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IN THE YOUTH COURT
AT WAITAKERE

I TE KŌTI TAIOHI
KI WAITĀKERE

CRI-2021-290-000005
[2021] NZYC 251

NEW ZEALAND POLICE
Prosecutor

v

[JF]
Child

Hearing: 15 June 2021

Appearances: S O'Connor for the Prosecutor
G Presland Youth Advocate

Judgment: 16 June 2021

JUDGMENT OF JUDGE A J FITZGERALD

INTRODUCTION

[JF] and two courts

[1] [JF] is 13 years old. On his father's side his iwi is [iwi deleted] and on his mother's side [another iwi]. I will say more about [JF] soon but will begin by setting out briefly the background to this hearing and the purpose of it.

[2] When [JF] was 12 the police applied to the Family Court for a care and protection order on the grounds that the number, nature and magnitude of offending by [JF] caused serious concerns for his wellbeing.[1]

[3] A Family Group Conference ("FGC") held on 13 October 2020 agreed that those grounds were made out. On 27 October 2020, when sitting as a Family Court Judge, I was also satisfied that those grounds existed and so I approved a social work plan, made a care and protection order granting custody of [JF] to the Chief Executive of Oranga Tamariki[2] and directed that the plan be reviewed 6 months later.

[4] The review of that plan eventually took place before another Family Court Judge on 18 May 2021, who approved the new plan, continued the s 101 order, and directed the next review of the plan be on 10 August 2021. The plan approved that day consisted of these seven things:

(a) [JF] being placed with [Iwi Social Services] at [location deleted] for six to eight weeks;

(b) A new plan be made for [JF]'s next placement in consultation with him, his parents and his lawyer in the Family Court;

(c) Mum and Dad to engage with [a Trust] to explore and enhance their parenting and home environment and restore their tapu and mana.

(d) [JF] attend education every day.

(e) A neuropsychological assessment be completed to explore FASD, ADHD and conduct disorder (this was to be done by reference to the

[1] Oranga Tamariki Act 1989, s 14(1)(e).
[2] Section 101.

relevant youth justice provisions of the Act, not the care and protection ones).

(f) [JF] to receive mentoring support.

(g) A clothing grant be funded by Oranga Tamariki

[5] [JF] also now has six charges before the youth court which he has admitted committing between [December 2020] and [January 2021]; they are five for burglary and one for aggravated burglary.

[6] At a FGC held on 27 May 2021 [JF] admitted that offending and an agreement was reached on plans in relation to the Youth Court proceedings and also the Family Court proceedings. The following provisions of the plans are common to both:

(a) [JF] will live with his parents;

(b) His education will be provided by Te Kura Correspondence;

(c) [JF] and his whanau will receive therapy through the Dynamics of Whanaungatanga ("DOW") programme until they are ready to move on to Pae Whakatupuranga Functional Family Therapy to be delivered by the Marae based Māori therapist within Whiti ki te Ora.

(d) The Whiti Ki Te Ora programme at [Marae 1] Tikanga programme will be provided.

(e) Monitoring of the plan to be for 12 months in both courts; in the Youth Court, monitoring at the Marae, in the Family Court monitoring in the crossover list.

[7] These things are only in the Youth Court plan:

(a) Monitoring of [JF]'s progress at [Marae 2];

(b) [JF] will write 17 apology letters;

(c) He will be on bail which at the moment has a 24 hour curfew, prohibitions on driving, alcohol and any illegal drugs and paraphernalia, a long list of other children [JF] must not associate with and a requirement to obey instructions on supported bail.

[8] These things are only in the Family Court plan:

(a) Oranga Tamariki will provide financial assistance for sporting equipment for [JF], food and petrol vouchers for whanau.

(b) Psychological and cultural reports will be obtained – but, again, the provisions of the Act referred to are youth justice not care and protection ones. In any event, exactly the same reports can be obtained in the Family Court.

[9] When the matter came before me in the Youth Court on 1 June 2021 I questioned the intention of running the almost identical plans in different courts before different judges and different lawyers but for essentially the same thing; concerns about [JF]'s offending. I pointed out that the bail conditions sought in the Youth Court can also be made in the Family Court; that apology letters can be provided in either court as can the financial assistance and the psychological and cultural reports; there are identical provisions for such things in both the care and protection and youth justice parts of the Oranga Tamariki Act 1989 ("the Act").

[10] There are only two things the Family Court cannot offer. One is monitoring at [marae 2] but, in that regard, both plans involve engagement with the Marae and the plans share the same other cultural provisions.

[11] The other thing, and the reason for the proposal to keep running parallel proceedings in the two courts for twelve months, is the police desire to retain powers of arrest and detention in the Youth Court so that if [JF] misbehaves they can exercise such powers. The essential issue therefore is whether that is appropriate. It is an issue that has also arisen in four other cases that I have presided over recently in the Auckland and Waitakere Youth Courts.

[12] [JF]'s situation is slightly different to the other four in that he already had pre-existing Family Court care and protection proceedings based on past offending when the newer charges were laid in the Youth Court. However, in several respects the same issues that exist in the other cases need to be considered here.

[13] Before returning to say more about to [JF]'s case specifically, I will set out my views as to the relevant law that is common to all 5 cases.

CHILDREN WHO COME TO THE ATTENTION OF POLICE

The age of criminal responsibility.

[14] The age of criminal responsibility in New Zealand is 10, but 10 and 11 year olds can only be charged with murder or manslaughter.

[15] Until 2010, the only way 12 and 13 year old children accused of offending could be dealt with by a court was for the police to apply to the Family Court to have the case dealt with as a care and protection issue under Part 2 of the Act.

[16] Amendments to the Act in 2010 enabled the police to charge and bring some 12 and 13 year old children before the Youth Court, under part 4 of the Act, but only those facing a charge carrying a maximum penalty of 14 or more years imprisonment[3] or a child who is a previous offender.[4]

The pushback

[17] However, if a 12 or 13 year old child is charged and brought before the Youth Court, the Act enables the Court to refer the matter back to the prosecutor to consider making an application to the Family Court to have the case dealt with on a care and protection basis rather that continuing with it as a criminal proceeding before the Youth Court.[5] The ability for the Court to refer the matter back to the prosecutor in that way is referred to as "the pushback."

[18] When the pushback is exercised, the Court is able at any time to discharge the charge under s 282 of the Act[6] but, importantly, if not discharged earlier the charge is deemed discharged when the prosecutor's application first comes before a Family

[3] Section 272(1)(a).
[4] Section 272(1)(c) and (1A).
[5] Section 280A(2).
[6] Section 282. This is a complete and unconditional discharge; the charge is deemed never to have been laid.

Court Judge.[7] That deeming provision provides the Court with no residual discretion. It is very clear that Parliament intended that the matter either be in the Youth Court or in the Family Court, rather than both simultaneously; the scheme of the Act did not contemplate child offenders being dealt with in two different courts at once for essentially the same thing.

[19] In [JF]'s case, it would make much more sense to bring his matters together in one unified plan with one judge, one lawyer one social worker involved. That can and should be done in the Family Court. I challenge the view that the police can or should be able to hold onto powers to arrest and detain [JF] especially given how well he is now doing, and has been for some time.

Youth justice principles

[20] One of the most significant features of the youth justice principles of the Act is the emphasis on not instituting criminal proceedings against a child if there is an alternative way of dealing with the matter.[8] Another is that such proceedings not be instituted in order to provide any assistance or service needed to advance the well-being of the child or whanau, hapu and iwi.[9]

[21] As a result of those principles, approximately 80 percent of young people who come to police attention are not charged and brought to court. The percentage is likely to be similar for children. Instead they are dealt with in the community by the police taking alternative action. The Youth Court therefore only tends to deal with very serious offending or repeat offending that is serious enough to justify court involvement.

[22] It follows therefore, in my view, that Youth Court proceedings should not normally remain before that court when there is an alternative way of dealing with the matter and should never continue in order to provide assistance or services needed to advance wellbeing.

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[7] Section 280A(3).
[8] Section 208(2)(a).
[9] Section 208(2)(b).

[23] The statutory scheme is very clear; the combined effect of what Parliament has provided when the power to pushback is exercised, and the first two youth justice principles I have mentioned, count strongly against starting or continuing Youth Court involvement when the alternative option in the Family Court is available and on foot.

[24] Indeed, the plans provided for the two Courts here are almost identical and largely focused on well-being issues. The requirement to provide apology letters can be monitored in either court. There is nothing in the plan specifically to address accountability. Bail-like conditions can be provided for in either court but only those in the Youth Court come with the power for the police to arrest and detain [JF] if he misbehaves.

Children's rights

[25] The statutory scheme I have described is consistent with the rights each of these children have been guaranteed under the United Nations Convention on the Rights of the Child ("the CRC")[10] which strongly favour not using criminal justice processes. The amendments to the Act that came into force on 1 July 2019 require that such rights must be respected and upheld[11] which should mean what it says. In the present context, Article 40 of the CRC is especially relevant.

[26] On 18 September 2019 the UN issued its latest general comment on children's rights in the child justice system ("the UNGC")[12]. General Comments are issued from time to time by the UN to give guidance to member nations, such as ours, on the approach we should be taking to respect and uphold children's rights under the CRC. The previous one was in 2007 and so it was especially helpful that the latest UNGC came out so soon after the latest amendments to the Act.

[27] The introduction to the latest UNGC includes the following:

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[10] United Nations Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990) [CRC].
[11] Section 5(1)(b)(i).
[12] *Committee on the Rights of the Child General comment No. 24 (2019) on children's rights in the child justice system* UN Doc CRC/C/GC/24 (18 September 2019).

> 2. Children differ from adults in the physical and psychological development. Such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualized approach. Exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults.
>
> 3. The committee acknowledges that the preservation of public safety is a legitimate aim of the justice system, including the child justice system. However, States parties should serve this aim subject to their obligations to respect and implement the principles of child justice as enshrined in the Convention on the rights of the child. As the Convention clearly states in Article 40, every child alleged as, accused of or recognised as having infringed criminal law should always be treated in a manner consistent with the promotion of the child's sense of dignity and worth. Evidence shows that the prevalence of crime committed by children tends to decrease after the adoption of systems in line with these principles.

[28] Further on, under the heading "**Age and Child Justice Systems; minimum age of criminal responsibility**" are the following comments:

> 21. Under article 40(3) of the Convention, States parties are required to establish a minimum age of criminal responsibility, but the article does not specify the age. Over 50 States parties have raised the minimum age following ratification of the Convention, and the most common minimum age of criminal responsibility internationally is 14. …
>
> 22. Documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or comprehend criminal proceedings. They are also affected by their entry into adolescence. As the committee notes in its general comment No. 20 (2016) on the implementation of the rights of the child during adolescence, adolescence is a unique defining stage of human development characterised by rapid brain development, and this affects risk taking, certain kinds of decision making and their ability to control impulses. States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision making. Therefore, the committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with Article 41 of the Convention.

[29] Another theme in the UNGC that is related to this, is promoting the use of diversion with regard to Article 40.

> 13. Under Article 40(3)(b) of the Convention, States parties are required to promote the establishment of measures for dealing with children without resorting to judicial proceedings, whenever appropriate. In practice, the measures generally fall into two categories;

(a) Measures for referring children away from the judicial system, any time prior to or during the relevant proceedings (diversion);

(b) Measures in the context of judicial proceedings.

14. The Committee reminds States parties that, in applying measures under both categories of intervention, utmost care should be taken to ensure that the child's human rights and legal safeguards are fully respected and protected.

Interventions that avoid resorting to judicial proceedings

15 Measures dealing with children that avoid resorting to judicial proceedings have been introduced into many systems around the world and are generally referred to as diversion. Diversion involves referral of matters away from the formal criminal justice system, usually to programmes or activities. In addition to avoiding stigmatisation and criminal records, this approach yields good results for children, is congruent with public safety and has proved to be cost effective.

16 Diversion should be the preferred manner of dealing with children in the majority of cases. States Parties should continually extend the range of offences for which diversion is possible, including serious offences where appropriate. Opportunities for diversion should be available from as early as possible after contact with the system, and at various stages throughout the process.

[30] Also potentially relevant in [JF]'s case is the following, given that it is believed he might have FASD:

Children lacking criminal responsibility for reasons related to developmental delays or neurodevelopment disorders or abilities.

28. Children with developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, fetal alcohol spectrum disorders or acquired brain injuries) should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility. If not automatically excluded, such children should be individually assessed.

[31] From this we can draw at least the following:

(a) If [JF]'s rights under the CRC are respected and upheld, he would not remain before the Youth Court with a criminal justice approach taken to this case which has been demonstrated to cause harm to children especially when he has an almost identical plan on foot in the Family Court.

(b) Evidence shows that risk of offending tends to decrease when alternative approaches (to a criminal justice one) are adopted.

(c) By virtue of his age alone, [JF] is vulnerable given his frontal cortex is still developing and the possibility he has FASD potentially adds another layer of vulnerability potentially.

(d) We should be looking to divert children away from court processes wherever possible, even for serious offending where appropriate.

(e) The interests of public safety are better served by adopting such an approach. In fact, if [JF] has FASD the use of powers of arrest and detention and other punitive aspects of the youth justice processes is only likely to make things worse not better.

[32] Given the statutory scheme, the requirement to respect and uphold [JF]'s rights under the CRC and the UN's guidance on how we should be doing that, and the extant Family Court proceedings which are also based on concern for his offending, and in which there is an almost identical plan, there is no justification for continuing parallel Youth Court proceedings.

THE CARE AND PROTECTION AND YOUTH JUSTICE INTERFACE

Crossover kids

[33] Children and young people caught up in both the care and protection youth justice and systems are often referred to as "crossover kids". In a decision last year, *Police/Oranga Tamariki* v [*LV*], I explained that a subset of that group are those who have dual status; that is, charges before the Youth Court as well as care and protection proceedings before the Family Court which signifies high level care and protection concerns.[13]

[13] *Police/Oranga Tamariki* v [*LV*] [2020] NZYC 117 at [11]

[34] For reasons I have just given, 12 and 13 year old children who can come before both courts on account of offending, are not and should not be dual status in relation to the very same thing they have been brought to court for by the police. To do so, especially if it is just for the purpose of using powers of arrest and detention, is another form of the criminalisation of care and protection I referred to in [*LV*].[14]

[35] Twelve and 13 year old "child offenders" are a unique category of the crossover and are the quintessential embodiment of the interface between the youth justice and care and protection provisions of the Act. This is evident in various ways, for example;

(a) If they are brought before the Family Court for alleged offending, any hearing of the allegations is essentially a criminal trial in all respects including the application of the criminal standard of proof beyond reasonable doubt.[15] Any FGC directed regarding them must be convened by a youth justice coordinator rather than a care and protection one.[16] Bail-like conditions can be imposed such as place of residence, requiring engagement in educational, cultural, recreational or other programmes, non-association with specified people and such other conditions the court thinks fit to reduce the likelihood of further offending such as a curfew.[17] In addition to the standard disposition orders that are available in all care and protection cases including to come up it called upon, there are specific orders provided for child offenders such as admonishment, reparation for emotional harm or loss or damage to property, return of property and forfeiture to the Crown.[18]

(b) On the other hand, if a child is brought before the Youth Court there is the ability to use the pushback referred to already. While in the Youth Court there is the ability to refer the matter to a youth justice FGC co-ordinator for the pushback issue to be considered. There is also the ability to direct a youth justice FGC and urge the FGC to receive

[14] See at [104] to [115].
[15] Section 198.
[16] Section 18(3) and 247(a).
[17] Sections 91, 92 and 96.
[18] Sections 83 and 84.

information and advice on care and protection matters and make or formulate decisions, recommendations and plans.[19]

[36] As I will explain shortly there has always been a very clear interface between the care and protection and the youth justice parts of the Act but in practice that has never been properly implemented in practice to the very great cost of many children and young people who are the subject of proceedings. As was mentioned in [*LV*] in the context of crossover and dual status kids generally, this deeply entrenched practice of keeping care and protection and youth justice completely separate comes at a high cost to the children and young people concerned.

[37] However, it is 12 and 13 year old "child offenders" such as [JF] who straddle both parts of the Act, who, in particular require a well-co-ordinated response but do not get it as these cases illustrate. As if their vulnerability alone is not reason enough to ensure that occurs, there is another reason that demands it.

Prevalence

[38] From 2014/15 to 2019/20, **97%** of the 12 and 13 year old children referred for a youth justice FGC had been the subject of reports of concern to Oranga Tamariki regarding their care and protection.[20] (Emphasis added)

[39] This is an especially vulnerable group; the trauma they have experienced as a result of the abuse, ill-treatment and neglect they have suffered is unquestionably a factor influencing the behaviours that have brought them to police attention. Some of that behaviour is very serious and not only raises concerns regarding their well-being but also public safety concerns. Parliament has clearly had these important and sometimes competing priorities in mind when drafting the relevant provisions of the Oranga Tamariki Act.

[40] Like the rest of the 97%, [JF] does not experience the things that have brought him into the youth justice system, and those things that brought him into the care and

[19] Section 261.
[20] *Youth Justice Indicators Summary Report* (Ministry of Justice, December 2020) at 6.

protection system as two separate things and nor do his whānau. Those causes are all rolled up in his life together and need a well-coordinated comprehensive response in line with the provisions of the Act. As I will explain in more detail soon, he is a child with high and complex needs that his parents have been struggling to meet. As he has grown older that struggle has become harder and his troublesome behaviour has led to the police involvement. So, what happens when he is drawn into the court system?

Nonsense

[41] [JF] and his whānau have been drawn into an uncoordinated, dysfunctional process involving an unnecessary, inappropriate doubling up of professionals which is nonsense; it simply makes no sense.

[42] How can it possibly be sensible that [JF] and his whānau keep coming before different judges in different courts on different days with different lawyers but almost identical plans for exactly the same reason? The answer is deeply imbedded practice on the part of everyone exercising powers under the Act which is based on an erroneous interpretation of the Act that has endured for over thirty years now.

[43] Since the Act came into force in 1989 there has been a view taken by many that the care and protection and youth justice parts of the Act are utterly separate with no interface at all. There are many disturbing consequences of this attitude in practice. One is care and protection involvement ending when a young person enters the youth justice system with the shocking consequences I described in [*LV*].[21] There are many more that are just as disturbing but need not be detailed here.

[21] See at [107] – [115].

What is happening to [JF] and his whānau here is another example of that mindset; not just on the part of the police but clearly everyone else exercising powers given how far through the process this case has managed to get. The checks and balances built into the Act to avoid this sort of thing happening have failed because everyone has bought into the process.

Crossover lists

[44] It is important to mention that the opportunity was available in every one of the five cases I have mentioned because the Waitakere and Auckland Youth Courts both have "crossover lists" that enable the co-ordination of all crossover cases including children whether they are brought before the Youth Court under s 272 or to the Family Court relying in s 14(1)(e). For 10 years in Auckland there has been one day every fortnight for such work and in Waitakere one day a month for about eight years. However, for those lists to provide the much-needed coordination required for a case like [JF]'s, everyone involved needs to be willing to support them and that is not consistently the case. For whatever reason it did not happen in these 5 cases.

Two parts of one Act

[45] It is of great significance that the Act governs the youth justice system, the youth courts place in it as well as the law governing children in need of care and protection. That is not accidental and is very important

[46] Both parts of the Act share the same general purposes and principles[22] which, amongst other things, includes seeing children holistically.[23] The duties on Judges and lawyers to explain what is going on to children and others, and to encourage children's participation is the same.[24] The characteristics and qualities required of Judges, lawyers and others to work in the Courts are the same. The type of court the Act describes is much the same. The centrally important function of the FGC is the same. Both parts of the Act have almost identical provisions for such things as the

[22] Sections 4 – 5.
[23] Sections 5(1)(b)(vi).
[24] Section 5(1)(a).

appointment of Lay Advocates,[25] obtaining specialist reports[26] and cultural and community reports.[27] There are then numerous provisions that provide a very clear interface between the two parts. For example, reporting and notifications of concern[28] FGC's to deal with both youth justice and care and protection issues and make recommendations and plans[29] and FGCs to consider the exercise of the pushback.[30]

[47] There is something else of enormous importance that the two parts share and that is the children and young people themselves. I have already explained that 97% of the children are "crossover kids." For 14, 15, 16 and 17 year olds, the percentage is 88.[31] Across all ages therefore the percentage is 92.5%; that is more than nine out of every 10 children and young people entering the youth justice system! But because of the practice that care and protection and youth justice are separate parts we end up with perverse outcomes like the one we have here for [JF] and his whānau.

THE WAY FORWARD

[JF] and one court

[48] I think that from now on there should just be one judge in one court, and that should be the Family Court, with one lawyer and one social worker for [JF] and his whanau and a comprehensive plan. In that regard I acknowledge that a lot of hard work has been done to create the existing plans and I pay my respects to all concerned for that. The awesome progress [JF] is making is no doubt as a result and a reward for those efforts. That includes [iwi] social services who have been very much involved.

[49] I am largely satisfied that the plans are in compliance with the relevant provisions of the Act. As indicated my concern is primarily the need to co-ordinate and simplify what is going on here for [JF] and his whānau by bringing it together in one court.

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[25] Sections 163 and 326.
[26] Sections 178 and 333.
[27] Sections 187 and 336.
[28] Sections 15, 17, 18, 19 and 280.
[29] Sections 260 and 261.
[30] Section 280A.
[31] *Youth Justice Indicators Summary Report* (Ministry of Justice, December 2020) at 6.

Section 7AA and te Tiriti o Waitangi

[50] As well as the relevant provisions of the Act, and articles of the CRC, it is also important that in all cases concerning tamariki, a practical commitment to te Tiriti be demonstrated in a real and meaningful way. Although that duty is primarily imposed on the Chief executive of Oranga Tamariki under s 7AA I think all of us who exercise power under the Act have it in the forefront of our minds. Lawyers and judges for example should be checking plans for compliance, and if it is believed that the Chief Executive has not adequately discharged his duty in this respect, the opportunity to talk that through to find a solution should occur.

[51] It is important too that s 7AA requires that the commitment to the principles of te Tiriti be practical. It must actually mean something real in the lives of the children concerned and their whānau, hapū and iwi.

[52] In its recent report, the Waitangi Tribunal said the following in relation to this important principle:[32]

> Active protection requires a clear understanding of what the guarantee of tino rangatiratanga over kainga means, and careful consideration of what would now promote its maintenance and restoration. Active protection means recognising that Māori parents struggling in poverty have an early right as citizens to meet their children's needs as to the better often society. Active protection means recognising that the vast majority of whānau in contact with Oranga Tamariki are not out to harm their tamariki, but they may have ongoing needs that place stress on the whānau. These included factors such as poverty, poor housing, poor mental health, substance abuse, intermediate partner violence, or children with high needs. Growing in a quality and the disparities in child protection, education, justice, and health that result are not the inevitable outcomes of individual choice. They are substantially the outcomes of legislation, policy, and economic settings about which a society has choices. Active protection requires substantive changes design to address these structural conditions.
>
> Active protection does not mean intervening forcefully in the lives of whānau only when the accumulative effect of stress meets the threshold for State rescue of a child or children. Active protection certainly does not mean intervening forcefully in the lives of whānau in ways that are arbitrary or inconsistent, all the result of poor practice, or reflect institutional or personal racism.

[53] Those comments are especially relevant here. [JF] is one of 14 tamariki of his mother and one of seven of his father. From a young age [JF] was exposed to severe

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[32] Waitangi Tribunal *He Pāharakeke, He Rito Whakakīkingi Whāuarua Oranga Tamariki Urgent Enquiry* (Wai 2915,2021) at 20.

family violence which resulted in many police call-outs. Alcohol abuse fuelled the problems in the home where he was also exposed to poor and anti-social attitudes.

[54] [JF]'s mother grew up in the welfare system, spent time in residences, was moved about many times and is referred to in one report as having been institutionalised. Not surprisingly these experiences have coloured her views about organisations such as Oranga Tamariki and probably the court. Her experiences at the hands of "the system" have also affected her relationship with members of her paternal whānau who she does not want involved in these proceedings concerning [JF]. Throughout her life she has suffered severe abuse and trauma and has recently experienced the tragic loss of a [child]. She will be carrying an enormous amount of unresolved grief as a result of her life experiences. Obviously, these immense huge pressures come on top of the stresses of poverty and overcrowding in the home and the difficulties managing [JF]'s challenging behaviour.

[55] During 2019, 2020 and into 2021 [JF] has not been enrolled in school. When he was last going to school, truancy was a big problem. However, when he was there he had an outlet for his sporting talents and he has been described as having leadership skills. Having nothing else available to engage his time, energy and talent, he has been hanging out with others in a similar situation and inevitably getting into trouble.

[56] However, the recent reports about his effort and progress are very positive. The poster he created, entitled "[JF]'s Path Plan" is extraordinarily good both for its artistic quality (it is quite exceptional!) but also for what it tells me about [JF]'s intelligence, his insights and wonderful goals for the future. All of these things I have mentioned reinforce my strong view that the coordinated way forward for [JF] should be in the Family Court only.

[57] It is believed [JF] has FASD and ADHD, but assessments have not yet been completed. Everyone recognises the importance of that happening to inform future planning and the supports and services required. I agree this is essential. Apart from anything else we have the concerns the police raise about [JF]'s past non-compliance and their desire to keep responding to that by arresting and detaining him. If [JF] has FASD then that is the worst way to respond to the problem because the literature is

clear and consistent that such punitive approaches not only do not work, they will make things worse not better. It is in the public interest for us to gather the necessary information and respond in ways that will manage the problem and reduce the risks of them continuing.

RESULT

[58] Following discussions earlier today I made the following orders and directions:

Orders and directions

[59] I will now adjourn these proceedings to the crossover list on 13 July 2021 at 12.15. The Family Court proceedings will be brought forward to that date, at the same time.

[60] I am directing a FGC under s 280A(5) to enable the participants to consider the pushback and the option of the charges in the Youth Court being, in effect, now incorporated in the Family Court plan which might need updating.

[61] My intention is to discharge the charges in the Youth Court under s 282 but agree that I should allow these issues to be considered at a FGC with my views being available to everyone present.

[62] In the meantime, the current orders in both proceedings continue. That is still a s 78 order in the Family Court proceedings.

_____
Judge AJ Fitzgerald
Youth Court and Family Court Judge

Date of authentication: 16/06/2021
In an electronic form, authenticated electronically.