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<http://www.legislation.govt.nz/act/public/1989/0024/latest/DLM155054.html>

**IN THE YOUTH COURT
AT WHANGAREI**

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

**CRI-2019-290-000223
[2021] NZYC 59**

**NEW ZEALAND POLICE
Prosecutor**

v

**[KA]
Young Person**

Hearing: 11 February 2021

Appearances: Senior Constable R Stevens for the Prosecutor
S Russell for the Defendant

Judgment: 11 February 2021

MINUTE OF JUDGE G L DAVIS

[1] I have before me [KA]. [KA] has not denied an arson charge that occurred in [the first location] in [late] 2019. The general background can be described as [KA] and another young person going to an address in [the first location], they got into the property through the rear door, they began playing with lighters and aerosol cans near the bathroom. A towel was set alight and it was temporarily put out. The fire later reignited and spread into the roof cavity. [KA] and his mate went to a dwelling on the rear of the property, they continued playing with the fire using the lighter and meths; at the entranceway of the dwelling another fire started. It was put out but some of the property in the cavity beneath the floorboards also caught alight and the house eventually caught on fire. So those are the facts that I have to proceed on to date.

[2] [KA] was bailed to his [parent]'s address up in [the second location]. A family group conference was held and matters were proceeding towards disposal. While the family group conference was held in June 2020, had a number of components to it, a 333 report was completed; it made recommendations about a range of counselling that [KA] required.

[3] Regrettably, in about December 2020 [KA]'s placement with his [parent] broke down. They have since moved from [the second location] in the north to [the third location]. [KA] is now living with his [relative, TK,] in [the fourth location] and that is going very well, I am told. I have a letter here written by [KA] himself that says how well things are going. He will be attending [a local High school] when school starts, if he is not already. There might be a couple of things that might need to be tidied up to get him into [the High school].

[4] He will be playing [sport] for [a club] this year and I spoke with [KA] about some of the famous [sports players] from the [club], including [two famous sports players] and I asked [KA] whether I should be noting in my diary, 10 years' time, that I will be looking for [KA], [sports player]. He smiled and nodded yes, so I will be doing that in my computer when I get back to my chambers.

[5] Mr Russell has asked that [KA]’s matters be disposed of today by way of a 282 discharge and for reasons that are apparent I am not prepared to do that today. That is not to say that a 282 discharge will not, in the fullness of time, be warranted. I am more concerned about [KA]’s living arrangements.

[6] I have heard today from [KA]’s [relative TK]. She seems to me to be a very, very good woman but there are four children, [TK] and her partner living at the address in [the fourth location]. I am told the sleeping arrangements are broadly, [KA] and his [relative] in one room, [TK]’s daughter in another room and then two other young children, [TK] and, I assume, her partner in [TK]’s bedroom. That might work today but I question whether or not it will work in the long-term.

[7] The provisions of s 4, 4A, 5, 6, 7AA of the Oranga Tamariki Act 1989, in my view, are triggered here. There does not appear to me to be any care and protection issues here but the Act requires all persons exercising powers and functions under the Act to look through a lens that enhances mana tamaiti, and a young person’s well-being, and the relationship of the young person, his whānau, his hapū and his iwi.

[8] While some of these concepts are largely undefined what we are talking about here, in my view, at its simplest, is we are talking about people. We are talking about living arrangements and we are talking about practical ways in which these living arrangements can be made to work now, and in the long-term. I take my hat off to [TK] and thank her and her whānau for stepping up when [KA] needed somewhere to be living and to be bailed to. But often short-term solutions create longer term problems and I want to make sure we avoid all of that by using the Act to look through a human lens. How can we make this bail arrangement, how can we make this living arrangement work long-term?

[9] [KA] will require school uniforms, he will require kai, he will require somewhere to live, to do his homework and I want to make sure that those are all not additional pressures that are put on the household for [TK]. I have no preconceived idea as to what that might look like, so I am going to transfer this file down to [the fourth location] today because that is where the whānau are living and they have

travelled all the way from [the fourth location] today to be at court, as they did in December and possibly even January of this year.

[10] The Oranga Tamariki Act has specific purposes set out in section 4, including but not limited to promoting the well-being of children, young persons, and their families, whānau, hapū, iwi, and family groups through establishing, promoting and co-ordinating services that:

- are designed to affirm mana tamaiti (tamariki), are centred on children's and young persons' rights, promote their best interests, advance their well-being, address their needs, and provide for their participation in decision making that affects them;
- advance positive long-term health, educational, social, economic, or other outcomes for children and young persons;
- are culturally appropriate and competently provided;
- support and protect children and young persons to prevent them suffering harm, abuse, neglect, ill treatment or deprivation, or by responding to those things;
- assisting families, whanau, hapū, iwi or family groups to prevent their children and young persons to prevent them suffering harm, abuse, neglect, ill treatment or deprivation, or by responding to those things;
- assisting families and whānau, hapū, iwi, and family groups, at the earliest opportunity, to fulfil their responsibility to meet the needs of their children and young persons (including their developmental needs, and the need for a safe, stable, and loving home);
- ensuring where children and young persons require care under the Act they have a safe, stable, and loving home from the earliest opportunity and support to address those needs;

- providing a practical commitment to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

[11] The Act has as part of its principles the notion that the well-being of a child or young person must be at the centre of decision making that affects that child or young person, and, in particular:

- the child's or young person's need for a safe, stable and loving home should be addressed¹; and
- a holistic approach should be taken that sees the child or young person as a whole person².

[12] These principles are mandatory. Any court that, or person who, exercises any power under the Act **must** be guided by the principles.

[13] Further to these provisions s 5(1)(d) of the Act recognises the place of a child or young person within the community and in particular how a decision affects the stability of a child or young person. The section requires the impact of disruption on a child or young persons stability to be considered.

[14] The United Nations Convention on the Rights of the Child ("UNCROC") and Te Tiriti o Waitangi need to be paid more attention than mere lip service. The Act, Te Tiriti and UNCROC provide the framework for quality decisions to be made by [KA], for [KA]. The practice decisions made by social workers, submissions made by lawyers and Police, and decisions and directions made by judges are the mechanisms by which life will be breathed into the provisions of the Act, Te Tiriti and UNCROC. These practice decisions, submissions and judicial decisions and directions must be made with [KA] and with his whanau, hapū and iwi, not for [KA], his whanau, hapū and iwi.

¹ Oranga Tamariki Act 1989, s 5(1)(b)(iii).

² Oranga Tamariki Act 1989, s 5(1)(b)(vi).

[15] What is also important though is rather than convene another FGC I am inviting a new lay advocate to be assigned and an experienced youth advocate assigned in [the fourth location]. I am directing a professionals meeting with the police, Oranga Tamariki, the lawyers and, most importantly, with [TK] and the whānau as well so that a plan can be put together to make the bail arrangements work for the long term or the duration of the time that [KA] is likely to be living with his [relative] and the whānau and attending school. Those are critical components of any plan.

[16] The referral to Te Roopu Kimiora up north did not take place but I am told that Te Roopu Kimiora, the youth forensics and drug and alcohol service in the north, made an internal referral to the [the fourth location] equivalent and that is all under way. I am also told that there is an open care and protection investigation within Oranga Tamariki, not as a result of anything that has occurred at [TK]'s address but rather as a result of other matters. I do not see it being a care and protection matter at the moment.

[17] What is required is the youth justice lens to look at matters broadly to assist this whānau to achieve the tino rangatiratanga within their own house, that is what is contemplated by Te Tiriti o Waitangi, that is specifically mentioned in the Act, it is what is contemplated by the UNCROC. These are minimum standards that all children and young people can expect in New Zealand. So, with a mana enhancing lens and set of glasses on I am sure there can be great outcomes here for [KA] and his whānau.

[18] [TK], [KA], thank you for coming all the way from [the fourth location] up north today. I am going to take off all your bail conditions. No more bail conditions. You will be remanded at large, that is a legal term. I am noting on the file that your community work that was to have been done as part of the plan, that has all been done with the work that you have done on [the parent]'s house out in [the second location] so to really just be a matter of getting those counselling referrals through Te Roopu Kimiora and any other ones that need to be done, tidied up and under way.

[19] The next date is going to be in the [location deleted] Youth Court [in several months' time] I will be speaking to the judge about your case to make sure she keeps an eye on it and keeps me in the loop about two things, (1) how the placement is going

and how the plan's going and (2) how the [club] under 15s are going as well. I am also directing that the 333 report be released to [TK] but I just signal to her it is not to be shown to anybody else.

Judge GL Davis
District Court Judge

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