

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

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**IN THE FAMILY COURT
AT MASTERTON**

**I TE KŌTI WHĀNAU
KI WHAKAORIORI**

**FAM-2022-035-000019
[2022] NZFC 2045**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[PAIGE CHADWICK] Applicant
AND	[GABRIEL WALTON] Respondent

Hearing: 8 March 2022

Appearances: C Batt for the Applicant
Respondent appears in Person (via AVL)
G Freeman as Lawyer for the Children (via AVL)

Judgment: 8 March 2022

ORAL JUDGMENT OF JUDGE A R McLEOD

[1] These are Care of Children Act 2004 proceedings in relation to two young people, [Anna Walton], born on [date deleted] 2007 who is 14, nearly 15 years old and [Jacob Walton], born on [date deleted] 2009 who is just over 12 years of age.

[2] Appearing in court today is Ms Batt as counsel for the children's mother, Ms [Chadwick]. Ms [Chadwick] is also in court today. Ms Batt is accompanied by

Ms Herbert who is awaiting admission to the bar, so she has come along to observe court today. Ms Freeman attends today by way of visual VMR. Ms Freeman is the lawyer for these two young people. Mr [Walton] who is the children's father is attending this hearing by way of teleconference today.

[3] This is the second set of proceedings in relation to these children. As a consequence of earlier proceedings there is a parenting order in place that was made on 3 November 2020. That order provides for the children to be in the day-to-day care of their mother and to have contact with their father.

[4] This current set of proceedings is a specific application by Ms [Chadwick] for an order pursuant to s 46R for these two young people to receive the COVID-19 vaccination. Ms [Chadwick] originally applied to the court without notice on 4 February 2022 for an order giving her the full authority to make the decision about the immunisation of the children with the COVID-19 vaccination. That application was declined and placed on seven days' notice and as a consequence of that urgent application Ms Freeman was appointed as the lawyer for the children.

[5] There were some issues around Mr [Walton] being served with these documents. The matter was referred to me approximately a week ago now and I made some directions with respect to service on Mr [Walton]. I granted an application that had been subsequently filed by Ms [Chadwick] for Mr [Walton] to be served by substituted service and specifically for him to be served by way of email; and, also set the matter down for a hearing this afternoon because some urgent court time had become available.

[6] Mr [Walton] was served with the documents on Friday 4 March 2022 in terms of the order for substituted service. He was served by email. He has filed some documents in reply, although they are not technically in defence in that the documents filed by Mr [Walton] state that he wants the option to appear and to be heard by the court in the future if required. He did not specify in his documents that he wanted to appear and to be heard before any decisions are made, so on the face of it, Mr [Walton] is not defending the application that is before the court. Mr [Walton] has, however, had the opportunity to be heard.

[7] I just note also too that no-one has been sworn in in terms of this hearing. Mr [Walton] is acting for himself and so he has had the opportunity to make submissions directly on his own behalf. I had hoped that because of the affidavit that had been filed by Mr [Walton] that the matter could resolve today without the need for an order being made and that is because the affidavit evidence filed by Mr [Walton] really suggested that, even though he was not in support of the children receiving the vaccination at this stage until more information had been received he says in 2023, that he would support the children in their views.

[8] However, after having some discussion with Mr [Walton] about what that means he has been very clear that he cannot in good moral conscience, he says, support the children receiving the COVID-19 vaccination. He does not want to take any responsibility or any liability for any consequences to the children if they do receive the COVID-19 vaccination. He prefers to leave that responsibility with Ms [Chadwick].

[9] On that basis I am required to make a decision about what is in the best interests of these children insofar as the COVID-19 vaccination is concerned.

[10] My start point in terms of making the decision about these two, and I have referred to them as children but they really are young people, is that the best interests and welfare of these two young people are of paramount consideration in any decision that I make. I also need to look at these young people and their own specific circumstances. These two young people have had the opportunity, as is required by the Care of Children Act, to express views in respect of respect of the application before the court.

[11] Ms Freeman filed her first report dated 25 February 2022. Dealing firstly with [Jacob]. He was very clear on his meeting with Ms Freeman that he wanted to receive the vaccination. His views are set out at paragraph [10] onwards of Ms Freeman's first report. He has a basis on which he has formed his own opinion about the vaccination and that is because his experience currently is that without it, he is restricted in the activities he is able to participate in. That is having a direct impact on him. He wants to play sports next term. He is required to be vaccinated in order to do

that. He talks about wanting to go out to have a meal in a restaurant or go to the movies and do all those things that he should be able to do at his age but which he is now restricted in his ability to do so because he is not yet vaccinated.

[12] I have to say that in terms of [Jacob]'s views as they are recorded in Ms Freeman's report, what I have taken from that is that he has had the opportunity to consider the vaccination from all different perspectives. There is no question that both of his parents have given him information about the pros and cons of receiving the vaccination, so he has had the opportunity to think that through.

[13] Insofar as his age is concerned, at the age of 12 the policy of the Ministry of Health is that he is of an age where he is entitled to give his own consent to receive the vaccination.

[14] I am just going to record here too that because I am issuing an oral decision, I am going to reserve the right to edit and amend this. It is important from my perspective that I am able to record accurately the policy around Ministry of Health guidelines in terms of young people of the age of 12 and over - that they have got specific policy guidelines for children between the ages of 12 to 15 around their ability to give their consent to receiving the COVID vaccination so I want to make sure that I incorporate that in this decision so that it is clearly recorded.¹

[15] I am satisfied in terms of [Jacob]'s views that his views have been given with due consideration as to having the vaccination.

[16] Insofar as [Anna] is concerned, she was perhaps less clear around receiving the vaccination. Ms Freeman supported her to go to her general practitioner to have an independent meeting without anyone else there so that she would have the opportunity to work through any issues associated with the COVID vaccination and getting her own independent information about it. Ms Freeman has now filed an updating report dated 4 March 2022 which confirms that [Anna] did go and meet with her GP on Friday 4 March, that she had a separate meeting that Ms Freeman was not in

¹covid-19-vaccine-informed-consent-young-people-aged-12-15-years-policy-statement-16092021_0.pdf (health.govt.nz)

attendance at, that [Anna] spent approximately 20 minutes with the doctor and that as a consequence of that meeting with her GP independently she has made a decision that she also wants to receive a COVID-19 vaccination.

[17] [Anna] is what we refer to as being “Gillick competent” in that she is of an age where she does not require her parents’ consent to receive a medical procedure of this nature. I am certainly satisfied on the basis of the information of Ms Freeman’s report that [Anna] is “Gillick competent”. There is no question in my view after considering the material before the court that she is able to form her own opinion about receiving the COVID-19 vaccination.

[18] Were the children a little younger perhaps there would have been more consideration around what might be in their interests and welfare but at their ages, and based on the information that has come through from Ms Freeman’s report, there is no question in my mind that it is in their interests and welfare that they receive the COVID-19 vaccination predominantly because of the views that they have expressed. The lack of vaccination is having a direct impact on them and they want those issues addressed and at their age they are entitled to have those issues addressed so that they are able to go about their business as young people and engage in whatever activities they wish to engage in.

[19] The suggestion is that rather than having an order that requires [Anna] and [Jacob] to be vaccinated that the order is framed in such a way that Ms [Chadwick] has the full authority to make the decision about the immunisation of the children with the COVID-19 vaccination. That in my view is a responsible way to approach the matter because what it means is that should the children prior to receiving the vaccination change their mind then they cannot be required to undergo that procedure. So, I am taking from that application that Ms [Chadwick] is of the view that the children are still able to change their mind and that she is not going to impose that decision on them. I record that I am getting positive confirmation of my understanding of the situation from Ms [Chadwick]. She is saying that if the children did change their mind then again that she would support them in their views.

[20] On that basis I am going to grant the application that is before the court and make an order in terms of the application which is that Ms [Chadwick] will have the full authority to make the decision about the immunisation of the children with the COVID-19 vaccination.

[21] Insofar as these proceedings are concerned, on the granting of that application and the making of that order these proceedings are now concluded.

[22] As far as cost contribution orders are concerned, I am not going to make a cost contribution order against either party. When I take into account the views of the children that have been so clearly placed before the court the application in my view was an appropriate one for Ms [Chadwick] to be making on behalf of the children because the parents were unable to resolve this as joint guardians for these young people. So, it would be inappropriate in my view then to make a cost contribution order against Ms [Chadwick]. I have just clarified that Ms [Chadwick] is not legally aided either.

[23] And insofar as Mr [Walton] is concerned, while it would have been my preference that there was not an order made today, I could not say really that he has prolonged these proceedings. He has participated in this hearing and while he has on the face of it opposed the making of the order he really has not defended the proceedings per se in that his documents indicate that he wanted to participate in this but that he was not going to take active steps to defend the application that was before the court. So, on that basis there will be no cost contribution order made against either party.

[24] These proceedings then are concluded, and the court file should be closed once the order is issued.