

**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.GOV.T.NZ/COURTS/FAMILY-
COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).**

**IN THE FAMILY COURT
AT MANUKAU**

**FAM-2015-055-000168
[2016] NZFC 2133**

IN THE MATTER OF	THE CHILDREN, YOUNG PERSONS, AND THEIR FAMILIES ACT 1989
BETWEEN	CHIEF EXECUTIVE OF THE MINISTRY OF SOCIAL DEVELOPMENT Applicant
AND	PN PM Respondents
AND	AW Other Party
AND	BN BORN ON [DATE DELETED] 2015 Child or Young Person Whom the Application is About

Hearing: 15 March 2016

Appearances: T Coburn for the Chief Executive
No appearance by or for the Respondents
T Sharkey for the Other Party
J Attfield as Lawyer for the Child

Judgment: 15 March 2016

ORAL JUDGMENT OF JUDGE A-M SKELLERN

[1] This is the matter of an application under s 121 Children, Young Persons, and Their Families Act 1989 for Additional Access to BN, who is the grandson of the applicant AW. BN was born on [date deleted] 2015 so he is just [age details deleted].

Background

[2] BN is currently in the Interim Custody of the Ministry of Social Development under s 78 of the Act. The current arrangement is for Ms AW to have one hour access a week with B. This access is supervised by the Child, Youth and Family Services social worker. That period of access is followed by Ms PM's time with BN. When she fails to attend or is late Ms AWiniata has an extra 15 to 20 minutes with BN. Ms PM is BN's mother and Ms AW's daughter.

[3] Ms AW initially sought either four access periods per week for a few hours. Alternatively three periods a week for four hours, or today through Ms Sharkey generally asking for some more time with her grandson. She opposes the making of a Declaration and ultimately seeks the return of BN to her care. She says that this increased access that she seeks will help BN to meet his milestones and maintain his attachment to her.

[4] Access for her is generally proceeding well with BN being very pleased to see her and to be with her. However it is also undisputed, (although the extent and detail of it is disputed), that there are times when BN witnesses conflict while Whanau are engaging in addressing their problems with each other and with Child, Youth and Family Services. I will not make any more particular comment about that because it is just so basic from my perspective that BN must be protected from any behaviour of that nature.

[5] Ms AW has acknowledged that she is currently on bail facing a charge of at least assault with intent to injure, and assault with a weapon against Ms PM, her daughter. She has pleaded not guilty to this charge which is alleged to have occurred on 2 August 2015. Ms AW herself has six convictions for excess breath alcohol

related transport charges and a significant history of Child, Youth and Family Services intervention in respect of her own parenting. That is set out in the s 131A report dated 1 September 2015. Although Ms AW herself says apart from the time when Ms PM was nine and she acknowledged her parenting deficits, the balance of intervention was in respect of the poor choices Ms PM made as a young person.

[6] Ms AW did not accept that there was any real conflict in her family. She described it as just ordinary ups and downs of family life. This is notwithstanding that her daughter has a bail condition not to associate with her, and she has a bail condition not to associate with her daughter.

[7] There have been two altercations of note during BN's access with Ms AW. One was on 9 November 2015 and another on 18 February 2016. The behaviour by BN's Whanau is at times inappropriate to say the least, whatever the actual detail of the incidents are. The problem on 18 February 2016 apparently involved Ms AW remonstrating with the social worker about BN's godmother seeking details about being a caregiver for BN, and seeking a caregiver pack. That should not have occurred in front of or in the hearing of BN.

[8] In terms of Ms PM and Ms AW's positions they each seek the return of the care of BN. This could perhaps be part of the catalyst to two recent serious issues that have arisen between them. This is in addition to what was clearly at the very least a distressing episode on 2 August 2015.

[9] On 11 March 2016 Ms AW has just received from the Privacy Commissioner information about Ms PM's background. She raised these issues with Ms PM who was at her home at the time despite the two not being supposed to be having contact. On that occasion the police were called to intervene.

[10] On 13 March 2016 Ms PM indicated to Ms AW that she was coming to the house. Ms AW told her not to come. When she arrived, notwithstanding being told not to come, she was told to leave. There was then another argument and Ms PM's brother told her to leave upon which Ms AM is alleged to have assaulted him.

[11] The social worker gave evidence. She said that BN was always happy to see Ms AW. Of note was, as I have mentioned, that BN does not react to any conflict. I have said earlier that is very worrying from my perspective. The social worker had a concern that if there were to be more frequent access visits that BN would be travelling more than one hour in all for access. She resisted further contact for grandmother initially, but then agreed that if BN was available for two hours, and Ms PM was not going to take up that second hour, there was no reason that grandmother could not have the time given BN's positive reaction to her at contact.

The Law

[12] Section 121 Children, Young Persons, and Their Families Act sets out at (ss 2(a) where the Court makes an order under s 78 of the Act relating to the custody of a child or young person, pending the determination of any proceedings it may on making the Order, or at any time after making the Order on application made by any parent of the child or young person, or any other person make an Order granting access to that child or young person to that parent or other person).

121 Court may make orders for access and exercise of other rights by parents and other persons

- (2) Where the Court—
- (a) Makes an order under section 78 of this Act relating to the custody of a child or young person pending the determination of an application; or

The Court is directed that it may make such Orders on any terms and conditions the Court thinks fit.

[13] The Court is, of course, instructed in terms of the orders it makes by s 6 of the Act, which sets out that in all matters relating to the application of this Act, with some exceptions, the welfare and interests of the child or young person shall be the first and paramount consideration, having regards to the principles set out in ss 5 and 13 of the Act.

[14] The principle that I am most concerned with in making this decision is that wherever possible the relationship between a child or young person and his or her

family, whanau, hapu, iwi and family group should be maintained and strengthened. The situation for BN is clear in terms of his relationship with his grandmother. He enjoys seeing her and he enjoys being with her. The benefits to him in maintaining contact with her are of course that she is whanau, and his relationship with whanau must be preserved and strengthened. That relationship must, however, be on a safe basis. Access for BN must not at any time compromise his safety and wellbeing, and in that I include his emotional safety and wellbeing. Being exposed to aggression by the adults in his life is a matter which will not serve his welfare at all. He is to be protected from that at all costs.

[15] There is no reason that in the event that his mother does not exercise her access in the hour after grandmother has her access, that grandmother should not be able to have the two hours with him. The Access Order will be for grandmother to have at least one hour with BN per week. In the event that his mother is not having an hour's access following her access, grandmother is to have the additional hour with him. That, as I have said, will be on a weekly basis.

[16] It will be on the following conditions:

- (a) First it will be supervised by the Child, Youth and Family Services social worker.
- (b) Second it will be terminated should any of the adults, including grandmother, become aggressive with the Child, Youth and Family Services social worker.
- (c) BN's clothes are not to be removed at the beginning of access.

[17] I note that at the delivery of this decision Ms AW has been unable to contain herself, and has left the courtroom. The social worker supervising access will need to be vigilant to ensure that BN is not exposed to any behaviour that places his emotional safety at risk. That is the reason access is to be terminated in the event that there is aggressive behaviour by grandmother or any other whanau member.

[18] In terms of the Declaration proceedings I direct that the file be immediately transferred to Centralised Fixtures. All evidence is already on the file and the fixture

date is to be set as quickly as it possibly can be. The estimated hearing time is two days which appears to me to be quite realistic.

A-M Skellern
Family Court Judge