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**IN THE FAMILY COURT
AT WHAKATANE**

**FAM-2014-087-000029
[2016] NZFC 3376**

IN THE MATTER OF	THE CHILDREN, YOUNG PERSONS, AND THEIR FAMILIES ACT 1989
BETWEEN	CHIEF EXECUTIVE OF THE MINISTRY OF SOCIAL DEVELOPMENT Applicant
AND	AE First Respondent TC Second Respondent
AND	GE born on [date deleted] 2005 FE born on [date deleted] 2006 NE born on [date deleted] 2012 Children or Young Persons the application is about

Hearing: 26 April 2016

Appearances: L Cohen and O Brittain for the Chief Executive
No appearance by or for the First Respondent
Second Respondent appears in Person
S Clews as Lawyer for the Children
G Crabtree and I Puru as Social Workers

Judgment: 26 April 2016

ORAL JUDGMENT OF JUDGE S J COYLE

[1] The proceedings before me relate to an application by the Ministry of Social Development (MSD) that FE, born [date deleted] 2006, and NE, born [date deleted] 2012, are in need of care and protection. The children are currently in the custody of the Chief Executive following a without notice application for a s 78 custody order with that order being made on a without notice basis. The matter has been set down today for a defended hearing and as Ms AE, the children's mother, opposes the making of a declaration. The children's father, Mr TC, who is present today, is supportive of the declaration being made.

[2] The matter last came before me on 14 April last for a judicial conference. Ms AE was present and confirmed that she wished to continue to oppose the making of a declaration and it was at that time that I directed the matter be set down for today and that the fixture was to commence at 11.00 am as I had a prior matter at 10.00 am. When the matter was called at 11.00 am I was advised by my registrar that Ms AE was not present. I, accordingly, indicated that we should wait further time to see if she arrived late. But as at 20 past 11 she had not arrived. According to Mr TC she does not have a cellphone thus there is no way of contacting her. Quite clearly Ms AE knew that the matter was proceeding today and that it was proceeding at 11.00 am. She has made no contact with the Court's registry to indicate that she would be arriving late or indeed that she would not be turning up.

[3] Ms Cohen, for the Ministry, has sought that the matter proceeds today, in effect, on a formal proof basis. That is supported by Mr Clews, counsel for FE and NE. This matter needs resolution. Ms AE has had counsel but has not engaged with that counsel and a declaration was made pursuant to r 88 that Ms Kumar was no longer her solicitor. She, as I have already indicated, was well aware that this matter was proceeding today and was present in Court when I set the matter down. In the circumstances I have decided that the matter should proceed today.

[4] Ms Cohen, for MSD, has sought that I make an order on a formal proof basis. Mr Clews has indicated that whilst he would have wished to cross-examine Ms Puru

and Ms Crabtree, the social workers, if the matter had proceeded by way of a defended hearing, that on the basis the matter was to proceed by way of a formal proof hearing he did not require either of the social workers to be called to be cross-examined by him. Additionally I have no questions of the social workers. Both their respective affidavits are fulsome and set out fairly the background and set out very clearly the matters which have given rise to the Ministry's concern that these children are in need of care and protection. Accordingly, I have not required the social workers to be available to give oral evidence.

[5] There are a number of affidavits on the file, all of which have been affirmed, and thus there is an evidential foundation before the Court to enable the Court to consider the matter on the papers, as it were. Both Ms Cohen and Mr Clews have briefly addressed me by way of submissions as to why they support the declaration being made. Mr TC, who as I have indicated is present today, has also confirmed that he continues to support a declaration being made that his children are in need of care and protection.

[6] The Ministry seek a declaration pursuant to s 14(1)(a) and (b) of the Act. The affidavits set out a history of violence by Ms AE towards the children. There is also evidence of Ms AE not assisting in GE, an older daughter, engaging in the evidential interview process. She had initially agreed but failed to bring GE in to Whakatane for the purpose of an evidential interview stating at the time that she was serving a sentence of home detention. The concerns in relation to GE followed a disclosure by her that she was inappropriately touched by her brother, JE, on a number of occasions, with that disclosure being made in January 2014.

[7] Ms Puru, in her affirmation of 31 August 2015, also sets out evidence of a discussion with an elder sibling, XE, in which XE disclosed to Ms Puru that Ms AE often hit him and his siblings and, in relation to FE and NE, XE disclosed that they are also the victims of physical abuse by Ms AE.

[8] On 26 August last year a report of concern was received for FE who was seen at school with bruising to his upper left arm. Initially when Ms Puru and another social worker, Ms Bennett, went to [name of school deleted] to interview FE he was

very reserved initially saying he fell off his scooter. However, he then began to cry and disclosed that his mother had caused the bruising on his arm. He expressed fear at the thought of Ms Puru and Ms Bennett speaking with Ms AE about the concerns. Ms Puru's evidence is that there was observed additional stress to FE at the prospect that his mother would become aware that he had made this disclosure. An evidential interview was completed on 28 August 2015 in which clear disclosures were made by FE of physical abuse by Ms AE on him together with lots of yelling and swearing.

[9] In Ms Crabtree's affirmation she discloses evidence of an evidential interview by FE of Ms AE being physically violent towards him. But additionally she also discloses that on 7 April 2014 an elder sibling, JE, was evidentially interviewed in relation to another matter but in the context of that interview he talked about Ms AE physically abusing the children on a number of different occasions and specifically:

- (a) That Ms AE slapped and punched GE.
- (b) That Ms AE slapped FE and GE on the head.
- (c) That he was usually slapped on the head.
- (d) That Ms AE had punched FE in the stomach causing FE to fall to the ground.
- (e) That Ms AE had punched GE to the nose causing it to bleed.

[10] Attached to Ms Crabtree's affirmation was a list of prior convictions for Ms AE. They include convictions for threatening to kill, assault on a police constable, common assault, disorderly behaviour and fighting charges and some drink-driving and dishonesty offending.

[11] Mr TC has sworn an affidavit. He was married to Ms AE and his evidence is that over the course of his relationship with Ms AE he noticed that when she became angry he would become worried about the children's safety for it was his evidence that Ms AE's anger, "Deteriorates to the point where she is in a rage and seems out

of control.” He, at paragraph 11 of his affidavit, sets out an incident in which Ms AE came towards him with a knife and Mr TC had to lock himself in the room with JE with Ms AE stabbing at the door with the knife. He deposes seeing Ms AE hit XE on his back as hard as she could and scream so loudly that NE was shaking with fear. He recalls Ms AE slapping GE and he deposes an assault by Ms AE towards him that occurred in [location deleted] in August of 2015 which caused bruising to his upper arm.

[12] Ms AE has sworn two affidavits. In short she denies by and large that there has been any violence. She accuses her children of lying and accused the Ministry, in effect, of a vendetta without foundation to deprive her of a relationship with her children.

[13] I am aware that the evidence has not been tested on cross-examination, in particular that of Ms AE. I am also aware that the evidence of the social workers has not been tested in cross-examination. But there is a clear pattern, in my view, of a history of physical violence by Ms AE towards her children or physical violence by Ms AE to Mr TC and of her engaging in psychologically abusive behaviour towards the children. That type of behaviour is entirely consistent with the violence which is evidenced through her criminal convictions. I accept the evidence of Mr TC that he has, in the context of their relationship, been a victim of Ms AE’s violence and that he has observed Ms AE being violent towards their children and engaging in other behaviour which has caused NE, at least, to be extremely fearful of Ms AE.

[14] The totality of the various strands of evidence compels me to the conclusion that Ms AE has been physically abusive to a number of her children but in relation to these children that she has been physically abusive to FE, that she has been psychologically threatening and abusive to NE and that as a consequence she presents a clear risk to the safety of the children should they be in her care.

[15] It is clear when I read the combined evidence of Ms Puru and Ms Crabtree, that the Ministry have tried to deal with this matter by way of family whānau agreement. The Ministry have tried to work collaboratively and co-operatively with Mr TC and Ms AE to try and intervene to protect these children short of the making

a declaration. It is clear that Ms AE is not engaged in any meaningful change and that she has, over a number of years, continued to exhibit violent behaviour towards the children. Additionally it is clear to me that given her failure to co-operate with GE's evidential interview that she has also not been acting protectively towards her daughter who was making a disclosure at the time that she was a victim of sexual abuse. Mr TC, too, has tried to work with the Ministry and with other family members to try and improve things for the children short of the State's intervention by way of a declaration application.

[16] I am satisfied, on the evidence before me, that there is no alternative to meet the care and protection needs for these children short of making a declaration that they are in need of care and protection. I note that Mr Clews, the Court-appointed lawyer for the children, has been for some time now and remains firmly of the view that the children are in need of care and protection. There have been a number of family group conferences, the most recent ones Ms AE has not attended but Mr Clews has reminded me that in relation to an earlier family group conference Ms AE had attended and agreed at that time as to the rest of the family group conference that the children were in need of care and protection.

[17] The combined totality of all of those factors has led me to a clear and unequivocal conclusion that FE, born [date deleted] 2006, and NE, born [date deleted] 2012, are in need of care and protection pursuant to s 14(1)(a) and (b) of the Act on the basis that these children have been and likely to be harmed, ill-treated or abused by Ms AE and that these children's development and physical and mental and emotional well-being has been and is likely to be neglected and that that neglect is likely to be serious and avoidable as a consequence of the violence by Ms AE towards them.

[18] I adjourn the proceedings now to 8 June at 12.00 noon for the filing of a s 128 plan and report and for the making of initial disposition orders, and the s 78 order is to continue until then.

[19] As Ms Cohen has reminded me there is already in effect a s 87 final restraining order against Ms AE and thus that matter does not need revisiting by the Court at this time.

S J Coyle
Family Court Judge