

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

NOTE: PURSUANT TO S 437A OF THE ORANGA TAMARIKI ACT 1989, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE

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**IN THE FAMILY COURT
AT WHANGAREI**

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

**FAM-2020-088-000176
[2024] NZFC 7169**

IN THE MATTER OF THE ORANGA TAMARIKI ACT 1989

BETWEEN CHIEF EXECUTIVE OF ORANGA
TAMARIKI—MINISTRY FOR
CHILDREN
Applicant

AND [MT]
[HT]
Respondents

AND [PT] born on [date deleted] 2006
Child or Young Person the application is
about

Hearing: 29 May 2024

Appearances: A Reihana for the Chief Executive
M Russell for the Respondent [MT]
No appearance by or for the Respondent [HT]
D Hart as Lawyer for the Child

Judgment: 29 May 2024

ORAL JUDGMENT OF JUDGE L KING

[1] I have been case managing [PT]'s Family Court proceedings for at least the last two years. [PT]'s matter was in front of me on 10 May so that is less than three weeks ago.

[2] [PT] is a young person who will turn 18 on [date deleted] this year. Currently the only order in place is a custody order in favour of the Chief Executive.

[3] At the last call of this matter, Mr Hart as [PT]'s lawyer and Ms Russell as the lawyer for [PT]'s parents considered the plan filed by Oranga Tamariki was inadequate. The crux of the dispute is that the plan is silent about what additional supports or entitlements are available to [PT] once he turns 18 years of age.

[4] I adjourned the matter until today. Mum, Dad and [PT] have always come along to court. All three are absent today. At the last court hearing both [PT] and then his father took offence to comments and observations that I made. As I said, I stand by those observations but court must continue. In any event, there is no request to adjourn matters.

[5] Since the last hearing, [PT]'s mother [MT] has filed a proforma application seeking the appointment of the Chief Executive as additional guardian. In reliance of that application Ms [MT] refers to her fairly lengthy and detailed affidavit dated 7 May 2024. Ms Russell will attend to filing the information sheet to enable the application to be processed today for filing.

[6] A copy of that application has been provided to Ms Reihana, counsel for Oranga Tamariki. The Ministry's position is to oppose the appointment of the Chief Executive as additional guardian. The Ministry has today filed a notice of intention to appear. The opposition is on the basis that such an order is not necessary.

[7] To progress that application:

(a) I direct evidence to support the notice of intention is to be filed by the Ministry no later than 14 June 2024.

(b) Final right of reply to Ms [MT] no later than 24 June 2024.

- (c) I then direct a one-hour submissions only hearing at the next crossover court before me. It will go at the end of the list so that is Whangārei, 5 July 2024 at 2.15 pm.

[8] The next matter that has taken some time today is counsel's varying positions regarding the applicability of the *Moving to Independence* provisions set out at ss 386AAA and 386C. Those provisions were added to the Oranga Tamariki Act 1989 on 1 July 2019 and represent the final tranche of amendments to the Oranga Tamariki Act that have taken place since about 2015 through to 2019.

[9] Both Mr Hart for [PT] and Ms Russell share the same view which is that the moving to independence provisions apply. At the commencement of today's hearing Ms Reihana on behalf of the Chief Executive had a different position. However, having heard oral submissions from counsel and in response to questions posed by me, Ms Reihana now accepts that s 386AAD does apply to [PT].

[10] There is a custody order in place. That order places [PT] in the custody of the Chief Executive. That order was first made on 25 March 2020, and I thank Mr Hart for providing the chronology attached to his most recent memorandum.

[11] Pursuant to s 386AAD(1)(a) [PT] meets the criteria for a young person who is entitled to live with a caregiver up to the age of 21 years. Subsection (1)(a) refers to s 361 of the Oranga Tamariki Act. Whilst outside the *Moving to Independence* provisions, s 361 was also amended on 1 July 2019. Specifically, s 361(c) states that s 362 applies to any young person who is in the custody of the Chief Executive under a s 101 custody order so that criteria is easily met today.

[12] There is also strong argument for one of the other alternatives in s 361(c) to apply.¹ [PT] is currently with [support service provider A] who is an approved child and family support service.² That information has been confirmed by Ms Reihana today.

¹...in the custody of the chief executive or an iwi social service or a cultural social service or the director of a child and family support service pursuant to an order made under section 78 or section 101

² Section 396(3).

[13] The relevance of s 361 is that it means s 362 applies. The importance of s 362 is found in the interpretation of the word caregiver provided for in s 386AAA:

Caregiver means either—

- (a) A person who is in charge of a young person aged under 18 years has been placed under section 362; or
- (b) A person with whom a young person who is a young adult (aged 18 years or over but under 21 years) is living under s 386AAD.

...

[14] [PT] is still under 18 years of age and therefore comes within subs (a).

[15] Whilst there are other alternative scenarios caught by s 362, the relevant part of that section provides:

... the Chief Executive...may place any child or young person...who is in the care or custody or under the guardianship of the chief executive...in the charge of any person whom or organisation which the Chief Executive...considers suitable to provide for that child or young person's care, control and upbringing.

[16] [PT] is a young person under the custody of the Chief Executive by virtue of the s 101 custody order. The Chief Executive has placed [PT] with an organisation, namely [support service provider A] whom he considers is suitable to provide for [PT]'s care, control and upbringing.

[17] I am therefore satisfied the *Moving to Independence* provisions apply. As I say, that is now accepted by Ms Reihana.

[18] Ms Reihana therefore accepts that the current plan does not address those matters set out at ss 386AAD and 386AAE.

[19] Before the young person leaves care or custody the Chief Executive must advise them of their entitlement to be supported by the Chief Executive.³

³ s 386AAD(3).

[20] That advice includes that “*the young person is entitled to be supported to live with a caregiver at any time and for any period from the age of 18 years up to the age of 21 years and may request to do so at any time*”.⁴ There are statutory exceptions, including where either the caregiver or young person do not agree to such an arrangement or the Chief Executive considers the young person living with that caregiver is likely to be detrimental to the well-being of the young person.⁵

[21] Section 386AAE places additional responsibilities on the Chief Executive:

(1) If a young person is to live with a caregiver under section 386AAD, the chief executive must provide them with support to negotiate and agree the terms on which they will live with that caregiver.

(2) The agreed terms must be recorded in writing (the **support arrangement**).

(3) The support arrangement must—

(a) be consistent with the purposes in section 386AAB; and

(b) give effect to the principles in section 386AAC; and

(c) meet the standards referred to in subsection (4); and

(d) be approved by the chief executive.

(4) The chief executive must monitor the operation of all support arrangements against standards set in regulations made under section 447(1)(cb).

[22] Section 386AAF sets out the role of caregivers under support arrangements, s 386AAG sets out financial assistance for support arrangements, s 386A advice and assistance for a young person up to 25 years, s 386B provision of advice and assistance by the Chief Executive and then finally s 386C, Chief Executive to maintain contact with the young person up to the age of 21 years.

[23] Prior to these amendments, there was a concern by many including Family Court Judges that once a young person ages out of the Chief Executive’s custody that all supports including financial and non-financial fall away. This is the exact reason why the *Moving to Independence* provisions were inserted into the Oranga Tamariki Act.

⁴ s 386AAD(2).

⁵ s 386AAD(4).

[24] [PT]'s needs are over and above most 17-year-olds. He was diagnosed with ADHD when he was eight years old. [PT] was diagnosed with oppositional defiance disorder when he was 10 years old. In 2021 a full-scale IQ assessment was undertaken and [PT] fell within the very low range. More recently, in December 2023 [PT] was diagnosed as a young person on the spectrum for autism, coupled with a mild intellectual disability. That last assessment is what has triggered the involvement of [name deleted – a disability services provider].

[25] I therefore direct the Ministry is to file and serve an updated plan no later than 28 June 2024. I acknowledge the hard work being undertaken by frontline social workers and supervisors to try and find a good place for [PT] that will have longevity and that will address the ongoing issues.

[26] I have given that date on the basis that counsel can file submissions prior to the next call of this matter on 5 July. Those submissions will address the issue of the application for the Chief Executive to be appointed guardian and also for the Court to undertake a review of the plan noting [PT] turns 18 in [month deleted] .

[27] Just a final note, I will include some footnotes and relevant sections. I reserve the right to do that because having the bare section included in the body of the decision makes things very hard to follow. I reserve that right without of course changing the end result.

Judge L King
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 10/06/2024