

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

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**IN THE FAMILY COURT  
AT ASHBURTON**

**I TE KŌTI WHĀNAU  
KI HAKATERE**

**FAM-2018-003-000002  
[2022] NZFC 4568**

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| IN THE MATTER OF | THE CARE OF CHILDREN ACT 2004 |
| BETWEEN          | [DECLAN PRYOR]<br>Applicant   |
| AND              | [LISA EVERETT]<br>Respondent  |

Hearing: 13 May 2022

Appearances: Applicant appears in Person  
Respondent appears in Person  
J Strauss as Lawyer for the Child

Judgment: 13 May 2022

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**ORAL JUDGMENT OF JUDGE P W SHEARER**

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[1] This is a guardianship dispute brought before the Court pursuant to s 46R of the Care of Children Act. This morning I have presided over a brief submissions-only hearing.

[2] The applicant, [Declan Pryor], and the respondent, [Lisa Everett], are the parents of [Phoebe] who is now 6 years old. Both Mr [Pryor] and Mrs [Everett] are self-representing. [Phoebe] is represented by Ms Jenifer Strauss.

[3] The dispute is as to one narrow issue only, namely as to whether or not [Phoebe] should receive the vaccination against the COVID-19 virus. Mr [Pryor] wants [Phoebe] to be vaccinated. Mrs [Everett] does not.

### **The parties positions**

[4] I am grateful to both Mr [Pryor] and Mrs [Everett] for the brief and child-focussed arguments that each of them have made. Each has filed only one affidavit and succinctly stated their position, and each has made oral submissions today and has, again, made good, sensible, arguments.

[5] Mr [Pryor]'s application dated 17 February was filed without notice to Mrs [Everett], but was directed, appropriately, by the Judge on e-duty to proceed on notice. Mrs [Everett] was served on 21 February and filed her notice of response and affidavit in support that same day.

[6] Neither party has filed anything further but, as I have said, both have attended court this morning and each has made further oral submissions and we have had a general discussion about [Phoebe] and separated parenting and guardianship issues.

[7] Because each party has succinctly stated their position in their affidavit, I will quote in full what they have said, to set out their respective positions. The position that each party has taken is entirely predictable and understandable, given their fundamental disagreement as to whether vaccination is in [Phoebe]'s best interests or not.

[8] Mr [Pryor] stated in his application that:

Due to the current COVID situation in New Zealand and the world I would like our daughter [Phoebe] to be vaccinated with the children's COVID vaccine.

[9] He disclosed, appropriately, that Mrs [Everett] disagreed and he attached to his affidavit screen shots of their conversation on the issue. He went on to say:

I deem this an urgent matter to be sorted due to the worsening Omicron situation in New Zealand and with [Lisa] not appearing to be going to change her mind. [Lisa] agreed with no issues for all of [Phoebe]’s standard childhood immunisations, and also was fine with her having the extra meningococcal B vaccine, so I went ahead and booked [Phoebe] in the quickly closing spaces available for the child COVID vaccine, and then due to [Lisa]’s disagreement on the subject and citing I did not have her permission I cancelled her vaccine appointment and placing it in the Court’s hands. I would like my daughter to have the vaccine to help protect her from COVID.

[10] Mrs [Everett] in her reply said: “These are the reasons why I do not want [Phoebe] to have the COVID vaccination at the present time:” She then listed five bullet points, which were as follows:

- I have concerns about the long-term effects with the COVID vaccine given to [Phoebe] at such a young age.
- I want to hold off on the vaccine until I know more.
- There have been documented cases of children having ill effects following the administration of the vaccine.
- There may be unknown side effects that will risk her health.
- No long-term studies have been done on this vaccine in children and I don’t want it risking her health.

#### **Lawyer for child report**

[11] Ms Strauss has then filed a report dated 6 March. She advises that [Phoebe] has no underlying issues with her health. She has had all recommended childhood vaccinations, as well as meningococcal B.

[12] Ms Strauss commented that, unsurprisingly, [Phoebe] has said to her mother that she does not want a ‘poke’ as she referred to the vaccination. Ms Strauss also advised that neither parent considers [Phoebe]’s comment to be determinative.

[13] In her oral submissions today Ms Strauss submitted that whether or not to vaccinate children is such a personal decision, and is a case to case decision for the Court. She advised that her understanding of the Ministry of Health position is that vaccination for children is perfectly safe.

### **[Phoebe]’s views**

[14] Speaking of [Phoebe]’s views, s 6 of the Care of Children Act preserves [Phoebe]’s right to express a view, and I am required to take into account any view that she does express.

[15] I find, however, that at just 6 years of age [Phoebe] is too young to understand or decide about being vaccinated against COVID-19. The decision needs to be made on her behalf by her parents and guardians, and in this instance given that her parents cannot agree, by the Court.

### **The law**

[16] As in all decisions made under the Care of Children Act, the welfare and best interests of the child, in his or her particular circumstances, must be the first and paramount consideration. I must consider this child, in her particular circumstances.

[17] I must also take into account the principles contained in s 5 of the Act, and of particular relevance in my view, in this case, is the principle in s 5(a) which states that [Phoebe]’s safety must be protected.

### **Case law**

[18] Mr [Pryor] and Mrs [Everett], I mentioned when we were talking generally and I suspect it will not be any surprise to you, that the Courts have regularly been called upon to deal with and determine vaccination cases.

[19] COVID-19 is obviously a relatively new pandemic, but whether or not to vaccinate against other diseases is not a new issue. There have also been over the last several months now, several Family Court and also High Court decisions in New Zealand relating to the COVID-19 vaccination issue. As such, it is not a new issue that we are talking about today.

[20] I am going to borrow now from the decision of another Family Court Judge, His Honour Judge Gary Collin, who considered this same issue in the Hamilton Family

Court just a few weeks ago on 25 March.<sup>1</sup> He issued a lengthy judgment which he had clearly researched and considered very thoroughly, and I am going to quote from that decision now because I am hoping that some of the research and information that he referred to will help you both, and hopefully give you some reassurance.

[21] Firstly, Judge Collin referred to another decision of another Family Court Judge, Jenny Binns, who is an experienced Family Court Judge, and in a decision in 2020 had analysed 16 different cases that considered vaccination applications.<sup>2</sup> Judge Collin then referred to six factors which he said are highlighted in those other judgments of the Court:

- (a) Where mainstream medical evidence and Ministry of Health immunisation schedules recommends and advocates for immunisations to be received, in most cases Court orders are made authorising immunisation to occur;
- (b) Immunisation protects the wider community;
- (c) It is irresponsible for the Court to do anything other than make directions which reflect mainstream medical advice and thinking;
- (d) The Court must be satisfied that there is credible evidence against the benefit of immunisation when deciding not to immunise;
- (e) The risks of being harmed by contracting a disease are more serious than those associated with vaccination;
- (f) Although there is an emphasis on individualised assessment, the starting point is Ministry of Health guidelines. Consequently, medical evidence regarding the particular needs of a child would need to be provided before the Court ignored Ministry of Health or mainstream medical advice and thinking.

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<sup>1</sup> *[Townsend] v [Poole]* [2022] NZFC 2773.

<sup>2</sup> *Oranga Tamariki – Ministry for Children v AW and LC* [2020] NZFC 4629.

[22] Judge Collin then considered some Court decisions specifically about the Pfizer COVID-19 vaccination, and of particular relevance to our case today, is the High Court decision at the beginning of February this year. It was a case where a group of parents sought judicial review of Cabinet's decision to roll out the vaccine for children aged between 5 and 11.<sup>3</sup>

[23] Arguments and concerns that those parents raised in that case included the same concerns that you have raised, Mrs [Everett], and which Ms Strauss has also referred to. For example, that vaccination carries few benefits because children in that age group suffer only mild symptoms, and vaccination presents material risks, and the safety data about vaccination is inadequate.

[24] What you may not be aware of, is that the High Court received detailed scientific and medical information and examined the medical and health benefits and risks of the vaccination. In dealing with the concerns that are relevant to our case today, the High Court Judge, Ellis J, noted that:

- (a) Pfizer's clinical trial for the initial COVID-19 vaccine included approximately 44,000 participants.
- (b) The paediatric trial included 5,500 participants, 3,100 of whom received the vaccination. That is large by the standards of normal vaccine trials.
- (c) The trials took place over multiple months.
- (d) That there is significant scientific understanding of how the vaccination works because it is not based on new technology, but technology which is well-known and has been previously used. Researchers have been working with and studying vaccines for decades, particularly in the context of the influenza, rabies and Zika viruses.

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<sup>3</sup> *MKD v Minister of Health* [2022] NZHC 67.

- (e) That while children aged 5 to 11 typically suffer mild symptoms from COVID-19, the disease can cause serious complications like respiratory failure, myocarditis, and multi-organ failure.
- (f) Pfizer's paediatric trials indicate the vaccine has a 91 per cent efficacy rate against symptomatic COVID-19.
- (g) In terms of health risk, an analysis by the United States' Centre for Disease Control of adverse effect reports following 8.7 million doses of the paediatric vaccine found just 100 reported serious adverse effects (a rate of 0.0000011 per cent).

[25] I appreciate that there are different studies and different numbers, percentages and opinions available on the internet, but this is information that the High Court relied on.

#### **Ministry of Health guidelines**

[26] Judge Collin in his decision, then referred to the guidelines that the Ministry of Health has published, which now include children from 5 to 11. He commented that they note that:

- (a) The child formulation of the Pfizer vaccine is a lower dose and smaller volume compared to the adult formulation.
- (b) The trials in 5 to 11 year olds with a paediatric Pfizer vaccine showed it was safe and side effects were generally mild.
- (c) The vaccine is highly effective, and that children aged 5 to 11 are far less likely to fall seriously ill and less likely to transmit the virus to others. For children aged 5 to 11, clinical trial results showed the Pfizer vaccine was 90.7% effective against getting COVID-19 symptoms, and no participants developed severe COVID-19.

- (d) COVID-19 generally has mild effects in children and is rarely severe or fatal. They note that:

Children who have COVID-19 will commonly have no symptoms or only mild respiratory symptoms – similar to a cold. However, some can become very sick and require hospitalisation. Rare complications can include Multisystem Inflammatory Syndrome (MIS-C) that may require intensive care. Children can also suffer long-term side effects (known as long COVID), even after mild cases of COVID-19.

- (e) Young children with COVID-19 can transmit the virus to other people, and immunising young children helps protect whanau members whose health makes them more vulnerable to COVID-19.
- (f) That the vaccine has been provisionally approved or authorised and is being rolled out across the US, Canada, Europe and Australia.

[27] Judge Collin also noted that the information provided by the Ministry of Health is supported by Starship Hospital in a paper they have published, which states that data from both 12 to 18 year-old and 5 to 11 year-old trials showed no serious adverse events, and with only minimal risks existing.<sup>4</sup>

### **Other research**

[28] The last thing I am going to quote at you, is an article that Judge Collin referred to from an American doctor, who specializes in infectious diseases. Her name is Nora Colburn. You can Google her, I Googled her last night. She looked at the known history of vaccinations and notes that going back at least as far as the polio vaccination in 1960, there has never been a vaccination with known long-term side-effects, meaning side-effects that occur several months or years after the injection. All known effects of vaccinations have developed within six to eight weeks of the injection. She says that the known incidences of adverse events of the Pfizer vaccination are extremely rare and are in the region of three to eight cases per million doses. She said:<sup>5</sup>

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<sup>4</sup> See Starship. COVID-19 Vaccination in Children. 8 February 2022.

<sup>5</sup> Nora Colburn: How can we know the COVID-19 vaccine won't have any long-term side-effects? 14 September 2021.



COVID-19 vaccines have been studied in humans for more than a year now, and more than 174 million people have been fully vaccinated in the United States alone. The vaccines have been shown to be extremely safe...

### **Analysis and decision**

[29] From the flavour of all of that information that I have relayed, you won't be surprised to learn that Judge Collin, in that particular case in Hamilton, found that the two children who were the subject of that case, and who were 9 and 8 years old respectively, should be vaccinated against COVID-19.

[30] I might add that not every Court decision has ordered vaccination. There was a case in Tauranga just before Christmas, which Ms Strauss is obviously aware of and referred to in her report, where Judge Coyle, who is again a very experienced Family Court Judge, was not satisfied that it was in the child's best interests and welfare to require him to have the vaccination. The big difference in that case, however, was that the child was nearly 12½ and had very clear views that he did not want to be vaccinated. The Judge actually met with him and the boy told the Judge that he would refuse the vaccine if he was taken to the vaccination clinic.

[31] My decision for [Phoebe], in her best interests and welfare, is that she should be vaccinated. That decision, Mrs [Everett], is for a number of reasons which I hope you will be able to understand, even if you are not yet convinced or persuaded yourself. I note your advice today that you are not an anti-vaxxer and that you are actually vaccinated yourself, and I appreciate you volunteering that information. My reasoning for my decision is as follows:

- (a) The reality that the vaccine has been approved by the Ministry of Health, following standard practice within the industry and from around the world. COVID vaccinations are authorised for use in most developed countries and are not experimental.
- (b) The mainstream medical advice, together with the Ministry of Health guidelines, must be the starting point in any decision the Court makes. The Ministry of Health recommends that children aged 5 to 11 be

vaccinated, to keep children safe and to help protect families and the community from COVID-19.

- (c) That although there are acknowledged risks with the vaccine, and with any vaccine, the risks are low.
- (d) The risk that [Phoebe] might be exposed to harm by getting COVID is considerably higher, in my view, than the risks that exist from vaccination.
- (e) There is no known or medical reason or history why [Phoebe] should not be vaccinated, and that is obviously a good thing. She is a normal, healthy, child from what I understand and as you have acknowledged, she has had other standard immunisations.
- (f) In New Zealand there is now a very high rate of vaccination with a very low risk of harm detected. Worldwide millions of children in this age group, 5 to 11, have been vaccinated, with a very low adverse consequence.
- (g) Finally, it is appropriate to consider the potential for long COVID, which we are now hearing more and more about, and the dormant risks which may become evident years after a child has had a disease, even if they were asymptomatic at the time.

[32] So, in summary, it is my view and my decision that there is no sufficient reason why [Phoebe] should not receive the Pfizer vaccination. I find that there are very valid reasons why she should.

[33] Accordingly, the application to resolve a dispute between guardians is granted.

[34] I order that [Phoebe] receive the first Pfizer vaccination as soon as possible, and then receive the second at the Ministry of Health recommended interval. If a booster shot is later recommended by the Ministry of Health for 5 to 11 year olds, I order that she receive that too.

[35] Ms Strauss, I now terminate your appointment with the thanks of the Court and I direct that your fees are to be paid from the consolidated fund and that there is no need for the parties to contribute to those costs.

**Addendum:**

[36] At Mrs [Everett]'s request I direct that she is the parent that is to take [Phoebe] to have the first dose of the vaccine. She has said that she will book an appointment and do that next Monday, 16 May, as [Phoebe] is in Mr [Pryor]'s care this weekend. Mrs [Everett] has said that she would like to monitor [Phoebe] after she receives the first injection, and I can understand that.

[37] I direct that Mr [Pryor] is to take [Phoebe] for her second dose of the vaccine at the appropriate time.

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Judge P W Shearer  
Family Court Judge | Kaiwhakawā o te Kōti Whānau  
Date of authentication | Rā motuhēhēnga: 19/05/2022