau, hapu, iwi and family group.⁷

[23] [CSK]’s connection with the [T] whānau is through whakapapa. [KT] is the sister to [CSK]’s maternal grandmother. I asked [KT] to describe her relationship with [RS] and she quickly referred to her as “my niece”.

[24] When I look at [CSK]’s birth whānau, not only is [CSK] being raised by a whānau member that is one generation above his parents, but so are [MSK], [HSK] and [JLI]. In short, it is the grandparent line that is raising [CSK] and three of his four siblings. In some ways, recognising the mana that is associated with [CSK]’s birth whanau must recognise that this whānau has taken on a shared responsibility for caring for their mokopuna - [CSK] with his maternal grand aunt and uncle; [MSK], [HSK] and [JLI] with their paternal grandaunt.

[25] [KT and ST] are Māori, speak Maori and practice tikanga Māori. Their commitment to [CSK]’s whakapapa is evident in the fact that they have, with the support of Oranga Tamariki-Ministry for Children, made annual trips to enable [CSK] to have face-to-face contact with his parents and siblings. This is no mean feat,

⁵ Section 113A(1)(a)

⁶ Section 113A(1)(b)

⁷ The principle contained in s 5(1)(b)(iv)

considering they previously lived [in Town B – North Island] and now in [Town C – North Island] whilst [CSK]’s parents and siblings live in the South Island.

[26] [KT] has told me she has made arrangements with [RS] and [SI] to travel south with [CSK] and the whanau so that he can have contact with his parents and siblings in the upcoming school holidays. As well, Facebook Messenger is used frequently as a means of contact and to enable photos and shared korero to occur.

[27] I read the recent evidence filed by the caregivers that sometimes [RK] is not available for contact; that is his loss. I have also read the social worker’s updating report which speaks about recent and ongoing family harm between Mum and Dad and [KT]’s evidence that sometimes the parents are living together and then at other times they are living apart. It does not appear many changes have been made by [RS] and [RK]. I note that the youngest child [ASK], who is one year old, is still in their care. That is managed or overseen by Oranga Tamariki-Ministry for Children. Presumably that is also something that will need to be closely monitored.

[28] [ST] has told me that as well as his Māori side, [CSK] also has Samoan and Tokelauan connections through his mother’s whakapapa. [KT and ST] are committed to making ongoing connections for [CSK] with his birth whanau.

[29] [KT and ST] give real meaning to their whakapapa and whanaungatanga responsibilities in caring for [CSK]; they remain committed to [CSK]’s relationship with his birth parents and siblings even when at times there may be difficulties or obstacles in the way.

[30] I am also satisfied that [CSK]’s relationship with his whānau, hapū and iwi will be recognised and respected and, importantly, I note that it was [CSK]’s parents that have actively supported [CSK] remaining with [KT and ST].⁸ Again, I am satisfied that [CSK]’s relationship with his whānau will continue to be maintained and strengthened.⁹

⁸ The principle contained in s5(c)(iii)

⁹ The principle contained in s5(c)(iv)

[31] I must have regard to ensuring decisions about [CSK] have particular regard to his experience of disability and any difficulties or discrimination he may encounter and should support [CSK]’s full and effective participation in society.¹⁰

[32] I do not know whether [CSK] has a disability. It is a preliminary assessment only in terms of autism and FASD. However, it seems that both [KT and ST] are well equipped to provide care for [CSK]. They are both educators. [KT] supports young children with disabilities in the Early Childhood sector. [ST] is the [employment deleted] which is a big organisation, as well as involved in other community activities. [CSK] is in good hands.

[33] When I consider these applications in terms of Tikanga Māori, I have regard to the practice of manaakitanga¹¹ and te mana o te whanau. Where the whānau has spoken with one voice, it is important the Court hears that voice.

[34] Counsel has referred me to two recent Family Court decisions.¹² However, both decisions consider a child in a non-kin care placement and, in the latter case, a Maori child placed with non-Maori caregivers. They are Family Court decisions and therefore not binding but, more importantly, the circumstances of those children are different to that of [CSK].

[35] Accordingly, I am satisfied the appointment of [KT and ST] as special guardians will not only enhance [CSK]’s interests but will promote his wellbeing and best interests.

[36] Accordingly, I make the following orders and directions:

- (a) Discharge of the s 101 custody order in favour of the Chief Executive;
- (b) Discharge of the order appointing the Chief Executive as sole guardian;

¹⁰ The principle contained in s 5(1)(b)(viii)

¹¹ Hirini Moko Mead describes the high value placed on manaakitanga as nurturing relationships, looking after people, and being very careful about how others are treated – Tikanga Maori, Living by Maori Values, 2003 Huia Publishers at page 29

¹² *Chief Executive of Oranga Tamariki v BH and JA* [2021] NZFC 210, *Re [WH]* [2021] NZFC 4090

- (c) An order pursuant to s 110(2)(B) appointing [KT and ST] as additional guardians of [CSK];
- (d) An order appointing [KT and ST] as special guardians. The guardianship rights which are to be held exclusively by the special guardians are all guardianship decisions to be made in respect of [CSK]’s medical, educational, travel or place of residence and also the right to register a change of name to enable [CSK]’s surname to be [T];
- (e) In terms of the guardianship rights which are to be shared with [RS] and [RK], those rights shall be any decisions made in respect of [CSK]’s culture and religion; and
- (f) Ms Fidow is to file the special guardianship order which can be referred to me in Chambers if required.

[37] In closing, I refer to a statement made by (the now) Sir Joseph Williams J in his 2013 *Lex Aotearoa* paper who made a very simple statement when talking about whānau in terms of Te Ao Māori:¹³

The whanau was, and still is, the essential glue that holds Māori culture together.

[38] What has occurred today and the actions taken by both the Ministry and, importantly [KT and ST] is an example of exactly that. They have provided the glue to keep [CSK] connected with his whānau.

[39] Nō reira ka nui te mihi ki a kōrua ki a koutou hoki mō tō manaakitanga, tō kaitiakitanga mō tō irāmutu. Āe he mihi aroha ki a kōrua. Thank you everybody for

¹³ Justice Joe Williams “Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law” (2013) 21 Waikato Law Review 1.

your assistance today. [ST], you can have the last word and perhaps if you would like to close our sitting. It is after five and I leave you to close with Karakia for us.

Karakia Whakamutunga

Judge L King
Family Court Judge

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