

**NOTE: PURSUANT TO S 139 OF THE CARE OF CHILDREN ACT 2004,
ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO
11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER
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**IN THE FAMILY COURT
AT GIBSONE**

**FAM-2015-016-000209
[2016] NZFC 2986**

IN THE MATTER OF THE CARE OF CHILDREN ACT 2004

BETWEEN KAE HENDRY
 Applicant

AND RONA ARONO
 Respondent

Hearing: 12 April 2016

Appearances: L H Maynard for the Applicant
 No appearance by or for the Respondent
 R T Hovell as Lawyer for the Child

Judgment: 12 April 2016

ORAL JUDGMENT OF JUDGE A B LENDRUM

[1] This is the matter of Kae Hendry and Rona Arono, the father and mother respectfully of Pippa Arono, born [date deleted] 2011 and now aged four. Mr Maynard acts for Mr Hendry.

[2] Mr Hovell was appointed by the Court to represent Pippa. Ms Arono is not present for reasons which will become clear in their minute. However before I deal with that, I need to deal with the issue of Mr Hovell as lawyer for Pippa.

[3] This morning Mr Hovell made it very clear that there was a whānau connection between his whānau and the mother's whānau. He informed me that that created a conflict and that conflict could not be ameliorated or otherwise dealt with. I accept his position entirely and I discharged him from his role before I commenced this minute. I formally record that now.

[4] I need to add that Mr Hovell has quite appropriately not played any part in the decisions and directions that I am going to make in this minute.

[5] This matter is a difficult one. Pippa moved to Australia with her father in January 2016. A s 132 report was obtained and that confirms that Pippa has moved to Brisbane where she is living with her father and other members of his whānau in what appear to be very appropriate circumstances.

[6] I am informed by email traffic between this Court and the Ministry of Social Development, and further from Mr Maynard's helpful advice this morning, that Mother has applied to the Central Authority pursuant to the Hague Convention to seek the return of Pippa, whom she alleges has been abducted by her father.

[7] The Ministry have made it clear that the mother consented to Pippa going to Australia with her father. The issue may be whether that was for a holiday or permanently, and that in turn would depend on how the parties evidence is interpreted.

[8] The s 132 report is dated 4 April 2016. Insofar as the mother is concerned, it is a most concerning document. It records in no set order, the following:

- (a) That Ms Arono, when seen by the social worker, was clearly under the influence of some illegal substance.
- (b) That Ms Arono had recently experienced further domestic violence with her partner, Mr Barret Ham.
- (c) That Ms Arono and Mr Ham are in the words of the report, a top 10 family violence couple in the Gisborne police district.
- (d) That Ms Arono is transient and has had six addresses since April 2015.

[9] The Court file discloses that Ms Arono has been in contact with the CRO responsible for this file (Ms Chambers), but has refused to come to the Court to uplift the application filed by the father on National E-duty on 18 December 2015, and which I, as the presiding Judge did not grant. It needs to be said that at that time I did not have all the information that I have before me now.

[10] The Court is also aware that Ms Arono faces evidential blood alcohol charges (which are not her first charges), and that the Court is informed, and quite properly by Mr Maynard, that he was present when her case was called in the criminal Court. At that time no address could be supplied for home detention purposes. She subsequently failed to appear and a warrant has been issued.

[11] In an email from the Ministry of Social Development on this issue, the Ministry social worker made it very clear that if Pippa was to be removed from her father's care in Australia and returned to New Zealand, the Ministry will take care and protection proceedings on an urgent basis to ensure that the child would be placed into the immediate care of the Ministry pursuant to an interim custody order under s 73 of the Child, Young Persons, and their Families Act 1989.

[12] I set these matters out because I intend to refer a copy of these directions to the Central Authority in Wellington for transmission to the Australian authorities. I do so because while the issue of Pippa's removal to Australia may or may not have been with the consent of the mother as to duration, the key issue that this Court faces, and will face if Pippa is returned to New Zealand, is what is in her best interests and welfare?

[13] The Ministry are satisfied on two counts:

- (a) That Mother is manifestly incapable of protecting her best interests and welfare.
- (b) That her father is.

[14] Given her age, and given the attachments she will have and particularly with her father, it seems likely that the only course the Ministry could properly take in that circumstance is to have custody of the child and then place that child in the care of her father in Australia.

[15] In these circumstances, in my view, the only appropriate directions I can make in this matter are these:

- (a) This matter is adjourned to the next list week of this Court to enable the Central Authority to advise the Court whether proceedings are in train to return Pippa to New Zealand.
- (b) That the mother, if served, is to advise the Court whether she wishes to proceed with any application to the Central Authority.
- (c) For the Ministry to formalise their position in respect of Pippa's care if she were to be returned to New Zealand, pursuant to the Hague Convention.

(d) Given Pippa's gender and age and the fact that Ms Thorpe has an extensive practice throughout this region, and in particular on the coast, I direct the Family Court co-ordinator to appoint Ms Thorpe in substitution for Mr Hovell.

[16] I repeat that Mr Hovell has not played any role in the steps that I have taken today. The information I have worked on has been the s 132 report, Mr Maynard's client's applications and the email traffic between the Court and the Ministry, and finally, the Court's information that Ms Arono is aware of the father's proceedings, but has deliberately avoided receiving service of that application.

A B Lendrum
Family Court Judge