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IN THE FAMILY COURT
AT PALMERSTON NORTH

FAM-2016-054-000276
[2017] NZFC 8441

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[GL] Applicant
AND	[BL] Respondent

Hearing:	18 October 2017
Appearances:	N Kelly for the Applicant T Johnston for the Respondent M Faimalie as Lawyer for the Children G Mason as Lawyer to Assist
Judgment:	18 October 2017

ORAL JUDGMENT OF JUDGE J F MOSS

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[1] This application is to place [TL, CL and LL] under the wardship of the Court. They have been subject to Court proceedings now for 19 months.

[2] [TL] was 10 on [date deleted]. [CL] will be nine on [date deleted] and is now [almost 9] and [LL] is [almost 7 and a half years] old, having been born on [date deleted].

[3] The law in relation to wardship or the Court's power to hold the guardianship of children and displace parents from that role is ancient and it derives from the Court's assertion that where necessary the Court can take a protective role in the care of children and supplant their parents' status. It is necessary that this action is considered as a last resort. It is necessary that the Court consider other options before this one is exercised. You will both know, however, that on [date deleted] October I appointed a lawyer to assist the Court who is Mr Mason, to make this application in order that the Court have the potential for all of the available remedies. Currently there is an active application for the issue of a warrant to enforce an interim parenting order. Because the interim parenting order is that, just an interim order, there remains a substantive application for orders under the Care of Children Act 2004 for division of the children's care and contact between the parents.

[4] In the exercise of any power under the Care of Children Act the Court is obliged to act in the best interests of the children as a paramount concern. The children's safety is more important than other considerations. The considerations appear in s 5 Care of Children Act. I have kept at the forefront of my consideration those individual aspects of children's welfare.

[5] Primary among them is as I have said, safety. Safety is safety from all forms of harm which include particularly for consideration today safety from psychological abuse. There is also an issue in relation to physical abuse, the evidence around which is as yet unclear.

[6] What is clear to me is that the effect of the events videoed and produced in evidence from 2 September amount to psychological abuse of these children.

[7] The other welfare and best interests considerations relate to: parents taking responsibility for their children's care, development and upbringing;. the parents having a responsibility to achieve the care, development and upbringing by ongoing consultation and co-operation; the children's welfare and interests will be secured by continuity in care, development and upbringing, by continuity in relationships both with parents, with siblings, family group, whānau, hapū and iwi. And finally, it will be secured by a child's identity being preserved and strengthened. Those matters are

as I have said all subject to the obligation of the Court to protect children from all forms of violence.

[8] The evidence in this case has ballooned in the last six weeks. The bundles for consideration for this submissions hearing has run to just over 500 pages. Of that 350 alone have been generated in the last two months. Some of the material is, of course, repetitious but it discloses extreme intensity in the breakdown of the children's relationship with their father. The children are entitled as a matter of their identity to the preservation and strengthening of the relationship with both of their parents.

[9] Unusually in a case like this there is video evidence which I have already referred to. I am satisfied that it is reasonably reliable. I accept the mother's sworn statements that she took the footage and has delivered it to Mr Mason as lawyer to assist the Court without it being edited or tampered with in any way. I am concerned that when she was directed to provide that evidence to the Court as long ago as 25 September she did provide some but it was not until she agreed to deliver her phone to Mr Mason so that all footage could be downloaded that in my view the most abusive aspects of the footage were in fact properly disclosed.

[10] The audio tapes made by [GL], some of them made without the knowledge of [BL], were filed. I have not listened to them. No counsel referred to them in submissions but in canvassing with counsel now it appears that the themes of the video material provided by [BL] and the audio material provided by [GL] are relatively consistent. Their emphases will no doubt differ.

[11] This application for wardship comes to the Court, as I have said, in the context also of other live applications which have not been finally determined, nor indeed have they advanced very far.

[12] Mr Mason proposes that wardship is the proper course relying on the following propositions:

1. That the children have been involved in adult issues in a way and to a degree that is abusive of them.

2. This involvement in adult issues has crippled the children's ability to have a relationship with their father with the mother being unable or unwilling to promote contact with the father so that it occurs.

3. The adult issues are impacting on the children's education.

4. The children have recently made allegations of moderate physical abuse against the father.,

5. The mother's functioning is or may be compromised by loss issues relating to her relationship with the father.

6. The father is overwrought by the issues between him, the mother and the children.

7. The proceedings between the parents are or are likely to become intractable.

8. The order will allow the children to be placed away from either parent thus providing the children with respite and the parents with the opportunity to address their issues in the interests of the children.

[13] I consider that these eight bases set a well considered structure for justifying intervention. I will come to a consideration of the evidence as it applies to each of the propositions in a moment.

[14] First of all, I want to note the time it has taken to resolve this matter in substance. There have been three failed mediations, two at Family Dispute Resolution and one round table meeting. By failed I mean either that it did not commence with the two FDR occasions or that it did not reach a sustained and substantial outcome.

[15] There has been a failure in sustaining agreed arrangements There is no background which leads to an adequate hypothesis that it is impossible for these children to have a safe relationship with this father. Common causes to restrict contact are significant risks of adversity because of illness or from drugs or from violence. In the absence of such an adequate hypothesis which, if proved, establishes the basis for highly restrictive contact with one parent or the need for a safety structure within care and contact, the Court is obliged to conclude that the parental relationship dynamics are such that these will thwart adequate nourishing of parental relationships. Thus, in the presence of that thwarting in my view the basis for the Court to step in with protective guardianship can be made out.

[16] In this matter the Court has adopted an unusual procedure. Mr Mason has been appointed under s 9C Family Courts Act 1980 relying on 9C(1)(c), that is to undertake any task required by or under another Act. That other Act in this circumstance is the Care of Children Act. The other Act required is to have a person who can neutrally appraise the evidence and gather additional evidence and advocate on the Court's behalf to the Court in favour of against taking protective guardianship.

[17] I asked lawyer to assist to apply. It was at that point on [date deleted] October necessary to divide the children's representation from a representation of their views and a representation of their best interests. In cases such as this, and bearing in mind at that point I had heard the first filed video footage, it seemed that the best interests of the children and their views were highly at risk of diverging.

[18] I note that Mr Mason has advocated bearing in mind the Court's obligation to act in the best interests of the children with a careful measured canvassing of the evidence. Ms Faimalie has taken a meticulous focus on the wishes of the children.

[19] The context of necessity for wardship arises because of the kind of risk children are exposed to which falls within s 14 Oranga Tamariki Act 1989 particularly ss 14(1)(a), (b) and (h). That is that the children are being harmed, that their development is being avoidably impaired and that there are such serious differences between their guardians that that harm and impairment is happening.

[20] I turn next to the children's views. It is essential for the Court in the exercise of its discretion under the Care of Children Act to ascertain children's views. In this case these views have been ascertained in three ways.

1. By the parents themselves and as reported in the evidence and it is fully described.

2. By their own counsel and that has been documented meticulously particularly after Ms Faimalie's interview with the children on 28 September.

3. And finally, their views have been ascertained by me in considering the video footage.

[21] I note that Ms Faimalie had a particularly full consultation with the children which I think occurred in their mother's home on 28 September. In her introductory remarks she referred to the difficulty of that attendance and she said

> [19] All three children were extremely upset at the thought of having to go to contact. All three children indicated their feelings of being forced to have contact with [GL]. All three children confirmed that they felt unsafe with [GL].
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> [20] All three children indicated they would run away from [BL]'s care prior to being delivered to [GL]. All three children were clear that they would run away from school if changeover occurred at school or would not go to school. [LL and CL] suggested they would hide if [GL] attended school on [date deleted]
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> [21] The children were extremely upset when they confirmed their instructions. There were times when the children were screaming at the top of their voices, visibly shaking and crying.

[22] Notwithstanding Ms Faimalie's suggestion that they meet at a different time the children were keen to continue. These children are yet very young. This was doubtless traumatic for them and it is plainly out of reasonable proportion with the complexity of these proceedings unless I conclude that the relational dynamic between the parents has become so disturbing that the children's capacity to manage themselves in an age appropriate way has dwindled.

[23] An order to enable the children to be collected from school at the start of contact was made on 25 September on a without notice basis in response to the father's application for a warrant to enforce the contact order which remains in an extant order dated 20 July. That application for a warrant was not granted but Judge Collins made a series of directions justifying the obviously sensible variation.

[24] Returning to Ms Faimalie's material it is important to record that [CL and TL] both complained that they had been physically imposed upon by their father. [CL] referred to their father's action as "torture". [CL] said [CL] was held upside down, pushed on the fingernails, punched and had his kneecaps squeezed. [TL] said [TL] was held over the compost bin.

[25] Ms Faimalie noted that [LL] said that only [CL and TL] had been hurt. She noted that [TL] reported that [GL] "Has been abusing us for a long time". And when asked how long, [TL] thought at least a year and a half. Ms Faimalie went on to report

> [32] I queried with [TL] that I had met [TL] on two other occasions within the past year and a half and [TL] did not allege any disclosed abuse. I asked what had changed. [TL] reported that, "Mum received a booklet from her lawyer Tracey[1] explaining abuse, Mum gave it to me to read, after reading the information I realised that [GL] had been abusing us all along.

[26] However, it is clear on the evidence that on about 17 August the mother did talk through the power and control wheel which she had come by with the children. She said in evidence that it had been given to her by her counsellor. She referred in her affidavit and I am looking at page 493 of the bundle, that this was something she learned about New Zealand culture which is different from [cultural details deleted] culture.

[27] It is important, it appears to me, to note that this is the first time that the children reported any physical abuse. The descriptor as "torture" is not apposite for

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[1] I note that the reference to a booklet from the lawyer is not supported in the adult versions of the evidence. I specifically record that I do not conclude that Ms Johnston was part of that chain of provision of information. I do not know whether she was but I have no reason to conclude that she was.

the events described. Torture does not incidentally appear as a word on the power and control wheel. But it is not in my experience a word which most eight year olds use meaningfully unless perhaps describing medieval warfare of the kind that crops up in children's books and toys and games. I am troubled by the use of the term to describe something which has happened to an eight year old.

[28] Overall Ms Faimalie reported that the children were adamant that they would not see their dad in any circumstances.

[29] There is another event in which the children are noted to be screaming and disturbed and that occurred on [date deleted] September in the early hours of the evening when police intervention led to the order for contact not being able to be enforced. I note that the police's action at that moment was the right action. No doubt the father was highly frustrated by the difficulty with enforcing a Family Court order but the police were right. They did not have the power to physically impose on the children. I conclude it is far more likely than not that they reasonably formed the view that to continue the persuasion was more adverse to the children. What is of grave concern to me is the extent to which the children were regarded as screaming, and to use a summary word, quite hysterical.

[30] The degree of control which these children have now been exercising in circumstances where they are bound by orders as much as the parents, are illustrative of the degree of the damaging influence of the parental dynamic. I note that this degree of out of control behaviour observed by outsiders and on the video evidence establishes the degree to which the current environment has become unsafe for the children.

[31] I now summarise the proceedings since that failed event of [date deleted] September. There was a directions conference on [date deleted] October. I indicated a need for alternate care for the children and that the context for them at that point was adverse and I considered that alternative care was necessary to give the kids a break. At that point it was early in the first week of the just finished school holidays. I appointed lawyer to assist.

[32] On 10 October I convened a further directions conference and confirmed the need for a s 133 report and provided a brief for the first tranche of that report. I am particularly concerned that the children are not seen in the first part of that assessment. They are in the throes of a crisis. It is not fair on their parents or on them to capture their state at this point. It is not necessary for me to be advised by a psychologist for me to conclude that the children's current situation caught in these dynamics in which enforcement action may ultimately be required but the only force which is imposed will be against the children.

[33] And then from 10 October it has been necessary to establish this fixture which has been done on short notice. I have heard on a submissions only basis. The case has taken all day. I am deeply grateful to counsel for the work they have done to martial the huge amount of information into logical, clear and persuasive submissions.

[34] The next practical step for these children come down to two options. The legal structure which is available to enable the two options is a different matter. The practical options are available because the parents both conceded the need for the care of the children to leave the care of their parents at this point. The mother prefers an option that they remain in [location 1 deleted] in the same home, at the same school and living in the care of neighbours and friends. The father prefers an option that the children go to live with paternal grandparents in [location 2 deleted]. Both options are relatively well developed, reasonably practicable and both have the advantage of cutting through the relational dynamics which have led us to this place.

[35] Before I address the pros and cons of the options I will canvas the evidence in relation to the proper level of intervention within the caution which the Court must exercise and the degree of co-operation which the parents are showing. I thank them for that.

[36] I return to consider the eight features which Mr Mason sets out. The first relates to an involvement in adult issues in a way which is abusive of the children. There is an emphasis here on [GL]'s girlfriend. It appears that his relationship with this woman came to the mother's knowledge in July but her own evidence, the

girlfriend's evidence, says that she and [GL] have been dating for about 11 months so perhaps as far back as [months deleted] last year. The children have in expressed language which may or may not have meaning referred to adult issues in a way which shows they have been involved in those issues.

[37] Both [TL and CL] have talked about the need for Dad to, "Dump his bloody girlfriend." It was [CL] I think who said in one of the video footages, "That any girl will dump you Dad." [LL] has said that [their] dad is a drug smuggler. [CL] spoke at some length about [their] dad being like Winston Peters. [LL] complained to Ms Faimalie that Dad only had Netflix at his place not news so [LL] could not watch news, [LL] was five at the time.

[38] The children's involvement in and knowledge of the power and control wheel indicates they have been enabled by their mother to apply that information about abusive dynamics which was provided to her in a therapeutic context to their own personal situation. [CL and TL] have both run away when an attempt has been made to collect them for contact. [TL and LL] have run away from their dad when he has attended the school.

[39] The second issue raised by Mr Mason refers to the involvement in adult issues crippling the children's ability to have a relationship with their father. There are two strands to this. First, that the children's ability to have the relationship with their father is crippled and Mr Mason then says that that occurs because the mother is unable or unwilling to promote contact with the father so that it occurs. That is the mother's action whether an inability to promote or an act of sabotage of the contact is less clear.

[40] It is clear that there is a relational dynamic between the parents which goes back probably before separation. The mother's reason stated very early in the proceedings for the separation indicate a profound degree of dissatisfaction, more recently she has described a highly gender based, somewhat emotionally and economically abusive environment. Her experience of that has impacted on her capacity in the new context of separation to enable the children to express their relationship with their father. It may also be that the mother by nature is a more

highly supervisory parent and that does sometimes get in the way of children enjoying a different kind of relationship with their dad. But the relational dynamic has some common characteristics.

[41] Each parent is highly determined, each parent is highly emotional. There has been a long period since separation with ups and downs of contact with a theme of the mother acting as a permissive and consultative parent in relation to the children's contact with their dad in stark contrast to her highly managed approach to all matters relating to education. It is apparent that there has been a bad exacerbation of conflict because the father's new relationship has been disclosed to the mother. There is, in my view, a question about the effect of that on the mother's mental health. I am concerned that in the first week or 10 days of July she was highly angry, confrontational, pouring out her heart in tragic ways to parents-in-law and was subject to a welfare check by police in the very early hours of the morning of [date deleted] July. Through this period the mother has been unable to secure the children's obedience to the Court order. Most remarkably she has been unable to secure their obedience to an individual Court order made for the purpose of [date deleted] September, in particular she was unable to get the children to go to and then to stay at school.

[42] The next issue for Mr Mason relates to the impact for the children on their education because of these adult issues. The involvement at school has been extreme. It is clear reading the parents' individual emails to the school that they are each contaminating staff attitudes and then necessarily the calm environment for the children at school. Both parents have attended school habitually. At these children's ages and with their degree of competence they do not need parents to [activity deleted]. While I can understand the father's choice to attend [activity deleted] to see the children because he was not being allowed to see them in any other way without the presence of the mother it was not, in fact, a helpful thing in terms of the children.

[43] I divert to observe that children of these ages can manage perfectly well with a short non-intense and non-distressing absence of either or both of their parents so long as they know what is happening and they have a substantial preceding

relationship with parents. This will not be profoundly corroded in brief period of absence. Of more danger to the children is the exposure to highly intense distressed emotional parents.

[44] I agree with Mr Mason having considered the evidence that the adult issues and the parents' determination to express those to and at the school are impacting on the children's education.

[45] Next, the children have made the allegations of moderate physical abuse and having heard Mr Mason's submissions I conclude that he considers that there is a real doubt about whether those allegations can be regarded as likely to have particular probative value. I note the mother's conversation about the wheel on 17 August. I note [TL]'s letter of 25 August. There was no earlier claim in the evidence about physical abuse though the mother had once referred to some concern about the father's disciplining of the children. I note that Oranga Tamariki has conducted a child focussed interview and police and Oranga Tamariki are investigating. There are those allegations. It does not appear to me that in and of themselves they are helpful or determinative in relation to protection of the children from any form of violence.

[46] The next matter which Mr Mason structured his argument about is that the mother's functioning may be compromised by issues of loss relating to the relationship with the father. He referred in particular to the heart rending emails early July to early August and the mother's engagement in counselling. He refers to the dissonance between the mother's explanations in her evidence that she only suggested reconciling because she thought it was good for the children and the police observation on [date deleted] July that she was distraught about the end of the relationship, her email to her father-in-law on [date deleted] July saying that she had not thought she previously had any feelings for the father but on discovering the relationship she had been crying for days. And I note also the engagement with her therapist which was focussed on resolving feelings of loss and grief.

[47] I note also that the mother's functioning may have been compromised by some mixed messages from the father including a recent text about the option of

reconciliation. That is in the context of the mother's recent emails, in the context of the father saying that he is relieved to be separated from the mother and in the context of the extreme gatekeeping which the mother was imposing around contact with the father. In particular on 21 or 22 September part of the video footage records her saying to the father that she would not permit him to speak to the children out of her presence and that she considered his need for contact was satisfied with the six minutes he had spent with the children. My impression of that material is that it was six extremely difficult minutes which will have left the children feeling distressed, not because of anything the father did.

[48] The next focus for Mr Mason is that the father has become overwrought. It is certainly possible to draw that conclusion. It appears to me that each parent is highly determined and as each piece of intense determination impacts on the other the other ups the ante. But there is no doubt that on [date deleted] September the police recorded that the father was grumpy, that he had a poor attitude but that he did leave the confrontation. The school noted some lengthy description on [date deleted] when the father entered a [school meeting – details deleted] uninvited, was rude and in the view of the staff who were present, intimidating and frightening. [GL] has been extraordinarily distressed in the courtroom.

[49] In the video evidence, however, I have observed the father being reasonable, focused on his children, masking his own distress, trying to focus talk about the relationship with [BL] away from the children's presence and trying to keep his voice low. So while I accept Mr Mason's view that the father has contributed to the intensity of the dynamic there is a degree to which the father's behaviour can be seen in a more reasonable light.

[50] The next concern of Mr Mason is that these proceedings are likely to become intractable. Plainly these proceedings are intractable because the children are acting outside of parental motivation and control. The Court cannot impose enforceably on children without using the threat of or actual physical force. If parents cannot apply authority the proceedings call for another intervention and thus we get to Mr Mason's last proposition that a wardship order will allow the children to be placed away from either parent.

[51] In applying a best interests test the Court's unpalatable option at this point is to find a least worst outcome. There are no protective outcomes at present which will immediately relieve the children of the psychological burden they are placed in. However, the Court's obligation to avoid long-term disruption of effective relationships is an important embodiment of that best interests test. It is necessary for the Court to act to end psychologically abusive behaviours which are in particular the mother involving the children in adult issues and the mother enabling the children to choose her over and above and to the exclusion of the father.

[52] The Court must avoid the children being encouraged to choose compliance. The mother has not assisted the children to comply. That leads to an apparent futility of Court orders. My aim is in paving the way towards best interests to return as soon as possible to the parents taking a cooperative and consultative responsibility for the long-term care and development of their children.

[53] Before dealing with the legal structure I will turn to the two options. [Location 1 or Location 2]. Friends, home, school, familiar and loved activities or committed, loving, understanding and available grandparents. The [Location 1] option may be regarded as offering an inadequate circuit breaker because both parents still will be able to exert their presence despite school imposed limits. I am concerned that neither parent is thinking straight, long-term about how to ease the burden on the children. If they are in the neighbourhood the change may be insufficient. I am very concerned that [TL and CL] can run. There is video evidence of that, they have expressed their determination to run and I have great concern that their inclusion of [LL] in the running behaviour is likely to influence [LL]. That is plainly dangerous. We need an arrangement to manage this risk.

[54] There are undoubted advantages in the [Location 1] option of stability and continuity. There is another facet of it in the care of [the neighbours] and that is that their availability is short. [BL] has then proposed her parents who reside in [overseas location]. Previously in September she has noted by affidavit that they are not available, they are elderly and do not know about the separation. They are non-English speaking. The children do not speak [language deleted] fluently. It seems unlikely that these grandparents would be able to manage distressed children.

[55] The option in [Location 2] has a plain disadvantage that it disrupts the children's continuity of their day-to-day living. It has advantages. Grandparents are family, they are committed and apparently sensible and sensitive. Moving to [Location 2] will enable the children to remain as an intact bunch. That sibling relationship set is very important now. Until recently, particularly [GL] Snr has retained an intact relationship with [BL] as well as, of course, their son. They have made a generous offer to facilitate contact and put their hands in their pockets to do that.

[56] The main disadvantage, of course, is that it would mean a change of school for the children because looking ahead I cannot be sure that a brief respite of a couple or three weeks will be adequate to make a significant change to the dynamic. Thus I need to think about the children's education over the next school term until mid to late December.

[57] It is a disadvantage to suddenly change schools. [TL] is in [year deleted], he has one further year at primary school. The other two children being younger have longer to go at primary school. They are used to seeing [School name deleted] as a calm and safe place. The local school near to the grandparent's home appears to be well reported on. In my view at the stages these children are at educational disruption of a term or so is not the end of the world. It will also disrupt their extracurricular activities which are busy and likely to enhance their well-being. They involve [activities deleted]. There are other school based activities as well. Again, while undesirable to be disrupted these are not in and of themselves matters of critical importance compared to rendering these children protected from all forms of violence.

[58] The next question relates to the structure. The mother proposes that because she accepts that the children can be in the [Location 1], that could be supported by an interim parenting order, that there is no need for a wardship order. She is content to work with Oranga Tamariki. [GL] for his part supports a wardship order preferring that structure. Ms Faimalie for the children has not got a firm view about the structure, she does on the whole prefer the continuity of the [Location 1] option particularly as it accords with the children's expressed views which she has guessed

at should they be able to express them. I agree. She has called the children's views right, they would prefer to sleep in their own beds I have no doubt. They would prefer to continue to go to their own school with their own mates and live in their own neighbourhood. Mr Mason has strongly advocated for making a wardship order and that [the wardship order] should be made on the basis of the children moving to [Location 2] forthwith and that the Chief Executive of Oranga Tamariki is ready to accept agency.

[59] I have earnestly considered whether Care of Children Act 2004 orders in terms of a parenting order are sufficient. I do not consider that those orders are sufficient. So damaging has been the exercise of the parents' responsibilities in relation to these children of recent weeks that it does not appear that the Court can feel reassured that even after a significant intervention by the Court of this sort the parents have the immediate capacity to settle their own distress and act differently. As a general proposition I believe the parents will be able to settle their distress, learn a way of resolving the new way the children must be parented which is in two houses rather than in one, and that in time, the children's relationship with their father can be repaired, restructured and restarted.

[60] The appointment of the Court to the guardian of the children is now made. That will be for general purposes. I ask that the Chief Executive of Oranga Tamariki accept the general agency and in particular arrange supervised contact for the parents while the dynamic can be treated. I consider that it is necessary that the children move to [Location 2] to live with their grandparents while this occurs. I do not consider that the parents and in particular the mother, who is close to the neighbours who are prepared to care for the children in [Location 1], will be able to manage her distress sufficiently to hold back from trying to continue to exert some management over the children. They need a break. I accept with considerable gratitude the grandparents' offer of providing funds for the parents to travel to [Location 2], I express the hope that that can occur on a weekly basis.

[61] The supervised contact will apply to both parents, it should be done by an approved supervisor. The father has sought an order that the mother not be permitted to speak in her native tongue to the children. That is, in my view, a wrong approach.

The Court will provide an interpreter in the mother's language so that her communication with the children can be understood and if need be reined in and certainly reported on.

[62] It is necessary to consider the next appropriate steps in the proceedings and I will do that in a moment but meantime I want to record some concerns about the way in which the father has attributed to the mother a dynamic of behaviour which is commonly and erroneously called parental alienation syndrome.

[63] First of all, the idea that it is a syndrome has been debunked many years since. This use of the term "alienation" is, it appears to me, both unhelpful and premature. I would myself resist the characterisation. It does seem that there is a rejection and resistance paradigm but to lay that at the feet of the mother only avoids consideration of the essential relational dynamic. This relational dynamic has a very particular intensity. It is now long standing, at least two years and probably longer. These children have come to feel entitled and appear to share their mother's extreme views about their father and about what they themselves need but it is wrong to characterise this at this point as alienation. It is more important to enable the children to be parented in a way that protects their rights and interests.

[64] The next procedural steps are going to be difficult. As counsel all know there will need to be substantial therapeutic input. The brief for the 133 report will start by providing the Court with a design of that therapeutic input. It is likely to involve separate work for Mother, for Father and for the children. And then work for Mother and children and work for Father and children.

[65] The Court has no jurisdiction to enable therapeutic work for children. The Court can resource limited therapeutic work for parents but it is problematic and unlikely to be sufficient to enable the level of therapeutic input which this family is going to need.

[66] I would ask that the father consider making an application for a declaration under the Oranga Tamariki Act 1989. He will need to apply for leave but by that means he will facilitate two things. He will facilitate the holding of a family group

conference which is a good healthy place for issues around these children's relationships to be aired. It will also enable the Court to have jurisdiction to provide counselling for both the parents and the children pursuant to s 74 Oranga Tamariki Act. That direction for counselling can occur upon the application being made. There is no need for a declaration to be made before the counselling is begun. That is simply a matter for combined thinking by counsel.

[67] Because these children are now under the protective umbrella of the Court there will be a judicial conference related to them initially fortnightly. I require reports from Oranga Tamariki as to how the children are settling and what steps are needed to enable them to settle. Unless it appears necessary for the children's protection it would seem to me adverse for them to see their lawyer other than for them to learn the nature of this decision. For them to be asked repeatedly to provide their views is unlikely to assist a forward momentum.

[68] Mr Mason has suggested that I should see the children to tell them what is happening, I will do that. Given how late it is now I suggest that is at 9.15 tomorrow morning. The care of the children overnight tonight is a matter for the concern of the Court now. Neither parent is entitled to the care of the children now and that is a matter on which I ask Oranga Tamariki to take charge.

[69] Finally, I want to close by thanking Oranga Tamariki for stepping up. Mr Mason thank you for marshalling the information. I convey my thanks to the paternal grandparents. I convey my thanks to the school and Ms Faimalie, I would be grateful if you would let the school know the outcome of these proceedings so far in order for the children's enrolment up north to be facilitated and I hope that the parents will manage themselves not to further try to engross the school in these arrangements. The school's role is a difficult one anyway and it does not appear to me that this is school business.

J F Moss
Family Court Judge