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**IN THE FAMILY COURT
AT NORTH SHORE**

**FAM-2011-044-001852
[2016] NZFC 2862**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	JASON TOMPKINS Applicant
AND	FAYE CORGAIN Respondent

Hearing: 7 April 2016

Appearances: A Carbon for the Applicant
S Mitchell for the Respondent
L Jones for the Chief Executive
D Holbrook as Lawyer for the Child
J Capper - Social worker

Judgment: 7 April 2016

ORAL JUDGMENT OF JUDGE D A BURNS

[1] In the proceedings between Mr Jason Tompkins who I will call Father from now on and Ms Faye Corgain who I will call Mother from now on, the case is set down for hearing today. I refer to the directions I made earlier. The case came about because an urgent without notice application was filed by Father last Friday 1 April. He supported that application by an affidavit. I need to summarise what he said.

[2] He recorded that he was one of the parents, along with the respondent Ms Faye Wylie, now Corgain, of Takara Tompkins-Corgain born [date deleted] 2010. He had recently filed an affidavit on 21 March and he was updating that. He referred to that affidavit. He said that since November 2014 Mother and her husband, Pat Wylie, had made allegations that he physically and sexually abused Takara. He said as a direct result of those allegations, his contact with Takara was stopped for a period of five months and since July 2015, had been supervised. During this time he said that Takara had remained living with Mother and her husband. He denied that he had ever at any stage physically or sexually abused Takara.

[3] He said since 2 July 2015, he had been waiting on a s 133 psychologist report from Ms April Trenberth. It has obviously taken a long time, until late-March for that to be received by the Court. Unfortunately the Family Court in Auckland does experience significant delays when a report is commissioned. There are a number of reasons for that. Firstly, senior psychologists are quite rare. There is a diminishing pool of psychologists available to do this work, often because psychologists who might consider it appropriate are concerned about complaints that they receive and the time that it takes to deal with them. It is a real concern of the Family Court at Auckland that we have a diminishing pool of psychologists available to do this work. As a result, reports are often not actually commenced until two or three months after being commissioned and then often take a period of time until being received. That partly explains the issue of delay which has occurred in this case and referred to by Mr Mitchell in his submissions.

[4] He said that the report had been released, dated 29 March and as I said earlier, it was released on 30 March to counsel. He said that on 1 April he read the report and as a result is now making urgent application for Takara's day-to-day care. He also understood that both Child, Youth and Family Services, specifically Mr Shepherd and Ms Dana Holbrook were aware that he was making these applications and as a result of communication between those persons, there was support for the application that he was making.

[5] He said that he read the confidential details disclosed in appendix C of the report and up until reading the report had no idea previously that Mr Wylie was transgender or any of the details of his family history. He said he did not take any issue with him being transgender, however he had significant concerns about the issues in his family history and how those could possibly affect Takara. I of course note that Mr Wylie's evidence has not been tested and there was an application earlier on today to have him joined as a party to these proceedings. I indicated that he could be available as a witness but I am satisfied that I can deal with this case without breaching any natural justice issues with respect to him. The focus of these proceedings is on Takara's best interests and welfare and the adults' issues can be considered but her interests have to take paramouncy.

[6] He has repeated what he said in his preceding affidavit, 21 March, that he had significant concerns about Takara being exposed to psychological abuse whilst in the care of her mother and her husband. The extreme nature of the abuse has now been confirmed by the report. The report concludes that there are no indicators that his contact with Takara needs to be supervised. He said that he regarded that dramatic measures had to be undertaken to reverse day-to-day care or even wardship in order to protect her mental health and her psychological wellbeing.

[7] He then sought a change of care, how he said in paragraph 19 as follows, "As a result of Faye and Pat's allegation, Takara has been subjected to multiple interviews by professionals and medical examinations." According to the report, Takara saw a doctor four times in 2015 to assess a red or itchy vagina, including during times when he was not having contact. He is seriously concerned about Takara being subjected to invasive medical examinations. He referred to trying to obtain medical notes. He referred to the fact that apparently Mr Wylie was sexually and physically abused as a child and that he had a heightened sense of awareness on the issue of abuse as a result. He then went on to say that essentially Mother had an entrenched and intractable attitude to the situation, had made multiple allegations without any foundation, that the child was being psychologically abused as a result and he had significant care for her remaining in Mother's care. He sought a warrant to enforce the application for day-to-day care. He put forward proposals with respect

to contact in the interim and also sought an order preventing removal of the child from Auckland or New Zealand.

[8] I interpose at this stage that I am going to make such an order and there will be an order preventing removal of the child from New Zealand and an order that the child not be removed from the [location deleted] area in terms of residence, just in case I overlook that at the conclusion of this judgment.

[9] He concluded by saying that he did not believe that Mother was capable of parenting Takara, that he was concerned for her mental and emotional wellbeing and that she was being influenced inappropriately by Mother and her husband and an urgent change of care was necessary.

[10] Now that came on late-Friday before Judge Collin and I have already referred to the content of the minute that was directed. The case therefore was set down urgently today, in consultation with the North Shore Court, to consider the application. Obviously Judge Collin considered that he regarded the threshold to proceed without notice as not having been met and wanted to give an opportunity for the mother to be heard.

[11] Mother has engaged senior counsel and is here with her solicitor and with Mr Mitchell who has represented her today. I fully understand that she has been given short notice for preparing for today's hearing but this is a proceeding under the Care of Children Act and the procedural issues need to be relegated in priority to the best interests and welfare of the child. That is the focus of today's hearing and that is what I have got to and am required by the law to factor into account.

[12] Essentially Mr Tompkins is saying that Mother is in breach of s 5A, B and C Care of Children Act which she is required to observe, pursuant to s 4 of that Act and therefore there is a case to warrant uplift and immediate change of care.

[13] Coincidentally, Ms Capper the social worker who has been assigned to this case went to interview the child at school on or about the same time as the report was received and released. She developed, as a result of that interview, concerns about

the welfare of the child for psychological purposes. She has been available to give evidence today. I accept that there has been no affidavit completed outlining those concerns or any report filed. She has effectively given viva voce evidence today and has been available for cross-examination. She confirms the concerns of the psychologist Ms Trenberth in her report. She considers that if the child is to remain in the care of her mother, that there will be impact on her for her psychological safety and is supportive of the child being placed under the guardianship of the Court.

[14] Ms Jones, as one of the lawyers representing the Chief Executive has attended Court today. The position of the Ministry is that it is supportive of the application brought orally by Ms Carbon seeking for a wardship order to be made. She seeks for that to be made today. She advises that the Chief Executive consents to being an agent of the Court. She seeks an immediate order under s 31 and a placement pursuant to conditions imposed on the wardship order, placing the child with her father.

[15] Ms Holbrook supports that position and she has filed a memorandum dated 6 April 2016. There is also a memorandum filed previously by her. She has had some involvement with this case for a period of time. There are a number of aspects of Ms Holbrook's report that I need to refer to in more detail. She refers to the s 133 report from Ms Trenberth dated 29 April and says that, "Takara, being the subject of multiple interviews by social workers, multiple medical examinations, a specialist services report, a psychologists report and police investigations as a result of an extensive range of serious child abuse allegations by Faye Corgain, Mother and Pat Wylie against Jason Tompkins, Father." She noted that the notes, concerns and notifications had continued unabated to the present day, to Child, Youth and Family.

[16] There appears to be a recent notification, I am not certain who has made that but certainly the school, according to Ms Capper's information, had raised concerns with Child, Youth and Family and it looks as though another confidential notification had been made. Maybe that can be revealed later but for today's judgment I do not need to know that. She refers to Ms Trenberth noting concerns the notifications had continued to the present day by Child, Youth and Family and Police, Takara's GP and

most recently her teacher, on 10 and 23 March 2016 and more recently a touching allegation in a meeting at Takara's school on 30 March 2016. She said she noted the report writer at paragraph 7.17 page 11 of her report, said, "It was of additional concern that none of the investigations had substantiated any of the abuse allegations. Nevertheless this had not reassured Ms Corgain or Mr Wylie who had continued to report fresh disclosures and abuse-related behaviours."

[17] Ms Corgain, having now read the report, gives evidence that she has realised that the way she handled the situation may not have been correct and that her actions may have had a negative impact on Takara. That is contained in the notice of response dated 5 April. She has not chosen to give evidence or be available for cross-examination today. Some discussion took place between counsel and apparently an agreement was reached that she would not be available. It may be that Mr Mitchell was concerned that on short notice, being available for cross-examination could be prejudicial to her.

[18] Her case, primarily today, is contained and put forward by Mr Mitchell on her behalf and his submissions is that she should be given an opportunity to take into account the content of the report, to modify her behaviour, to seek assistance from a skilled psychologist and to make changes in her behaviour. The question of course is whether she is capable of doing that and whether in the interests and welfare of this child, the Court can delay while that process takes place I will have to consider and I will refer to later in this judgment.

[19] It is noteworthy that the specialist assessment report of 9 March recommended no further investigations for Takara and Ms Holbrook identified a pattern of repeated questioning of Takara by Ms Corgain and Mr Wylie. She records that on 18 December 2015 during a multidisciplinary meeting, including the police and a social worker, Ms Corgain and Mr Wylie were advised that there was no evidence to substantiate allegations and that their reporting of allegations to the police and Child, Youth and Family needed to stop. That advice had been given and my understanding from Ms Capper's evidence today, that similar advice was also given in March 2015.

[20] Ms Holbrook submits that despite this clear advice, the allegations continue with further disclosures to Child, Youth and Family as recently as March 2016, with Takara making a disclosure to a teacher. Further, Takara has now been shown “safe” videos from YouTube by Ms Corgain and Mr Wylie.

[21] The report writer noted at paragraph 7.75 page 18 that Ms Corgain and Mr Wylie remain unable to consider alternative explanations. They believed Takara’s behaviour and comments were first hand evidence. Furthermore they believed that their expertise trumped all the experts who had engaged with Takara and at paragraph 7.96 page 20, “The focus of Mr Tompkins as an abuser was reaching the level of obsessive with neither adult feeling able to alter their perceptions.”

[22] Ms Holbrook submitted that Ms Trenberth concluded at paragraph 12.2 page 27, the situation was rapidly approaching the point where more drastic measures would be required to protect Takara from identified risks to her mental health, referring to wardship or reversal of primary care. Ms Holbrook submits that despite the evidence of Ms Corgain that she will engage in counselling and agrees for Takara to receive counselling, counsel holds serious concerns for Takara’s welfare remaining in the primary care of Ms Corgain.

[23] Counsel has been advised by Ms April Trenberth that Takara should not attend counselling if Ms Corgain and Mr Wylie continue to heighten her anxiety at home, as this would put her in a worse situation than she currently is in. She refers to Ms Trenberth saying, at her age Takara’s powerless to think independently of Ms Corgain and Mr Wylie and only if Ms Corgain and Mr Wylie are able to address their own issues then Takara should engage in counselling to include Mr Tompkins and his partner.

[24] The second aspect of the case put forward by Mr Mitchell today in submission, is that they are capable of change, do realise the seriousness of the issues raised in the report and both should be given an opportunity, particularly Mother, to address the issues and that the risks of change and removal of care

outweigh any benefits of doing so and that there should be further consideration and time.

[25] Ms Holbrook effectively in answer to that proposal, said in paragraph 12 of her memorandum that she noted the longstanding allegations, ingrained beliefs and opinions of both Ms Corgain and Mr Wylie, that both individuals have historical issues dating from childhood. As such, counselling may be long-term. I understand that submission to mean that effectively, if Takara is to remain in Mother's care, we could be involving a process that could go over months certainly, possibly up to a year or longer.

[26] As Ms Holbrook says, the issue really for determination is what care arrangements are in Takara's best interests and welfare, having regard to s 5 principles and most particularly s 5A.

[27] There are two essential applications before the Court today. One is by Father for interim day-to-day care and for a contact order to be made effectively suspending contact for a period and then consideration being given to allowing or reintroducing contact to Mother. A period of four weeks has been referred to.

[28] The second application is the oral application for wardship brought by Ms Carbon on behalf of Mr Tompkins today supported by the Ministry and by Ms Holbrook. I am going to deal with the wardship issue first. The principles relating to when a Court exercises the jurisdiction of wardship, which is a very significant one, has been established over a long period of time. Essentially I summarise the case law, which I am not going to refer to individual cases now but firstly, it is not a step that a Court should take lightly, it is a very serious matter and secondly, a wardship order should only be made as a last resort.

[29] Mr Mitchell has submitted today that the process is unfair on his client, that there is a potential breach of natural justice. Whilst he acknowledges a reference to wardship in the psychologist's report, it has been referred to in the affidavit and the application by Father and was referred to in the minute by Judge Collin last Friday. Nevertheless, he understandably says that the grounds for the application have not

been set out in writing. He argues that his client has been taken to a degree by surprise. She is having to deal with these issues which have significant long-term consequences for her on short notice and that it is not necessarily on the merits of the case the best option in any event which need to be fully explored, that she needs to be given an opportunity to file a response and full opportunity to be heard.

[30] I consider, with respect to the wardship application, that the case has not got to the point where it is a last resort. I consider that the issues impacting on this child can be dealt with under the Care of Children Act in terms of s 48 and parenting orders that can be dealt with. I do not think it is warranted at this stage, at this point, for guardianship orders to be made by the Court. I do not consider the position has become as a last resort and so I am going to make directions at the conclusion of this judgment, procedurally with respect to the oral application for wardship which is going to be effectively adjourned and directions made for it to be placed in writing and so that Ms Corgain has a full opportunity to respond and be heard.

[31] I now turn to deal with the application by Father for a interim parenting order. I am satisfied today that an interim parenting order has to be made placing the child in the interim day-to-day care of her father and I do so for the following reasons. Firstly I consider that the child is at immediate risk for her psychological safety. She has been exposed to psychological abuse from the persistent questioning and involvement in adult issues. I have reached the conclusion, on the evidence before me to date, that the mother and her partner, husband are intractable, intransigent and incapable of change at this stage.

[32] I consider that Mother lacks the insight to understand the effect of her behaviour on this child. I consider that she has been given at least two previous strong pieces of advice to desist from the behaviour which has been undertaken of making inappropriate, without foundation allegations of sexual abuse, that there is a strong and emotive content to those allegations and they are without foundation. I am satisfied that there have been significant investigations undertaken by police, Child, Youth and Family and now a senior psychologist which have not found any substantiation for the allegations.

[33] Mr Mitchell has understandably emphasised the significance of this decision and the impact on his client. I fully understand but essentially he is placing her, that is her as an adult, Mother being the adult, ahead of the child's welfare and best interest. I have got to determine and place as that is the first and paramount consideration and this child needs to be protected from emotional harm. I do find and accept the submission made by Ms Carbon that there has been a breach of s 5A, 5B and 5C Care of Children Act. There is a situation where I have no evidence to justify that the cause of the ongoing intransigence and intractable nature of this case is by Father.

[34] The psychologist's report confirms that the child has a good relationship with her father. I consider that the escalating nature of the allegations and the most recent allegations are probably caused by the fact that Mother has a fear that the child will be removed from her care. She feels concerned about that and as a result has responded to that fear by making these unwarranted and unfounded allegations. I predict that if I do not make this drastic change today, then what is sure as day follows night, within a week or two there will be further allegations made and further triggering of involvement of this child in those allegations.

[35] The child has only as recently as late-March having to be interviewed by a social worker. I am sure she did that skilfully and appropriately but it is once again exposure to another set of professionals being involved in her life, already with Ms Trenberth. I am satisfied that if I leave the situation in place or allow Mother to undertake psychological therapy, that that will not stop the exposure to the psychological issues that I have identified. I do accept that Mother is not placing the child at risk for her sexual or physical safety, it is her psychological safety. This has been confirmed by the psychologist. If it does not stop there is potential for very long-term significant harm.

[36] If I do not take this step, it could be when she becomes an adult that she will suffer from significant mental health issues. It is likely that as a teenager she will suffer from such issues as eating disorders, self-harm and issues relating to self care. That has got to stop at a young age, it can be achieved and the case is overwhelming. It has to be dealt with today and the evidence essentially is unresponded to by the

social worker. I accept the social worker's evidence as being fairly given, which is consistent with that of the psychologist who has been commissioned by the Court. I uphold Father's concerns and make a finding that the child is at psychological risk as of today in Mother's care and that has to be alleviated.

[37] I therefore make the following orders and directions. Firstly there will be a discharge of any previous parenting order made by this Court. Secondly, there will be an interim parenting order placing the child in Father's day-to-day care effective as of right now. I make a condition of that interim parenting order that Mother is not to go to the child's school and is not to have any contact with the child until there is a further order of the Court. If Mother does go to the school and attempt to see the child, I indicate that it is likely that the Court will entertain on a without notice basis, an application by Father to be appointed as a representative for the child and an application made for a protection order in order to protect the child so that there are sanctions in place in the event of a breach of that condition.

[38] A warrant is to issue but to lie in Court until 4 o'clock today. I authorise Father to attend the child's present circumstances and uplift the child. If there is no co-operation in uplifting the child right now forthwith, then the warrant will issue to enable a social worker to attend and uplift the child. I recommend that Mother co-operate with that process and make it as seamless as possible and as least stressful on the child as is possible.

[39] The oral application for wardship is directed to be placed in writing, if it is intended to proceed. There may be advantages for this child, in terms of access to resources and support for placement with Father, so I can see some potential advantages and I understand why the Ministry has supported the application today but for the natural justice reasons I have referred to, it needs to be placed in writing and Mother given a full opportunity to be heard. I direct it to be put in writing in the next 14 days. Any reply thereafter 14 days thereafter.

[40] I direct a judicial conference in approximately three or three and a half weeks time for 30 minutes in this Court. The purpose of that judicial conference is to consider any procedural directions that need to be made at that stage but primarily to

consider the issue of Mother's contact and reestablishment of contact with the child and how that can be dealt with and it needs to be probably progressed on a stage basis and what conditions need to be imposed relating to that contact.

[41] Therefore there is going to be a gap of about three to four weeks where this child will not have contact with Mother but that needs to be given consideration and I think it needs to be re-established in one form or another in three to four weeks time to ensure that there is no ongoing anxiety by the child in relation to Mother because she may well worry about Mother's welfare once she experiences what has been ordered today.

[42] In the event that a wardship application is not proceeded in writing in 14 days, then I direct a s 132 report so that the Ministry can update the Court with respect to its ongoing involvement and whether it considers that there are any ongoing care and protection issues in the care of Father or as a result of what has been ordered today.

[43] Further, now having heard further from counsel, I also make it a condition of the parenting order that Mr Wylie is not to have any contact with this child in any way until further order of the Court. With respect to the child's schooling I direct that she continue at her current school. In view of the fact that there has been a significant change in her care as a result of these orders, as much should be kept as stable in her life as is possible until full consideration can be given to a change of school. I am not saying that will not happen but it needs to be done and also enable Ms Corgain to be heard on that issue. The school also have part of the background to her issues that she confronts and there maybe some benefit in her remaining at her current school. I accept that it will involve transporting issues for Mr Tompkins but her needs I think at this stage outweigh that hassle factor for him. So I am going to direct she remain at [name of school deleted] until further order of the Court. Any application for change of school needs to be brought in the next 14 days and that can progress and be considered at the judicial conference I have already directed.

[44] With respect to the engagement by Ms Corgain for Ms Sue Mafi, I authorise the report from Ms April Trenberth to be released to Ms Mafi on standard confidentiality conditions so that she can assist Ms Corgain in any way that she can.

[45] Finally, I direct that Ms Holbrook can meet with Takara's current school and give a summary of what has happened in the Court proceedings today and preceding and the findings made by the Court today. She also is authorised to summarise and advise the school of the content of Ms Trenberth's report. Thank you.

D A Burns
Family Court Judge