

**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 GORE**

**FAM-2010-005-000097
[2016] NZFC 2931**

IN THE MATTER OF	THE CHILDREN, YOUNG PERSONS, AND THEIR FAMILIES ACT 1989
BETWEEN	CHIEF EXECUTIVE OF THE MINISTRY OF SOCIAL DEVELOPMENT Applicant
AND	AA First Respondent
AND	ID Second Respondent
AND	RD born on [date deleted] 2003 ND born on [date deleted] 2004 ED born on [date deleted] 2006 WD born on [date deleted] 2012 Children or Young Persons the application is about

Hearing: 7 April 2016

Appearances: A Robles for the Chief Executive
No appearance by or for the First Respondent
C Jillett for the Second Respondent (via telephone)
S Clapperton as Lawyer for the Children

Judgment: 7 April 2016

ORAL JUDGMENT OF JUDGE C L COOK

[1] Today has been a call in respect of the care arrangements for the children, RD, whose date of birth is [date deleted] 2003; ND, date of birth [date deleted] 2004; ED, date of birth [date deleted] 2006; and WD, date of birth [date deleted] 2012.

[2] The current position is that the children are in the care of their paternal grandmother, Ms OD, and a parenting order was made in her favour under the Care of Children Act 2004 on 21 January 2016. There have been some recent proceedings in this Court under the Care of Children Act but the position as I understand it is that Ms OD is about to, or has, relocated to the Wellington area.

[3] The issue in front of the Court today is that the Ministry made an application for a declaration and there is, on a without notice basis, an interim restraining order against both parents.

[4] The record from the family group conference which occurred on 7 March 2016 - which the mother attended in person and the father attended by conference call - is that all parties agreed the declarations would be made, there would be a final restraining order and there would be an order by the Court pursuant to s 83(1)(b) as a consequence of making the declaration. The interim parenting order as I understand, has already been discharged.

[5] The position today is that Ms Jillett has appeared on behalf of Mr ID. Mr ID is currently on remand in custody and is awaiting sentence in the Gore jurisdiction on 27 April 2016 for a breach of the interim restraining order. Mr ID's position is that he has no opposition to the interim restraining order proceeding. He says that he did not give consent to the restraining order being made but his intention is to attend [name and location of treatment centre deleted] upon his release.

[6] The Ministry's position is that the Notice of Intention to Appear was filed out of time; there is, on the face of it, a clear consent to a final restraining order being made; and Mr ID did attend the conference and take part in it, so there seems little justification or reasoning why the interim restraining order should not be made final.

[7] Ms Clapperton, on behalf of the children, has a similar view and supports the Ministry's stance.

[8] In the interests of justice, I will allow Mr ID an opportunity to take further steps in regard to this matter and I give leave for the Notice of Intention to Appear to be made out of time. However, I am going to make some timetabling directions and if Mr ID does not comply with those timetabling directions, then his Notice of Intention to Appear will be struck out for want of prosecution.

[9] I am also going to put matters off until after his sentencing date so that the Court can obtain a clearer picture of his position and Mr ID needs to file some comprehensive responses and reasoning as to why, given his circumstances, the interim restraining order should not be made final.

[10] Accordingly, today I make the following orders and directions:

- (a) I make a declaration that the children, RD, ND, ED and WD, are children in need of care and protection pursuant to ss 14(1)(b) and (h) pursuant to s 67 Children, Young Persons, and Their Families Act 1989.
- (b) There will be a final restraining order made against Ms AA. She has been served with these proceedings on 14 March and has not taken any steps.
- (c) The interim restraining order against Mr ID will continue.
- (d) Further, I make an order that both parents, or any other person having the care of the child, come before the Court if called upon within two years of the making of the order, so that the Court may take such further action pursuant to s 83(1)(b) Children, Young Persons, and Their Families Act 1989.

- (e) Finally, I make a direction that Mr ID file, within the next 14 days, an affidavit setting out in full the rationale and reasons as to why he opposes the interim restraining order.

[11] This matter will come back in front of the Court for a judicial conference on a date to be allocated after 27 April 2016 when the sentencing matters are dealt with in the Gore jurisdiction.

[12] If Mr ID does not file the affidavit in the required time, his Notice of Intention to Appear will be struck out for want of prosecution.

C L Cook
Family Court Judge