

**NOTE: PURSUANT TO S 437A OF THE CHILDREN, YOUNG PERSONS,
AND THEIR FAMILIES ACT 1989, ANY REPORT OF THIS PROCEEDING
MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT
1980. FOR FURTHER INFORMATION, PLEASE SEE
[HTTP://WWW.JUSTICE.GOVT.NZ/COURTS/FAMILY-
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**IN THE FAMILY COURT
AT PAKAKURA**

**FAM-2015-055-000249
[2016] NZFC 2034**

BETWEEN	THE CHIEF EXECUTIVE OF THE MINISTRY OF SOCIAL DEVELOPMENT Applicant
AND	REBECCA JOHNSON AND RIGBY DICKSON Respondents

Hearing: 26 February 2016

Appearances: Ms A McCormick for the Applicant
Ms H Ellis as Lawyer for the Child
Ms Fuata'i as Counsel to Assist the Court

Judgment: 16 March 2016

**RESERVED DECISION OF JUDGE MAUREEN SOUTHWICK QC
With Reference to Appointment of Litigation Guardian**

[1] Proceedings commenced by the Chief Executive of the Ministry of Social Development (“MSD”) relate to Kikorangi Tito-Elliot (“Kikorangi”), born on [date deleted] 2015. Kikorangi’s mother is Ripeka Erana (“Ripeka”). Ripeka is a “minor” by virtue of her having been born on [date deleted] 2000.

[2] Rule 90 of the Family Court Rules provides that a minor must not take part in proceedings without a next friend or litigation guardian. Rule 90(2) provides various exceptions – only Rule (90)(2)(c) could present any relevance. That subsection provides that a minor may take part in proceedings without such representation if Rule 90A applies.

[3] Rule 90A provides the Court with the ability to allow a minor to take part in proceedings without representation where that minor has applied to the Court for such an order. The Court must be satisfied that:

- “(a) *The minor is capable of making the decisions required or likely to be required in the proceedings; and*
- (b) *No reason exists that would make it in the interests of the minor to be represented by a next friend or litigation guardian”.*

[4] Rule 90B defines the prerequisites to the appointment of a next friend. Such a person must file an application in Court, with an affidavit in support. That affidavit must show that he or she:

- “(i) *Is able fairly and competently to conduct proceedings on behalf of the minor; and*
- (ii) *Does not have interests adverse to those of the minor”*

In addition, the applicant must provide an undertaking to be responsible for any costs awarded against the minor.

[5] For the appointment of litigation guardian, Rule 90C(2) applies. The Court may make such appointment on its own initiative or as a consequence of application being made. The Court must be satisfied that the person proposed:

- “(i) *Is able fairly and competently to conduct proceedings on behalf of the minor; and*

- (ii) *Does not have any interests adverse to those of the minor.*
- (iii) *Consents to being a litigation guardian.*
- (iv) *In deciding whether to appoint a litigation guardian, the Court or Registrar may have regard to any matters the Court or Registrar considers appropriate, including the views of the person for whom the litigation guardian is to be appointed”.*

[6] Finally, a litigation guardian may apply to the Court for an order that he/she is not responsible for costs awarded against the minor.

[7] Given the complexities of this case and the absence of any obvious candidate to carry out the role of next friend or litigation guardian, counsel to assist the Court was appointed. Out of her investigations, the following emerged:

- (a) Ripeka would prefer that she was represented by her mother. There was muted support for the possibility of Ms Tuilotolava fulfilling the role, she being Ripeka’s youth advocate in the Youth Court.
- (b) Ripeka’s mother is Ms Rebecca Johnson. Ms Johnson is the respondent in MSD proceedings which relate to all six of her children.
- (c) Ms Johnson and her partner are currently engaged in various programmes in an attempt to place themselves in a position of being able to have their children back in their care.
- (d) Ms Johnson would consent to being appointed litigation guardian and says she supports her daughter regaining the care of Kikorangi. She is a natural guardian of Ripeka.

[8] Ripeka’s desire to have her mother represent her suggests that Ripeka herself is hesitant about her ability to represent herself. This young person is currently coping with multiple significant issues. I am not persuaded, given this situation, that she would be capable of making decisions in these proceedings without some level of guidance and support.

[9] The only options available to fulfil this role are her mother, or possibly Ms Tuilotolava. With respect to the latter, I have no information that Ms Tuilotolava consents to such an appointment. Neither am I aware of any funding that would be

available to meet the cost of her professional representation of Ripeka, although accept that an approach to legal services might resolve that difficulty.

[10] The obvious query in relation to Ms Johnson is whether the reasons for her children having been removed from her should preclude her from being able to “fairly and competently” conduct proceedings on behalf of Ripeka.

[11] There is nothing before me to suggest that Ms Johnson would not be able to carry out this role. She has the advantage of being aware of the nature and process of such proceedings. She understands the background of Ripeka’s current situation and supports her daughter in her desire to take the necessary steps to enable her to retain Kikorangi. Ms Johnson is also familiar with the expectations of MSD and, at least to some extent, the likely threshold to be crossed. Ms Johnson does not, herself, seek the day-to-day care of Kikorangi and, hence, there is no evident conflict of interest.

[12] In my view also, the wishes of Ripeka, given her age, should be considered seriously. Ripeka seeks that her mother should represent her.

[13] Accordingly, and on the Court’s own initiative:

- (a) I appoint Ms Johnson as litigation guardian of Ripeka.
- (b) Within seven days, Ms Johnson is to file formal consent by way of Memorandum, together with an application for an order that she should not be responsible for costs awarded against Ripeka.
- (c) Ms Fuata’i’s appointment is extended to:
 - (i) Explain fully the implications of the appointment to Ms Johnson.
 - (ii) To assist in ensuring that the consent and the application referred to above are filed within the timeframe directed.

Maureen Southwick QC
Family Court Judge