

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

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**IN THE FAMILY COURT  
AT WHANGANUI**

**I TE KŌTI WHĀNAU  
KI WHANGANUI**

**FAM-2012-083-000491  
[2022] NZFC 1807**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	ORANGA TAMARIKI MINISTRY FOR CHILDREN Applicant
AND	[NANCY NARANG] Respondent
	[DAISY NARANG] Young person the Application is About

Hearing: 21 February 2022

Appearances: S Smith for the Chief Executive  
Respondent Appears in Person  
K Crooks as Lawyer for the Child  
P Reid as Counsel to Assist

Judgment: 2 March 2022

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**JUDGMENT OF JUDGE D G MATHESON**

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## **Introduction**

[1] These proceedings concern [Daisy] who is almost fourteen.

[2] She is under the guardianship of the Family Court. Oranga Tamariki is the Court's agent. The reasons for that are identified in a fulsome decision, dated 16 August 2013.

[3] Since that decision, [Daisy] has been cared for by a long-term caregiver who has attended to her needs with diligence and love.

[4] [Daisy] has significant medical needs, which has resulted in her receiving considerable assistance from medical professionals and for the best part of the last decade that has included significant and attentive care from the paediatricians based in New Plymouth.

[5] [Daisy] is neurologically compromised and is particularly susceptible to respiratory infection.

[6] In late 2020, the [Daisy]'s paediatricians sought and obtained from the Court, approval for a care plan that identified that if her health deteriorated to a point that her quality of life was significantly compromised, then a palliative/non-invasive response was to be adopted.

[7] Her mother, who was given notice of the application, but who did not respond to it subsequently indicated that she was much aggrieved by that determination and sought a review.

[8] Given that the process had developed at some pace over the Christmas period, the Court agreed to allow her to be heard, and arising from that directed a second opinion be obtained.

[9] That was eventually provided, and I tracked the matter towards hearing.

[10] To assist mother, who has some mental health frailties, I appointed counsel to assist and then engaged further counsel to act as a litigation guardian for her.

[11] That litigation guardian subsequently reported and identified that this may be a situation where standby counsel may be appropriate.

[12] The Court agreed to that approach, but mother robustly rejected the assistance offered by the two senior, experienced and sympathetic counsel engaged effectively on her behalf by the Court.

[13] On 23 December 2021, I gave to mother an opportunity of another month to find counsel of her own choice or reflect on the Court's offer to provide assistance for her.

[14] The Court allocated a review for 14 February 2022.

[15] When the matter was called on 14 February 2022, there was no appearance by mother. That was not necessarily of surprise as her engagement through the years has waxed and waned a little.

[16] At that review I was also apprised of a request from the Court's agent to have [Daisy] vaccinated against COVID 19 because of concerns for her wellbeing if she was not. The request was accompanied by a letter signed by two paediatricians with significant knowledge of her situation.

[17] In the absence of mother, I directed that both issues be set for hearing and asked that mother be informed of the request for the vaccination and gave her 72 hours to respond in writing if she wished.

[18] Hearing time was found on 21 February 2022 and I proceeded, given the COVID-19 restrictions at this time, by way of telephone conference.

[19] As the transcript reveals, mother was an active participant and expressed clear views in opposition to the overall long-term care plan, and also to the COVID-19 vaccination proposal. Mother, had as directed, filed paperwork in opposition.

[20] As the discussion developed it became clear that a copy of the recommendation for vaccination signed by the paediatricians had not been copied to mother. She also claimed that she had not seen a copy of the second opinion report of Dr Smith, although examination of the Court file suggests, but cannot prove, that she was given a copy.

[21] During the discussion, notwithstanding repeated interjections and over-talking by mother, the two paediatricians were able to address issues of importance to mother, counsel and the Court. After an hour of intense engagement, I directed that copies of the vaccination report and the second opinion report be handed to mother before she left Court, and I gave her seventy-two hours to file any written material that she wished.

[22] In response to that she filed fifty-one pages of handwritten material. I subsequently gave to counsel an opportunity to reply, which the Court's agent chose to do. The written material has today been provided to me.

## **Background**

[23] The background to [Daisy]'s situation is covered in multiple decisions and minutes and I do not rehearse them here.

## **The Law**

[24] As to the law against which this decision is based, [Daisy] is under the guardianship of the Family Court as a result of the decision of August 2013. Any guardianship or care decisions need to be made in accordance with the provisions of the Care of Children Act 2004. In particular ss 4, 5 and 6 are important.<sup>1</sup>

### **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

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<sup>1</sup> Care of Children Act 2004, ss 4, 5 and 6.

- (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.

## **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 sections 9(2), 10, and 11 of the Family Violence Act 2018) from all persons, including members of the child’s family, family group, whānau, hapū, 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, whānau, hapū, 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.

## **6 Child's views**

- (1) This subsection applies to proceedings involving—
  - (a) the guardianship of, or the role of providing day-to-day care for, or contact with, a child; or
  - (b) the administration of property belonging to, or held in trust for, a child; or
  - (c) the application of the income of property of that kind.
- (2) In proceedings to which subsection (1) applies,—
  - (a) a child must be given reasonable opportunities to express views on matters affecting the child; and
  - (b) any views the child expresses (either directly or through a representative) must be taken into account.

[25] As those sections identify, the welfare and best interests of the child in her particular circumstances must be the first and paramount consideration.

[26] In considering this child's particular circumstances I need to take into account the principles identified in s 5 and must also give opportunities the child to express her views, and any views expressed need to be taken into account. In relation to this latter aspect, [Daisy] is simply not in a position to express any views because of her disabilities, but I do note that her lawyer has supported the proposals of the agent.

[27] In considering the issue of vaccination, I have considered several Family Court decisions, three of which I have found helpful and relevant.

[28] In *[Gour] v [Moss]* her Honour Judge E B Parsons noted at paragraph [21]<sup>2</sup>:

[21] The same situation arises in this matter, where the information noted below is provided by the Ministry of Health in relation to the Pfizer COVID-19 vaccine.

The Ministry of Health has issued information noting that the Pfizer vaccine is proving to be highly effective in young people after two doses are administered. The Ministry notes that children are far less likely to fall seriously ill and less likely to transmit the virus to others and that across all age groups studies have shown that about 95% of people who receive both doses of the Pfizer vaccine were protected against getting COVID-19 symptoms. The Ministry information also notes that Pfizer has reported 100% efficacy against symptomatic COVID-19 infection in the 12 to 15-year-old age group, with a higher antibody response than was seen in the 16 to 25-year-old age group.

Medsafe is responsible for approving the use of all medicines and vaccines in New Zealand. The Pfizer vaccine was provisionally approved for New Zealanders aged 16 and over in February 2021 and young people age 12 to 15 in June 2021. It is noted that Medsafe only approves a vaccine in Aotearoa once they are satisfied of strict standards for safety, efficacy and quality. Millions of people have now been vaccinated around the world and no additional safety concerns have been raised. The Ministry further notes specifically regarding 12 to 15 year olds, that the safety and efficacy of the Pfizer vaccine was first evaluated through a large clinical trial where participants were randomised to either receive two doses of the vaccine 21 days apart or a placebo and notes the results of that in approving the vaccine for this age group.<sup>3</sup>

[29] In *[Pearce] v [Bird]* Judge A S Greig noted in relation to a boy who like [Daisy], is severely compromised medically, at paragraph [16]<sup>4</sup>:

[16] I am entitled to take judicial notice of the research adopted by the New Zealand Governments, and Governments around the world, that the Pfizer vaccine is safe to be administered to children. It is safe.

[30] Finally, in *[Watkins] v [Watkins]*, his Honour Judge P R Grace noted at paragraphs [88], [89] and [90] the following<sup>5</sup>:

[88] It is not for this Court to determine the correctness or otherwise of the directions given by the Director of Public Health and the government on the issue of vaccination. The primary thrust of the advice is that vaccinations are important for personal and public safety, having regard to the current pandemic. It is deemed to be in the interests of each individual to be vaccinated to ensure as best as possible their personal protection from infection or, if infected, to reduce the potential seriousness of the infection on

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<sup>2</sup> *[Gour] v [Moss]* [2021] NZFC 12883.

<sup>3</sup> Information noted from Ministry of Health

<sup>4</sup> *[Pearce] v [Bird]* [2022] NZFC 1042.

<sup>5</sup> *[Watkins] v [Watkins]* [2021] NZFC 11934.

the individual and the potential spread of the virus to other members of the public.

[89] The issue of vaccination is an issue for guardians and as these two guardians cannot agree, they abrogate that responsibility to the Court.

[90] The weight of evidence in this country, and indeed throughout the world, and the stance taken by the government and the Director of Public Health, all suggest that vaccination is important. Whilst individuals are entitled to make choices and whilst children remain subject to guardianship decisions to be exercised by their parents, as their guardians who are deemed to have the best interests and welfare of their children at heart, it seems to me that it is appropriate and proper to direct that these children should be vaccinated when the public health directives provide for it.

## **Discussion**

### *Review of Care Plan*

[31] Since the hearing I have received fifty-one pages of handwritten material from mother.

[32] What is evident from that material is her sincerely held view that since the birth of the daughter, she and her daughter have been the subject of cross-agency negligence and conspiracy.

[33] In her material she repeats firmly her views as to medical negligence since the child's birth and that that negligence has been ratified by social work and legal system complicity that has denied to her daughter her rights as a person and has denied to her, her rights as a mother.

[34] She is resolute in her views, that those charged with [Daisy]'s care have failed her and that their overall care plans, ratified by the Court are tantamount to approval for an unlawful killing.

[35] She introduces no independent material to support her position.

[36] She also demands the Court appoint a lawyer for her which, as I have noted, the Court has already attempted to do.



[37] Given the intensity of her view and given the limited nature of the hearing last week, I have determined that in the interests of natural justice the application to review the care plan at large should be developed at a full hearing, and I confirm my previous direction of one-and-a-half days being allocated for that purpose. Mother wishes to be heard and the Court is prepared to accord that opportunity to her.

[38] I also confirm my previous direction that standby counsel be appointed. It is not to be Ms Gray, but Mr Reid is to be approached to see whether he is prepared to undertake the role as he has significant knowledge of the background. I terminate his role as counsel to assist at this point.

[39] I further direct that should Ms [Narang] wish to ask any questions of the paediatricians or the second opinion writer, then she is to reduce those questions to writing so that they can be referred to the professionals for them to be in a position to provide a response at the hearing. She is to provide those questions within 42 days from today.

[40] That deals with the review application.

#### *Vaccination*

[41] Turning then to the vaccination issue, that is a matter of much more pressing urgency with the 19,566 new COVID-19 cases and 99,859 active cases confirmed on 1 March 2022, the day the file has been presented to me.

[42] As a result, the Court as [Daisy]'s guardian, needs to make a decision now.

[43] The Court's agent asks for [Daisy] to be vaccinated against COVID-19 infection.

[44] It does so on the advice of two consultant paediatricians engaged by the Taranaki District Health Board.

[45] The child's Court appointed Lawyer supports the vaccination.

[46] Counsel to assist developed answers from the paediatricians that highlighted the efficacy of vaccination and the risks to [Daisy] if she were not vaccinated.

[47] Mother opposes and raises concerns.

[48] As well as allegations of conspiracy and breaches of protocol and concerns as to pre-determination and accusations of pre-meditated murder and falsification of medical records generally, she expressed concern that given [Daisy]'s compromised condition, a vaccination as a result would be to her detriment.

[49] She submits that there is a family history of adverse reaction to vaccination.

[50] She has a concern about cross-contamination caused by her caregiver having been vaccinated.

[51] She claims that this child is in the highest risk group, being neurologically compromised.

[52] She is concerned as to a potential reaction arising from current medication.

[53] She is concerned that there could be an allergic reaction to the vaccine causing respiratory problems.

[54] She is concerned about the child's immune system response.

[55] She expresses concern that the vaccination is not scientifically safe.

[56] She is concerned that any vaccination provided, take into account [Daisy]'s specific needs because it is the specific child, not the general child, who needs to be considered.

[57] While mother's delivery of her concerns may at times be challenging, her concerns are resolutely and sincerely held.

[58] The letter from the consultant paediatricians, Drs [name deleted – A] and [name deleted – B], reads as follows:

[Daisy] is a child with multiple severe disabilities and is well known to the paediatric department at Taranaki Base Hospital, and myself as primary paediatrician until recently. Doctor [B] has now taken over that role.

[Daisy] has had repeated admissions into Hospital for high level care because of deteriorating breathing and airway problems. This places her at extremely high risk if she were to get a COVID infection with a significant likelihood of requiring hospitalisation and high level respiratory support, much beyond that of another child of her age without her disability.

Among the things that can be done to protect [Daisy] is to provide a COVID vaccination which will reduce her risk of serious infection requiring hospitalisation and this has been shown in a number of studies and from both local (New Zealand) and international data. Our strong recommendation therefore would be that [Daisy] has her COVID vaccination.

In particular it is our opinion that the risk that [Daisy] would face if she were to get a COVID infection is much greater than the risk of any side effects from COVID vaccination.

I am happy to answer any further questions.

[59] In answer to questions from the Court and counsel to assist, Dr [A] identified that there was no evidence that he was aware of as to compromising inherited factors apparent in the health records of the child.

[60] As to the concerns of mother that the child was in the highest risk category and thereby vaccination should not proceed, the doctor, to the contrary identified that that increased the strength of the recommendation if anything, given that the aim of the vaccination is to prevent her getting, or to try and prevent her getting serious COVID-19 infection, which because of her neurological and respiratory status would potentially cause her very severe illness.

[61] As to compromised respiration the doctor noted the aim of the vaccination is to protect her as much as possible from the effects of, particularly the respiratory effects of COVID infection itself.

[62] As to the risks to [Daisy], if vaccinated, the doctor advised that concerning side effects have been shown to be incredibly low.

[63] He noted slightly higher risk factors for a teenager than the older adult age group, and therefore they would monitor [Daisy] in the paediatric assessment unit.

[64] The risk, in his assessment, would still be very low, and estimated that for a severe side effects it would be less than one per cent.

[65] He said the risk factor would be incredibly low, and that's based on evidence from the hundreds of millions of people that have been vaccinated.

[66] As opposed to that the risk to [Daisy] if not vaccinated is that she is quite likely to be exposed to COVID-19. If she did contract COVID-19 then due to [Daisy]'s low immune system, and comprised situation she is likely to become a lot sicker than another child her age, and the estimates are that over twenty-five per cent of children like [Daisy] would get severely unwell.

[67] The doctor said that he would not be recommending vaccination unless he truly believed, hand on heart, that this is for the benefit of [Daisy].

[68] He went on to say that the benefit of the COVID-19 vaccination outweighs any risk of side-effects and he just wanted to say that he was doing this in [Daisy]'s best interests, and did not want to harm her.

[69] In answer to further questions as to the impact of her becoming incredibly unwell should she contract COVID-19, Dr [B] replied that the risk to her pre-existing medical conditions is that it can deteriorate her pre-existing conditions and knowing her over many years he would unfortunately expect that she would deteriorate in one or any of her other conditions.

[70] In their written application supplemented by their oral responses to the issues raised by mother, the consultant paediatricians were resolute that in their specialist opinion, COVID-19 vaccination was mandated.

[71] This decision must be made taking into account the welfare and best interests of this particular child in her particular circumstances.

[72] In assessing that I need to consider the principles in s 5.

[73] As to s 5(a) and safety, the material of general nature identified in the decisions I have referred to, establishes that the assessment of those in charge of the well-being of the population of New Zealand at large is that vaccination is important.

[74] [Daisy] lives within that population at large, but it is also important to acknowledge her individual needs. The evidence of the paediatricians reinforces the general proposition of COVID vaccination being desirable by establishing that given her vulnerability, vaccination is essential.

[75] Section 5(b) – [Daisy]’s care and upbringing is primarily the responsibility of the Court through its guardianship, but mother has had an opportunity also to express views as I have identified.

[76] The Court’s agent is clear that the preferred option is vaccination, and the Court’s agent is guided in that assessment by medical opinion. Mother has produced no medical opinion to the contrary.

[77] Section 5(c) – as to consultation, the history of the file at large identifies that the Court’s agent has gone to great lengths at all times to engage with mother as has the court, and her views have been actively sought and are acknowledged.

[78] Section 5(d) – as to continuity of care, [Daisy]’s care has been with a committed caregiver supported by a committed paediatric team for almost a decade. Vaccination would be in keeping with the recommendations of that team.

[79] Section 5(e) – as to family relationships, mother has been part of this process.

[80] Section 5(f) – as to identity, through vaccination [Daisy] will have the opportunity to live her life uncompromised by the shadow of COVID-19.

[81] Section 6 – as I have noted [Daisy]’s views are compromised to the point where she is unable to express them in any meaningful way.

## **Conclusions**

[82] While wishing to be respectful to mother's views the issue here is the welfare and best interests of the child, and the evidence is clear that the welfare and best interests of this child demand that she be vaccinated.

[83] Accordingly, I direct the Court's agent to arrange for this child to be vaccinated as soon as is possible.

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Judge DG Matheson  
Family Court Judge | Kaiwhakawā o te Kōti Whānau  
Date of authentication | Rā motuhēhēnga: 02/03/2022