

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

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**IN THE FAMILY COURT
AT AUCKLAND**

**I TE KŌTI WHĀNAU
KI TĀMAKI MAKĀURAU**

**FAM-2014-044-000889
FAM-2014-044-000890
[2019] NZFC 5092**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[ZANE LAWSON] Applicant
AND	[DENISE PUGH] Respondent

Hearing:	28 June 2019
Appearances:	B Maclean for the Applicant Respondent in Person with a McKenzie Friend K Buchanan (agent for N Schumacher) as Lawyer for the Child
Judgment:	5 July 2019

RESERVED JUDGMENT OF JUDGE D A BURNS
[In relation to whether the child has his MMR vaccination]

Background

[1] This case concerns a male child born [date deleted] 2014 [Beckett Lawson].

[2] [Beckett]'s parents, the applicant and respondent, met in approximately 2004 and were in an on and off de facto relationship until approximately December 2014.

[3] Soon after [Beckett] was born his mother relocated him from [location 1] to [location 2]. His father has continued to live in [location 1] and his mother resides [in location 2].

[4] There have been extensive proceedings between the parties since December 2014 under the Domestic Violence Act, Care of Children Act culminating in a number of short-term and long-term hearings.

[5] The case is set down for a further long cause fixture to determine care arrangements for the longer term.

[6] A discreet issue relating to vaccination was directed by the Court to be the subject of a short-cause hearing on a submissions only basis. That hearing took place before me on 28 June 2019. On or about 30 May 2019 the father applied for a ruling under s 46R of the Care of Children Act 2004 ("the Act").

[7] He said in summary in his application as follows:

- ❖ That he sought to have permission for the child to have his measles, mumps, rubella (MMR) vaccination.
- ❖ That he had been informed by his general medical practitioner that failure to immunise the child would place the child in a dangerous and potentially life-threatening situation, not only to [Beckett] but also to other children he might come into contact with.
- ❖ That the child attended pre-school and accordingly was at risk of coming into contact with other non-immunised children.
- ❖ He referred to a booklet issued by the Department of Health by his medical practitioner entitled "Childhood Immunisation". He set out extracts from that booklet and in relation to measles he said as follows:

Measles

Measles causes pneumonia in 1 in 15 children and 1 in 1000 develop encephalitis – swelling of the brain. Even more alarming that for every ten children who develop encephalitis, one will die and up to 4 will have permanent brain damage.

Possible side effects are noted as redness at the injection site and mild fever and rarely more significant fever (39.5), a non-infectious rash or can become noticeably irritable. 1 in a million may develop encephalitis from the measles component of the vaccine. This is to be compared to one in a 1000 who develop encephalitis if not immunised.

Mumps

Unvaccinated children who catch mumps can also develop encephalitis and/or profound deafness. In puberty, 1 in 5 males get testicle inflammation.

Mumps has the same possible side effects of vaccination.

Rubella

Rubella, rarely causes serious side effects in children or adult. However, 8-9 out of 10 babies infected during the first 10 weeks after conception will have a major congenital abnormality.

[8] Mother filed a notice of response to the application and said that she was opposed to [Beckett] receiving his MMR vaccination. Ms Schumacher in her report of 16 June 2019 helpfully summarised mother's response which was contained in her notice of response which attached extensive documentation. I set out paragraphs 42 and following (a) – (v) accordingly:

42. In summary, mother's position is:
- a) there is a history within [Beckett]'s family of autoimmune diseases as mother has chronic fatigue syndrome;
 - b) mother had a reaction to the vaccine as a child which caused a distressing bout of screaming, which did not stop and mother was taken to the hospital as there was a concern that mother had injured herself in some way;
 - c) [Beckett]'s Maternal grandfather had a very serious adverse reaction to a smallpox vaccine where he got secondary smallpox and ended up in hospital with what was said to be heart-attack. It was the vaccine reaction. He was ill for some months;
 - d) [Beckett]'s Maternal grandmother has autoimmune diseases having been a long-term sufferer of colitis;
 - e) [Beckett]'s Maternal great grandfather had temporal arteritis and has polymyalgia (both autoimmune diseases);
 - f) [Beckett]'s Maternal Uncles have adverse reactions too, one has reactions mainly from exposure to any chemicals and the other has reactions that cause respiratory issues;
 - g) [Beckett]'s mother's [two relatives] in Australia have autism. The cause was not genetic and the Drs involved said that their health issues were linked to vaccination;
 - h) After [Beckett] had his previous vaccination he was extremely dozy and flushed, he was not his usual self. Eczema and digestive issues occurred. Mother sought treatment for [Beckett], discussed the possibility of any future vaccinations and enquired as to later issues that would affect him;
 - i) Mother has taken [Beckett] to doctors, a homoeopathist and a naturopath;
 - j) Mother contacted IMAC, the information and advisory Centre Healthline and was told that breastfeeding gives full immunity for measles, there is no current epidemic, two cases in [district deleted] (the area where mother and [Beckett] live) is nothing to be concerned about and that measles happens every year. [Beckett] is partially vaccinated, but not for measles, mumps or rubella. He has not had a test to show his current immunities;
 - k) Mother contacted IMAC, the information and advisory Centre Healthline, a second time to check consistency of the information provided and was told that breastfeeding may not give full immunity and there is no research available to support either way whether breastfeeding provides immunity from measles;
 - l) Charts provided show a 99% decrease in measles incidences or death before the measles vaccine was introduced;

- m) It is important to get all children tested with the MTHFR genetic test PRIOR to any vaccines – this simple saliva or blood pathology test is available from your GP or naturopath, and can let you know if your child has a reduced ability to detoxify chemicals (such as vaccine ingredients) or increased risk of nutrient deficiencies, which are a huge factor in vaccine damage or side-effects;
- n) That the rubella portion of the MMR vaccine can contain human derived foetal DNA contaminants of about 175ngs, more than 10x over the recommended WHO (World Health Organisation) threshold of 10 ng per vaccine dose;
- o) Major complications can incur as a result of vaccination;
- p) Woman who had recovered from wild-type measles (not the vaccine strain of measles) as children, passively transferred measles antibodies to a developing foetus when they were pregnant so newborns were protected from measles during the first year or more of life. Today, because most women have been vaccinated as children, they don't have the same kind of robust maternal measles antibodies to pass on to their newborns like mothers in past generations;
- q) Scientists in Australia reported in May 2019 there is evidence for waning measles immunity amongst vaccinated individuals that is associated with secondary vaccine failure and modified clinical illness with transmission potential. The impact of waning immunity to measles will likely become more apparent over the coming years, and may increase in the future, as a vaccinated population (with hardly any exposure to measles) will grow older and the time since vaccination increases;
- r) While the current vaccine is acknowledged as a good vaccine, it has been demonstrated that the immune response to measles vaccine vary substantially in actual field use. Multiple studies demonstrate that 2-10% of those immunised with two doses of measles vaccine failed to develop protective antibody levels, and that immunity can wane over time and result in infection (so-called "secondary vaccine failure");
- s) Vaccination replaces wild exposure with artificial exposure, and they are not equal;
- t) Since industry does not make a single measles vaccine available, that leaves just the controversial MMR that appears to not have any clinical trials. MMR contains fragmented foetal DNA in the rubella portion, which some find morally objectionable and others medically problematic because of the potential for autoimmunity and insertional mutagenesis;
- u) Some people should not get the MMR vaccine or should wait if they have a parent, brother or sister with a history of immune system problems;
- v) There have been [over 100] cases of measles in the [location 2] region in 2019, so 1 in 15,000 people. There are 2 cases in [district deleted] (where mother and [Beckett] live) since the start of 2019. The current

situation would be described as a “communitywide outbreak”. The Court directed an urgent hearing before me because of the current measles outbreak. The presiding Judge was concerned that the child might be at risk.

[9] Mother made an application for adjournment of the hearing which was declined. The hearing proceeded. I received written submissions from Mr Maclean together with further materials and I received further additional materials from mother. Mr Maclean in summary referred to the following additional materials in his submissions:

- (a) Case law relevant to the question of immunisation;
- (b) Text on the issue from the leading texts on Family Law;
- (c) A 2007 historical comparison of mortality and mortality for vaccine-preventative diseases in the United States;
- (d) World Health Organisation Childhood Immunisation booklet;
- (e) New Zealand Herald Article published;
- (f) A World Child My Health Book;
- (g) A 2015 Rebuttal of an article by Deisher.

[10] In her written submissions of 27 June 2019 she attached the following additional documents:

- (a) Attachment A – a true story that brought change to laws (Holly’s Law) regarding harm from MMR vaccine’s second doze entitled “The Antibody Titer Law (Holly’s Law) passed on January 14, 2004”.
- (b) A report alleging that five vaccines including the MMR have tested positive for being contaminated with glyphosate which the mother argued was a chemical in round-up and a known carcinogen. She alleged that the manufacturer had been sued for damages.

- (c) Information received from Merck as to clinical trials conducted by that company obtained through an OIA request. She attached Attachment C which was an overall assessment of MMR vaccine from an expert report of clinical documentation.
- (d) Attachment D confirmation that she had had her son tested to see whether he already had immunity for measles, mumps and rubella.
- (e) Attachment E – a letter from her doctor.
- (f) Attachment F was a reference to a case from the Supreme Court in Connecticut, USA allegedly stating that vaccination was not a medical procedure.

[11] The issue for determination therefore is whether the Court orders the child to have his MMR vaccination.

Role of the Court

[12] Mother made a submission that the Family Court was now a tool to make it mandatory by the use of the Care of Children Act to impose vaccination e.g. a child's welfare and best interests were equated with consent to medical procedures such as vaccination. This submission therefore requires assessment as to what the role of the Court is in disputes between parents relating to guardianship issues.

[13] Section 4 of the Act says as follows:

4 Child's welfare and best interests to be paramount

- (1) The welfare and best interests of a child in his or her particular circumstances must be the first and paramount consideration–
 - (a) in the administration and application of this Act, for example, in proceedings under this Act; and
 - (b) in any other proceedings involving the guardianship of, or the role of providing day-to-day care for, or contact with, a child.
- (2) Any person considering the welfare and best interests of a child in his or her particular circumstances–(a) must take into account–

- (i) the principle that decisions affecting the child should be made and implemented within a time frame that is appropriate to the child's sense of time; and
 - (ii) the principles in section 5; and
- (b) may take into account the conduct of the person who is seeking to have a role in the upbringing of the child to the extent that that conduct is relevant to the child's welfare and best interests.
- (3) It must not be presumed that the welfare and best interests of a child (of any age) require the child to be placed in the day-to-day care of a particular person because of that person's gender.
- (4) This section does not–
 - (a) limit section 6 or 83, or subpart 4 of Part 2; or
 - (b) prevent any person from taking into account other matters relevant to the child's welfare and best interests.

[14] The Court has to look at the particular child in his particular circumstances. The Family Court by making decisions on an individualised basis does set precedents which can over time have a more general effect. However it is not the role of the Court set by s 4 to make general pronouncements which apply to all children. However after a collection of cases over a number of years lawyers in advising clients of the likely outcome would be in a position to make a prediction. Section 5 of the Act sets the principles which assist in determining best interests and welfare and I set that out in full:

5 Principles relating to child's welfare and best interests

The principles relating to a child's welfare and best interests are that–

- (a) a child's safety must be protected and, in particular, a child must be protected from all forms of violence (as defined in section 3(2) to (5) of the Domestic Violence Act 1995) from all persons, including members of the child's family, family group, whanau, hapu, and iwi:
- (b) a child's care, development, and upbringing should be primarily the responsibility of his or her parents and guardians:
- (c) a child's care, development, and upbringing should be facilitated by ongoing consultation and co-operation between his or her parents, guardians, and any other person having a role in his or her care under a parenting or guardianship order:
- (d) a child should have continuity in his or her care, development, and upbringing:

- (e) a child should continue to have a relationship with both of his or her parents, and that a child's relationship with his or her family group, whanau, hapu, or iwi should be preserved and strengthened:
- (f) a child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.

[15] Section 5(a) is the applicable section. Mother regards the risks of a vaccination as outweighing any benefit and she considers that undertaking a vaccination against her wish is a breach of her rights or the child's rights. On the other hand father says that the risks to the child of not being immunised far outweigh the risks of a vaccination and therefore he strongly advocates for the vaccination to take place.

[16] Section 6 requires the Court to ascertain and take into account the child's views. The child in my view is not old enough to express an informed view about of issue of vaccination. For that reason I would not take any pro or anti view into account. Sections 15 and 16 determine what is a guardianship issue and the fact that guardians are required by law to consult each other on guardianship issues, cooperate in terms of trying to reach a decision and failing that make application to the Court to resolve the dispute. I see no evidence on the file of any prior consultation or cooperation between the parents and that is hardly surprising in view of the extensive litigation that has taken place between them.

[17] Mother argues a vaccination is not a medical procedure. She contends that the Family Court does not have a role in determining this issue. With respect I disagree.

[18] Section 15 says:

15 Guardianship defined

For the purposes of this Act,

Guardianship of a child means having (and therefore a guardian of the child has), in relation to the child,—

- (a) all duties, powers, rights, and responsibilities that a parent of the child has in relation to the upbringing of the child:
- (b) every duty, power, right, and responsibility that is vested in the guardian of a child by any enactment:

- (c) every duty, power, right, and responsibility that, immediately before the commencement, on 1 January 1970, of the Guardianship Act 1968, was vested in a sole guardian of a child by an enactment or rule of law.

Clearly vaccination is a responsibility of a parent and falls within the definition of a guardianship issue.

[19] Section 16 says:

16 Exercise of guardianship

- (1) The duties, powers, rights, and responsibilities of a guardian of a child include (without limitation) the guardian's—
 - (a) having the role of providing day-to-day care for the child (however, under section 26(5), no testamentary guardian of a child has that role just because of an appointment under section 26); and
 - (b) contributing to the child's intellectual, emotional, physical, social, cultural, and other personal development; and
 - (c) determining for or with the child, or helping the child to determine, questions about important matters affecting the child.
- (2) Important matters affecting the child include (without limitation)—
 - (a) the child's name (and any changes to it); and
 - (b) changes to the child's place of residence (including, without limitation, changes of that kind arising from travel by the child) that may affect the child's relationship with his or her parents and guardians; and
 - (c) medical treatment for the child (if that medical treatment is not routine in nature); and
 - (d) where, and how, the child is to be educated; and
 - (e) the child's culture, language, and religious denomination and practice.
- (3) A guardian of a child may exercise (or continue to exercise) the duties, powers, rights, and responsibilities of a guardian in relation to the child, whether or not the child lives with the guardian, unless a Court order provides otherwise.
- (4) Court order means a Court order made under any enactment; and includes, without limitation, a Court order that is made under this Act and embodies some or all of the terms of an agreement to which section 40(2) or section 41(2) applies.

- (5) However, in exercising (or continuing to exercise) the duties, powers, rights, and responsibilities of a guardian in relation to a child, a guardian of the child must act jointly (in particular, by consulting wherever practicable with the aim of securing agreement) with any other guardians of the child.
- (6) Subsection (5) does not apply to the exclusive responsibility for the child's day-to-day living arrangements of a guardian exercising the role of providing day-to-day care.

A vaccination falls within “medical treatment” and is not routine. Section 46R provides jurisdiction for the Court to resolve differences (as in this case) between guardians.

[20] I therefore find the Court has jurisdiction to determine the issue.

[21] In my view this is a case like many that have come before the Family Court about assessment of risk. Father relies on information he has been given by his general practitioner as published by the Ministry of Health and endorsed by District Health Boards. He has provided the booklet ‘Childhood Immunisation’ information for families of babies and young children published by the Ministry of Health, the health promotion agency, the New Zealand Government and under the heading MMR vaccine on page 21 it says as follows:

MMR vaccine

This immunisation protects your child against three diseases:

Measles, Mumps and Rubella. (Rubella is also known as German measles).

Children need the MMR immunisation when they are 15 months old.

They will need a second immunisation when they are 4 years old.

They need 2 MMR injections for protection.

The vaccine is given by injection in the arm or leg.

The three diseases

Measles is a very infectious virus. Before immunisation was introduced, nearly all children caught measles. Measles causes a rash, high fever, runny nose, cough and sore watery eyes. Severe cases can result in pneumonia, encephalitis (swelling in the brain), diarrhoea and rarely, death.

Mumps is caused by a virus and is spread through the air. Mumps causes fever, headache and swelling of the glands around the face. Mumps can also

cause meningitis and encephalitis, infertility among young men who get mumps is rare.

Rubella is usually a mild, viral illness. It causes a rash, fever and swollen glands in children. It is extremely dangerous for pregnant women because it can cause deafness, blindness and brain damage in an unborn baby.

How effective is the MMR vaccine?

Studies show that the MMR immunisation will protect more than 95% of people from measles, mumps and rubella if they have had both doses of the immunisation (at 15 months old and 4 years old).

A small number of people who are immunised may still become ill.

If that happens, they usually get a milder illness than people who have not been immunised.

Possible reactions to the MMR vaccine

Most children will not feel any effects from the immunisation but some (fewer than 1 in 10) may experience a mild response between 5 and 12 days after immunisation. The most common reactions include:

- mild fever
- rash
- unsettled (tiredness and crying)
- swollen glands.

If you are worried about your baby's reaction to an immunisation, talk to your doctor or nurse or call the free Healthline service on 0800 611 116 day or night.

[22] The booklet sets out the reasons for immunisations, what an immunisation is, why a baby needs immunisation which is set out on page 5 which says as follows:

What is immunisation?

Immunisation is one of the best ways to protect your child against many serious diseases. It works by using a vaccine to stimulate your baby's immune system.

When a germ like a virus or bacteria enters the body for the first time, the immune system takes time to produce special antibodies to fight that particular germ. During that time, a person may become unwell.

As the protective cells and antibodies are made, they destroy the germs and the person recovers. The immune system remembers the germ, for years or for life. If it enters the body again, the immune system can fight off the germ before the person becomes unwell.

Why does your baby need immunisation?

Babies are born with some passive immunity to certain infections because antibodies are passed on to them from their mother before birth. Breast-fed babies get additional antibodies from their mother's milk. However, this immunity does not last long. Babies and children need immunisation to provide ongoing protection from many life-threatening diseases.

Over a million people around the world die every year from diseases that can be prevented by immunisation. Most of these diseases have become rare in New Zealand thanks to immunisation programmes. Some diseases, such as whooping cough and pneumococcal disease are still common.

Many of the diseases that are now rare in New Zealand still exist in other countries and are brought into the country by travellers from time to time, for example, measles. Some diseases will always be present, such as tetanus, which is caused by bacterial that live in the soil.

The World Health Organisation and the Ministry of Health recommend that you immunise your children. Immunisation is your choice – please talk to your family doctor or nurse if you have any questions.

It also has information about how safety of vaccines is monitored in New Zealand and under the heading on page 10 says as follows:

How safe are vaccines?

Strict procedures are followed when vaccines are made to ensure they are safe. Before a vaccine can be approved for use, it is trialled extensively, sometimes with tens of thousands of people. These clinical trials with volunteers can take several years.

Throughout all of these processes, safety is monitored very closely.

Before a vaccine is approved for use in New Zealand, the manufacturer must demonstrate its safety and effectiveness to the satisfaction of Medsafe, a division of the Ministry of Health.

After a vaccine is introduced, its safety continues to be monitored for the duration of its use. The safety of vaccines is monitored internationally using many different methods.

How the safety of vaccines is monitored in New Zealand

In New Zealand, any reaction to a vaccine can be reported to the Centre for Adverse Reactions Monitoring (CARM) at the University of Otago, usually by your family doctor or nurse. If you are worried about your child's health after an immunisation, contact your doctor.

You can also report a suspected reaction to CARM by calling **(03) 479 7247** or reporting it online (www.otago.ac.nz/carm). The information provided to CARM by doctors, nurses and parents will assist in identifying those children who should receive follow-up immunisation in a controlled environment, such

as a hospital. Minor reactions such as mild fever, pain, or redness where the injection was given are usually not reported to CARM.

Any serious events may also be recorded on the National Immunisation Register (NIR).

In addition to this type of safety monitoring, there are ongoing studies that compare people who are vaccinated with people who are not vaccinated to ensure the vaccines we use are as safe as possible.

[23] The booklet then refers to a list of well-known diseases for which vaccination should be obtained.

[24] In New Zealand vaccination is recommended but is not compulsory. I am not aware of any cases in the criminal jurisdiction where parents have been charged for failing to provide necessities in the event of a child dying or becoming seriously unwell as a result of a diseases which was not vaccinated. The Government has taken a position that it is a decision for parents to make and it is clear that some parents are making a decision not to vaccinate or be selective in the vaccinations that they allow. The Family Court only has jurisdiction where parents cannot agree as in this case. I therefore disagree with mother's submission that the Court is an agent for the Government in having enforcement on a blanket policy basis. The Court cannot make decisions that apply to all children; only specific children who come before it in any particular case.

[25] As is in all cases my role as a Judge is to assess the evidence and make a decision based on a risk analysis. Every human being makes risk determinations on a daily basis. Mother in making a decision to transport her son by car, bus or train or other forms of transport makes a decision that the benefit of being transported in going from A to B outweighs the risk. No Judge could say that being transported in a car or in any other form of transport is without risk. Clearly there are instances where children are harmed in motor vehicle accidents. Decisions have to be made in that context as to whether the benefit outweighs the risk. Similarly decisions are made by people everyday about whether they play sport or engage in many other types of activities which involve risk, for example, a decision might be made by mother for her son to play football. Playing football has many benefits including team work, fun, fitness etc but it also carries risk with it of injury.

[26] Therefore in undertaking that risk analysis the Court has to assess the evidence that has been placed before it. Both parents (without criticism) rely on generalised information. Mr Maclean has referred me to a number of authorities where Judges have made decisions in the area of immunisation and so has Ms Schumacher in her written submissions. Both of them refer to the same cases and I set out the summary of the case law to date, paragraphs 19-40 inclusive.

19. Interestingly, in my research I did not come across any case law where a Judge determined a child should not get immunised. Indeed, all case law that I perused consistently made orders for children to be vaccinated. I attached 3 x cases to my report dated 16 June 2019, which I summarised as follows:

Capital and Coast District Health Board v DRB [2010] FAM-2010-085-00595

20. This case involved the Chief Executive of a District Health Board applying for a Guardianship Order placing a child under the Guardianship of the Court with the appointment of an agent, being a Dr, for the purposes of a particular child undergoing hepatitis B injections.
21. The mother of the child was a chronic carrier of the Hepatitis B virus. Evidence provided by a Dr within the Hearing was that there was a real risk that without “Baby B” having a vaccination and that immunoglobulin required, that Baby B will contract Hepatitis B from his mother.
22. Baby B’s mother did not consent to the vaccine being administered for religious reasons, her belief was that God will heal Baby B if he were to become unwell and medical intervention was not necessary.
23. His Honour Judge Whitehead stated that the Court must take into account the child’s best interests and welfare as paramount factors and His Honour quoted Justice Baragwanath:

The power of a parent as guardian includes decision making in relation to the child’s medical treatment. But the statute emphasises that the welfare and best interests of the child are the sole focus of the consideration by the court which may override parental rights. That does not however mean that the parents’ interests and wishes are of other than very great importance. There is a presumption that they will receive effect and to the extent that they do not receive complete effect they will be recognised as far as is possible, compatibly with the predominant interests of the child. That is because a child is not to be considered as a microcosm insulated from her parents but as far as practicable as part of the family of which she and they are the components.

24. A Guardianship Order was made placing Baby B under the Guardianship of the Family Court. An order appointing a specific

doctor was made to administer the hepatitis B vaccine before a specific date and to administer subsequent follow-up combination vaccinations at six weeks, three months and five months of age.

25. Baby B's mother was directed to present Baby B to the hospital on a specific day at a specific time. A warrant was issued which lay on the Court file in the event that mother failed to deliver baby B to the hospital.

Victor v Emmerson [2015] FAM-2012-004-003268

26. This case involves three children aged [between 8 and 15] years of age. Father applied for directions that he be authorised to have the children receive ongoing immunisations as they became due.
27. Mother informed the child's school and father that she did not consent to their son being given his Boostrix immunisation. Mother explained to the Court as a result of media attention regarding immunisation, she had changed from her previous support for routine immunisation to becoming more concerned about the safety of vaccines, in particular MMR (for measles, mumps and rubella). Mother preferred that the children make their own decisions at age 18. Mother had attached various internet sourced articles cautioning against immunisations within her documents.
28. Father obtained a professional opinion from two Drs being directors of the Immunisation Advisory Centre of the University of Auckland. They directly responded in unequivocal terms to the content of mother's affidavit. They detailed specific evidence in support of efficacy and safety of the New Zealand immunisation program and were critical of the non-scientific, anti-vaccination "propaganda" which mother referred to in her evidence.
29. His Honour Judge Druce noted that:
 - a) surprisingly, there appeared to be no New Zealand decisions directly on point;
 - b) objectively, the Ministry of Health report that some 94% of one-year-old children are fully immunised in accordance with the schedule and not less than 80% of all children complete their age-appropriate immunisations;
 - c) He was mindful of the possibility that immunisation for one child may be routine, while for another child may be a complex and non-routine decision.
30. His Honour Judge Druce noted that for the parties' son [aged under 12], there was no evidence of him having any significant physical or psychological sensitivity or reaction to his earlier vaccinations. Accordingly, the son had no compromised or vulnerable health state to consider.
31. His Honour Judge Druce designed a process to ensure the son's access to professional medical information and advice, so that the son could

be an active informed contributor to the decision, but father was given ultimate responsibility for making the final decision.

32. In respect to the parties' daughter [aged under 10], she was anxious and distressed in respect to the proposed immunisation. Her views were firmly opposed to the injection. Judge Druce identified that simply authorising father to have the parties' daughter immunised would, on its own, likely cause the daughter significant psychological distress. Accordingly, directions were made that:
- a) father attend with each of the children when they become due for immunisation for the purpose of them obtaining their own medical advice of the benefits and risks associated with the immunisation and then contributing their own views and feelings about the decision to their father;
 - b) father was authorised to then solely determine whether the children are immunised after taking the children's views and feelings into account.

Stone v Reader [2016] NZFC 6130

33. This case involved three children aged 12, 9 and 7 years of age. Father applied for directions in respect to schooling and immunisation.
34. Father's application was not specific as to the diseases he sought the children be immunised against, his Counsel submitted that the children receive immunisations recommended by the Ministry of Health.
35. Mother said the children have received homeopathic vaccination and are healthy and well, so not in need of vaccination as it was contrary to her belief in holistic healing and symbiotic living.
36. Both parties acknowledged a recent outbreak of an infectious disease in the Waikato District where the children were prevented from attending school if they had not been vaccinated to the school's satisfaction. Mother accepted that if a similar situation were to occur at any of the schools the children attend, homeopathic vaccination would not be considered adequate by the schools, so the children may be prevented from attending.
37. Her Honour Judge Otene considered that issues of safety, including protection from disease, must take priority over the continuity for which mother contended.
38. Although neither party placed before the court any medical or other expert evidence regarding the issue, Her Honour Judge Otene considered that she could take judicial notice of the fact that the government agency responsible for the management and development of the New Zealand health system recommends a schedule of vaccination for all New Zealanders based upon a body of medical evidence. On that basis, Her Honour Judge Otene ruled the best evidence before the court of protection of the children from disease is

by way of the Ministry of health recommended immunisation schedule.

39. When Her Honour Judge Otene took into account also the acknowledged possibility that if the children were not immunised they may be prevented from attending school, Her Honour was satisfied that it was in their welfare and best interests to be so immunised.
40. Orders were made for the children to be immunised in accordance with the Ministry of Health schedule of immunisation, unless their general practitioner advised that there is a specific contra-indication in relation to any particular immunisation for any child.

[27] I accept the submission made by Mr Maclean that there are no cases where vaccination has not been ordered. The Court on occasion has recorded a consent position.

[28] I find as follows:

- (a) The evidence from the Ministry of Health and applied by District Health Boards and the general preponderance of reputable medical opinion is in favour of vaccination including MMR on the basis that the benefits outweigh the risks.
- (b) Mother has not provided me with any medical evidence (other than general articles) for her son in his particular circumstances proving there are particular risks which outweigh the benefits of him receiving an MMR vaccination.
- (c) However to ensure that this particular child is assessed on an individualised basis I am going to call for a medical report under s 133 of the Act and have him specifically examined to determine the risk issues (if any). I set out the brief for the medical practitioner as follows.

[29] I therefore order a medical report pursuant to s 133 of the Care of Children Act from a specialist immunologist to provide an opinion to the Court on the following brief:

- (a) To assess whether the child has any specific risks/issues that should be taken into account;
- (b) Whether the child has any current immunity to the diseases MMR is designed to address;
- (c) To provide any assessment of likely benefits (if any) he would receive from vaccination with reference to appropriate research;
- (d) To provide the Court with an opinion as to whether the benefits of vaccination (if any) outweigh the risks with reference to any relevant research.’

[30] Normally I would require the parties to provide the specific medical evidence. However in this case I am satisfied there is no cooperation between them. The Court has to obtain the best evidence by a report.

Dated at Auckland this 5th day of June 2019 at

am/pm.

D A Burns
Family Court Judge