

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 TAURANGA**

**I TE KŌTI WHĀNAU
KI TAURANGA MOANA**

**FAM-2023-070-000147
[2024] NZFC 8250**

IN THE MATTER OF THE ORANGA TAMARIKI ACT 1989

BETWEEN CHIEF EXECUTIVE OF ORANGA
TAMARIKI – MINISTRY FOR
CHILDREN
Applicant

AND [KM]
First Respondent

AND [WM]
Second Respondent

AND [MM] born on [date deleted] 2023
[IM] born on [date deleted] 2023
Children or Young Persons the application is
about

Hearing: 24 June 2024

Appearances: A Gray for the Chief Executive
First Respondent appears in Person
Second Respondent appears in Person
P Eagle as Lawyer for the Children
S Hart as Social Worker

Judgment: 24 June 2024

JUDGMENT OF JUDGE S J COYLE IN RELATION TO JURISDICTION

[1] Today there is to be a hearing commencing for the rest of today and into tomorrow in relation to two children, [MM] and [IM], both born on [date deleted] 2023.

[2] Oranga Tamariki are seeking a decision be made by me that these children are in need of care and protection and on that basis they are seeking care and protection orders. Specifically, they are seeking the making of a s 101 custody order in favour of the Chief Executive, the appointment of the Chief Executive as an additional guardian under s 110 of the Oranga Tamariki Act 1989, and that the Court make pursuant to s 87 a final restraining order against the children's father, who is referred to in the proceedings as [WM]. Mr [WM] has asked today that for the purpose of this hearing I refer to him as [WM] and his wife has asked that she be referred to by her first name, [KM], and I have no difficulty with that.

[3] At the outset of the hearing I have explained the process in the procedure. [WM] has raised an issue around jurisdiction as to whether this is a court of equity or chancery, and it is clear from a number of documents he has filed that he does query the jurisdiction of this Court. I therefore need to determine his challenge to the Court's jurisdiction.

[4] Arguments around jurisdiction of this Court are not new. I have been appointed under s 5 of the Family Court Act 1980 with a warrant signed by the Governor-General authorising me to act as a District Court and Family Court Judge. Part of the statutory powers I have are those contained in the Oranga Tamariki Act and the way in which this hearing is to proceed is governed both by that Act and by the Family Court Rules 2002. This hearing therefore is not this Court sitting in either a chancery or equitable jurisdiction, but rather it is sitting as a duly constituted court by an act of Parliament and my powers are those set out by statute and by Parliament.

[5] Challenges to the sovereignty of Parliament and the jurisdiction of courts such as the Family Court have been before the courts on a number of occasions. Within the

hierarchy of courts the District Court, of which the Family Court is a jurisdiction, sits at the bottom. Next in hierarchy is the High Court, followed by the Court of Appeal, and then the Supreme Court.

[6] Parliament has given exclusive jurisdiction to determine matters under the Oranga Tamariki Act to the Family Court¹ and appeal rights only rest with the High Court² and if subsequent leave is granted to the Court of Appeal and to the Supreme Court.

[7] Sitting at the bottom of the hierarchy as it were, this Court is what is known as an inferior court. That does not mean that its decisions are inferior. It is simply what it is known as in terms of the hierarchy of courts. But what it does mean is that decisions that I make in order to achieve consistency of judicial decision-making involve me following or applying decisions made by the higher courts. That is, I am bound to follow any legal determination made by the High Court, Court of Appeal or the Supreme Court.

[8] At all levels the Courts have consistently upheld the sovereignty of Parliament in the jurisdiction of the Courts. The Court of Appeal, for example, in *Morunga v Police* stated at [7]:³

At the heart of this contention are arguments regarding the sovereignty of Parliament and the jurisdiction of the Courts. The Full Court of the High Court in *Creeks v R* said relevantly at [7]:

The Court of Appeal has made it clear that the courts are not the forum for a fundamental challenge to the entire constitutional structure of the country or for political campaigns...Māori sovereignty can be the subject of debate in Parliament. The Waitangi Tribunal may be prepared to consider it. It can be debated in public meetings or the media. It may be the subject of lawful protest. But an assertion of [other] sovereignty does not raise a justiciable question. It cannot succeed in the general courts of New Zealand.

[9] In short, those appellate authorities which are binding on me make it quite clear that I have jurisdiction to hear and determine these proceedings. If there is an

¹ Section 2, Oranga Tamariki Act 1989, and the definition of “court”.

² Section 341, Oranga Tamariki Act 1989.

³ *Morunga (aka Hapi) v Police* [2016] NZCA 599.

argument to the contrary, what the Court of Appeal is endorsing is that that can only occur through public debate and through changing of the legislation by Parliament.

[10] Thus, in terms of the statute and case law it is quite clear that I have jurisdiction to hear and determine these proceedings and that they will be considered and determined by me in accordance with the laws set down by Parliament, which is sovereign. The hearing will now proceed.

Judge SJ Coyle

Family Court Judge | Kaiwhakawā o te Kōti Whānau

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