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**IN THE FAMILY COURT  
AT CHRISTCHURCH**

**FAM-2008-009-001016  
[2016] NZFC 3003**

IN THE MATTER OF      THE DOMESTIC VIOLENCE ACT 1995  
  
BETWEEN                      PS AS LITIGATION GUARDIAN FORSV  
   Applicant  
  
AND                              CL  
   Respondent

Hearing:                      5 + 6 April 2016

Appearances:              Ms McNulty as Lawyer to Assist the Applicant  
   Mr Hembrow as Lawyer for the Respondant  
   Mrs Graham as Lawyer to Assist

Judgment:                    13 April 2016

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**JUDGMENT OF JUDGE R J MURFITT**  
**Domestic Violence Act - Protection Order where the behaviour comprises**  
**domestic violence - Necessity - Inter-Relationship with PPPR Act**

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## **Introduction**

[1] The questions in this case relate to whether a temporary protection order made on 20 December 2013 should be confirmed as a final order. The temporary order was made on application by a cousin of SV, then aged 15. In particular the issues raised need to consider whether the behaviour of the respondent, SV's father, comprises domestic violence, and if so whether there is a necessity for a protection order to be made.

### **Who is SV?**

[2] SV was born on [date deleted] 1998 so was, at the time of hearing, about to turn 18. Her parents JT and CL separated when she was almost five years of age. Initially she lived primarily with her mother, but from 2009 a shared parenting plan was in place.

[3] Her parents' separation was acrimonious and the family divisions persisted after SV's mother died in [date deleted] 2012, aged 47, as a result of a heart attack. That left her father CL as SV's sole guardian and caregiver.

[4] SV herself is a young woman with special characteristics which leave her with special needs. In the proceedings under the Care of Children Act and in these proceedings there are numerous psychological and psychiatric assessments which allow me to describe her as having a mild to moderate intellectual disability, coupled with a significant element of ASD (Aspergers).<sup>1</sup>

[5] Doctor Olive Webb, a psychologist with immense experience dealing with individuals diagnosed with autism, has furnished a report of 10 March 2016, which is more positive in its descriptions of SV's makeup. Although she did no formal testing, she regards SV as an emotionally warm young woman with a mild intellectual disability and mild degree of ASD. Given the rapid flicking from subject to subject during one of their meetings and other displayed behaviours by SV,

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<sup>1</sup> I refer to the reports Dr Daniel Svoboda 16 April 2014 (psychiatrist) and Mr Guy Eaden January 2015 (psychologist)

Dr Webb suggests she probably also has ADHD (Attention Deficit Hyperactive Disorder).

[6] Autism is a condition with a wide spectrum of intensity. At its most severe, a functional life is unachievable, and intensive supervisory care is necessary to protect the individual against severe self harm. SV's condition is much different from that, and Dr Webb envisages that in due course SV will be capable of a functional life in the community, albeit with guidance and assistance, living in supported accommodation and with employment in a supported work environment.

[7] Like many with ASD, SV displays a number of characteristics, including a dependence on routine, heightened anxiety about threatened disruption, social awkwardness and a tendency to fixate on detail on certain subjects. In SV's case, she has [details deleted]. Complicated by her intellectual disability, her ASD leaves her prone to misunderstanding human behaviours, and social cues.

[8] Despite her disabilities, SV is capable of forming very determined opinions about what she should do, or not do, and her views can be unshakable. However, at the same time she is highly susceptible to the influence of those in whom she has reposed trust or affection. That is a characteristic which, coupled with her mild intellectual disability is highly relevant as to her capacity, both in relation to her ability to engage counsel of her own and in her ability to reach decisions about her own future welfare. I will return to this issue later in this decision, but it is important to observe now that SV's presentation and her levels of capacity are influenced by the quality of care she receives from those around her, and the environment they provide.

[9] Now having been in a supported living arrangement with [name of care provider deleted] for about two years, SV's capabilities are having an opportunity to flourish. In previous years, when she was in the midst of a family tortured with rifts and conflict, her disabilities were more florid and her behaviours more challenging. SV herself told Dr Webb she felt that she was in a "tug o' war".

#### **After her mother's death**

[10] SV lived with her father from May 2012 until a catastrophic incident occurred on 4 December 2013.

[11] During that period, she had ongoing associations with her maternal family, including her aunt and uncle, and in particular her cousin WB. The family rift between CL and the extended WB family continued after SV's mother died in [date deleted] 2012. Each side viewed the other with distrust and criticism concerning SV's welfare and care.

[12] It is clear that Mr CL's management of SV was very challenging. She was experiencing profound grief at the loss of her mother (like any other child of her age - then 15), as well as the hormonal turmoil of puberty. SV was becoming increasingly opinionated, determined to insist on her own choices and rebellious against authority.

[13] Coupled with her intellectual disability and her autistic characteristics, she was prone to hyper aroused anxieties when things did not go according to plan. For example, if her routines were threatened with disruption, it could be a major issue for SV, who was increasingly prone to responding with volatile and sometimes violent behaviour.

[14] The environment in which she was living did not help. I have no doubt that members of her maternal family, and Mr CL were at least quietly hostile to each other and I have no doubt SV would be aware of that conflict between those adults who were so important to her. In addition, Mr CL's best efforts to manage SV were becoming increasingly inadequate. One of the reasons for this relates to Mr CL's own personality.

### **Her father's character**

[15] During the course of the hearing, and even during prehearing conferences, I could not help but notice the tendency of Mr CL to exhibit anxieties and other behaviours which go beyond the normal anxieties of any litigant. In the days before the hearing commenced, he insisted on filing a screed of new affidavits (and I

allowed two of them) because he was convinced of the importance of their testimony. During the course of the hearing I observed his impulsive interventions, and somewhat awkward actions, suddenly leaving the witness table for this reason or that. At the hearing he was permitted to play a recording of an incident which occurred in 2013 at the [location deleted], convinced of its compelling effect in his favour, but oblivious to the way it revealed his own intensity and authoritarian styles. His documentation and his “incident reports” showed a preoccupation with detail that is truly remarkable. I could not help but wonder whether SV’s own autistic tendencies have a genetic root stemming from her father.

[16] I raised this question with CL during the course of the hearing. He agrees that he has some similar characteristics to his daughter, and in particular identified the way in which he is single minded in pursuing detail “to the ‘nth degree”.

[17] That would be consistent with Mr CL’s intensity and persistence in pursuing complaints about one social worker in particular, Ms Radford, and his behaviour in “bombarding” SV’s current social worker with emails and enquiries.

[18] That then is the personality of the man whose responsibility was to manage the increasingly challenging behaviour of his daughter who has her own intellectual impairments and aspergic tendencies.

[19] It is clear that during 2013 the challenge of caring for SV was becoming too great for Mr CL. Notifications had been made to CYPS and investigations were initiated each time.

### **The escalation of challenges**

[20] In May 2011 a complaint was made that Mr CL had checked under SV’s knickers to ensure she was not wearing underwear to bed beneath her pyjamas. It is fairly apparent that was a complaint initiated by the maternal family, or SV’s mother herself. That was investigated by Police who considered the conduct was not criminal, and fell within acceptable though imprudent parenting practice. The explanation was that SV had been suffering from thrush, and part of the remedy was

to ensure she did not wear underwear at night beneath her pyjamas. His parenting may have been clumsy, but it was not ill-intentioned.

[21] Another complaint in November 2011 related to a claim SV had disclosed being slapped by her father for not getting into the shower. The notifier (apparently a senior teacher at SV's school) felt that SV had been encouraged by her mother to report this, and CYPS closed the file on that matter.

[22] It is apparent however from Mr CL's own evidence, and the "incident report" he prepared on 4 December 2013 that difficulties in managing SV were escalating. SV was displaying [detail deleted] behaviours<sup>2</sup>, a symptom of the stress she was experiencing.

[23] From Mr CL's own account, while life with SV was predominantly loving and calm, with her enjoying attendance at school, travelling there by bus, enjoying her cats, and enjoying positive relationships with maternal family members as well, there were episodes of conflict which escalated to SV hitting and kicking her father when he insisted upon something or other occurring in the home. At such times, Mr CL tried distracting her attention by talking about the cats, but at times he used restraint by pinning her arms to prevent her from continuing to hit him, or hurting herself. [Details of condition deleted].

[24] Mr CL was clearly desperate. He attributed SV's deteriorating behaviour to her experience of bullying at [name of school deleted] and he was unhappy at the school response when meetings occurred.

[25] At times Mr CL used "restraint" to control SV's more extreme behaviour. He said this was sanctioned by a medical professional, although I have nothing to verify that from the original source. I am aware that in the past, "restraint" has been seen as an acceptable aspect of management of eruptive behaviour by individuals with autism, who are engaged in seriously disruptive or self harming behaviour. This usually involved enfolding the subject in the arms of the restrainer, sometimes briefly but sometimes for an extended time. That is currently a practice not

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<sup>2</sup> [Details of condition deleted].

permitted by “service providers”. Ms Mulcahy, social worker, indicated that in Youth Justice facilities, restraint can be authorised by senior management, exercised by trained personnel and in limited circumstances.

[26] Dr Olive Webb was asked whether “restraint” is appropriate when a child or young person like SV was out of control. In her response, she described two contexts – one for trained service providers and one for family members. “Service providers” are subject to guidelines which indicate that restraint should be minimal, never used as a teaching tool, and should be a measure of last resort. In such controlled circumstances, only trained personnel can exercise it and extreme circumstances must apply. In an ideal world, if a likely scenario of violence could be anticipated, the scenario should be avoided. However, she said “families work differently” and that when stresses are highly geared within the family, they may be “not that able” to respond according to the ideal. With commendable empathy with families struggling to deal with children with disabilities, Dr Webb indicated that when families get into crises, there were no fixed rules other than the general law. By this she refers to s 59 Crimes Act, which confines the scope for parental justification for physical discipline. Dr Webb said that professionals are likely to say that restraint is necessary in some situations, but only as a measure necessary to protect safety.

[27] She highlighted that restraint demeans the restrained, and reinforces their sense of powerlessness.

#### **4 December 2013 event**

[28] During the preceding weeks or months, Mr CL had experienced difficulty in managing SV to be ready to catch her bus to school. SV was emotionally aroused and he attributes that to the fact she had been overloading with sugar after cooking pikelets with him the night before. They had disagreed about this the previous night, and SV went to bed without dinner.

[29] For whatever cause, plans for her to go to school the next morning did not go well. She had lost her bus card. Her father tried to get her to find it in her room.

SV's own explanations at the time confirm this background in general terms. SV was anxious to get to school and not miss her bus.

[30] According to Mr CL SV became agitated and began shouting, saying negative things about herself, banging her head with her hand, and smashing musical equipment to the floor. He confiscated her clock radio which failed to settle SV, who began to struggle with him, abusing him and intensely angry. Now outside, in full fury, SV swung a garden chair at her father who averted the blow, and holding her with both his hands, used one leg to trip her to the ground, where he held her for a period asking her to calm down, stop behaving that way, or he would need to call the Police. He returned inside (with the clock radio) expecting that SV would spend some time with her cats while she continued to settle down. However SV came back in to the house, grabbed the clock radio and smashed it to the floor. He ordered her outside again, where SV again threw a chair towards him. Mr CL locked the door and sat down to regain his composure. A few seconds later SV tried to punch her way through the door breaking the glass, and severing an artery and tendons. An ambulance was summoned urgently and first aid was applied. SV was admitted to hospital for urgent surgery and remained there for the next three weeks.

### **Temporary protection order**

[31] On 20 December WB, who is SV's first cousin, and was in her early twenties, applied as a representative of SV for a protection order. She also applied for parenting orders. That day, Judge McHardy made an interim parenting order and a temporary protection order, noting that SV was in an unsafe situation which needed to be properly assessed.

[32] Mr CL opposed the making of a final protection order, and this hearing is the forum for that to be resolved.

[33] Proceedings were also continued under the Care of Children Act.

[34] Judge Somerville undertook responsibility for managing the proceedings. Clearly the WB and CL families were enmeshed in conflict, and as time wore on, the



Judge saw the need for the Gordian knot to be severed. Concerned as he was that SV was in the centre of a damaging family contest, on 10 December 2014 he made an interim order placing her under the guardianship of the Family Court. On 5 February 2015 that order was made final. A guardianship order of that kind lapses on the 18<sup>th</sup> birthday of the young person who is the subject of such order. SV turned 18 on [date deleted] 2016, and her wardship status has now expired.

[35] On her 17<sup>th</sup> birthday, [date deleted] 2015, SV passed the jurisdictional threshold where her litigation could be handled through a representative (WB). However on 24 September 2015 PS was appointed as a litigation guardian for SV, on the grounds that SV herself lacked capacity to instruct counsel or conduct the litigation herself.

[36] Throughout that year it was abundantly clear that SV had formed an implacable view that she needs a protection order but primarily through a fear that her father may attempt to disrupt her newly found stability living in supported accommodation with [name of care provider deleted].

[37] Throughout 2015, Judge Somerville managed this case more closely than any other in my experience. Each week he convened a telephone conference to monitor SV's situation, and the state of these proceedings.

[38] In the meantime Mr CL was charged with breaching the temporary protection order. The breach comprised passing a gift to SV's school, an action which I gather was recommended by an assessing psychologist who had not turned his mind to the possible consequences for Mr CL in doing so. The complaint leading to this prosecution was one of many laid by WB against Mr CL, but was the only complaint which led to a prosecution. Not surprisingly, the breach was seen as so trivial that Mr CL was discharged without conviction by Judge Saunders.

## **WB**

[39] WB and her mother NB have been positioned as SV's protectors. They view Mr CL bleakly, and believe he has been abusive of SV.

[40] For reasons which were quite compelling from her own perspective, WB saw the need in December 2013 to step into a protective role for SV.

[41] For a time, SV lived with WB and NB, but in due course SV herself formed an opinion that WB was working against her, and for some months now has refused any contact with her (except for a period of limited contact).

[42] Two professional observers, Mr Eaden and Dr Webb have expressed concern about the extent to which SV has been subject to WB family pressure to align with their hostility toward Mr CL.

[43] WB has been the primary agent advancing this application for a protection order, until last year when her role as SV's advocate was taken by Ms PS.

[44] Ms PS is a family friend of long standing, who has the confidence of both the WB and the CL families, and who has been a friend of SV's mother. During the course of the hearing Mr CL gratuitously expressed his thanks to Ms PS for all she has done for SV. Ms PS takes a somewhat neutral stance in this action and has not presented any evidence of her own.

### **Reports of past violence**

[45] Some of the evidence presented to substantiate allegations of domestic violence is contained in reported complaints by SV herself. While hearsay evidence is admissible in proceedings, it is subject to analysis of its reliability.

[46] SV has been reported as complaining that her father kicked and hit her. Primarily these complaints were to WB or NB. Others have been made to [details deleted]. Ms Mulcahy heard SV complain more recently of being "hurt" in the past, but not specifically of assaults or violence.

[47] WB gave evidence in her affidavit, supplemented by oral evidence that Mr CL had hit SV during the wake at her mother's funeral in [date deleted] 2012. WB and her family were dismayed by this. Detail given however at the hearing indicated that this happened when SV had reached for a further piece of cake (in the context of

behaviour problems emerging with too much sugar consumed) and her father smacked the cake out of her hand. When the context was described, the situation was not as serious as when first told in WB's affidavit. Again her father's behaviour was clumsy rather than ill-intended.

[48] The issue of SV's reliability has to be considered, when so much of the evidence presented in support of the protection order is hearsay, originating from her. It is clear from the professional assessments that SV is very susceptible to misunderstanding words said to her, and social situations. She is also highly suggestible, and at paragraph [65] of her affidavit of 25 February 2014, WB herself indicated that. She said that SV will often say "yes" without thinking, because she does not want to disappoint people. Dr Webb's recent report confirms that SV is very vulnerable to influence of others, a somewhat contradictory (but quite plausible) characteristic alongside SV's ability to be forthright and stubborn in her own views.

[49] SV has other history of either inventing or exaggerating complaints, and some of these have involved WB. AR, employed at one of the schools attended by SV, reported that SV had complained of WB locking her in her room, obliging her to go to bed at 7:30pm so that WB could follow her own activities, punished her for [detail deleted] (by depriving her from going to a community group) and making her pick up dog faeces as a punishment. WB outrightly denied some of these, and placed an explanatory context around others, which indicate a quite innocent intent. For example, when SV indicated she wanted a pet dog, WB took her on an exercise collecting dog faeces from the front lawn to show her what responsibilities went alongside ownership of a dog. SV misconstrued this as a punishment, which she termed "manure duty".

[50] Apart from the incident on 4 December 2013, SV has not given any detail about other occasions when her father has allegedly assaulted her, or used excessive force while parenting her.

[51] This lack of contextual detail together with her tendency to misconstrue or invent events leave me unable to place any significant weight on these statements by SV as a truthful and reliable account.

[52] SV is more detailed in the account she gave about events on 4 December 2013. There she described her father dragging her out doors holding her by the ankle. Other contextual detail she has given is consistent with the account presented by her father, namely the conflict over her missing bus card, the state of her room and the conflict over her clock radio. She also has referred to problems over her consuming pikelet mix. However, if SV's account was accurate, I am sure there would have been forensic evidence readily visible of bruising or abrasions around SV's ankles or other parts of her body, consistent with being dragged out of a house on the ground. Mr CL's account, typed on that day, while he was clearly still in an agitated state, in a stream of consciousness style, is more likely to be an accurate representation of the events of that day.

[53] The Police investigated that incident. Detective Constable Keith furnished a report on behalf of the Child Protection Team in July 2014. He concluded there was insufficient evidence for a prosecution to occur and that Mr CL had acted in a fashion which he (Mr CL) believed was "good parenting". In an ideal world, Mr CL might possibly have had other options than using force to bring SV to the ground, and restraining her there with his opened palm to allow her time to become composed. However, when one is faced with a teenager who by any measure was angry, out of control, bent on doing harm to herself, to her father and to chattels in the home, a perfect response is simply an unrealistic expectation. Added to that, Mr CL has personality characteristics which have always been part of him, but which place hurdles in the way of always responding with unfailing calm and equanimity. As Mr Eaden commented in his report of January 2015, he believed Mr CL was acting in good faith, but that his "methods and emotionality" interfered sometimes with effective management of SV's difficulties.

[54] One can not underestimate the domestic pressure on a solo parent trying to manage a teenage child with an intellectual disability (albeit mild) and the challenges presented by her autism. While Mr CL managed to parent SV to the best of his

ability and succeeded the vast bulk of the time, at times the dynamics spiralled out of his control.

[55] I cannot conclude that Mr CL's management of SV on 4 December was anything but a genuine, well intentioned, caring but somewhat desperate attempt to subdue SV's explosive outbursts, which in turn were likely to have harmful consequences for her and him if she was left unrestrained.

### **Other allegations**

[56] Whilst I have not been satisfied the allegations of assault of violence have been established, there are other allegations levelled against Mr CL that he verbally abused SV calling her insulting names and by using coarse language. WB testifies she heard this "so often" and give examples that Mr CL called SV "baldy", "a Jew", "a monk". She also alleges that in the hospital Mr CL roughly shoved a straw into SV's mouth and twisted her arm to make her drink.

[57] Mr CL denies outright either referring to SV with the first two epithets, but he acknowledges using the term "monk" to her. His explanation is that, [details deleted].

[58] In relation to the pressured effort to have SV drink through a straw in a hospital in December 2013, Mr CL says that he certainly did try to encourage SV to drink through a straw because it was important for her fluids to be maintained, but he denies any roughness in so doing. This was an occasion of high tension when he was recording at least parts of an exchange between himself and WB, and each were in high conflict over SV. Given the concerns expressed by Dr Webb and Mr Eaden about the competitive family standoffs, with each family anxious to discredit the other, I am not satisfied WB's account of words used by Mr CL or his actions in the hospital can be viewed as psychological abuse. In relation to the incident in May 2012, when Mr CL intervened to stop SV having additional cake, WB's first account presented that as a simple assault as a punishment for SV eating cake, stripped of explanatory context. It was only in her oral evidence that she described the cake was smacked out of SV's hand, casting a different light on the incident.

## **SV's perspective**

[59] It is abundantly clear that SV has developed a fear of her father. Almost always however that has been couched of recent times a fear that he will “kidnap” her or “take” her from her settled routines and accommodation with [name of care provider deleted].

[60] There has been no history of Mr CL attempting to disrupt SV's accommodation there, but then he has been curtailed by the existence of the temporary protection order.

[61] It is equally clear Mr CL continues to maintain an intense interest in SV's wellbeing there. He has actively lobbied about her schooling and her activities. He has “bombarded” Ms Mulcahy with many many emails setting out his view point. He fails to appreciate the difficulties he causes for others by the intensity and tone of these communications. It is little wonder that some people (the NB family included) react allergically to him.

[62] The involvement of Dr Olive Webb has brought about a new approach in management of some aspects of SV's relationship with her extended family and her friends. Dr Webb is impressed with SV's ability to make choices about her day to day activities (what she will wear, what she will eat, who she will contact and what she will do). At Dr Webb's instigation, a chart has been prepared for SV to plan what people she will contact, at what level and on what days. Thus SV chooses to have face to face visits with some, telephone contact with others, text contact or no contact at all. Initially, WB was included as a person with whom SV might have some monitored contact, but SV has since rescinded that and presently has no contact at all with WB.<sup>3</sup> Surprisingly SV nominated she would like to have text contact with her father. She has not seen him for almost two and a half years. During a visit from Dr Webb, SV indicated she would like to telephone her father and use Dr Webb's number to do so (she knew by heart her father's telephone number). That call was harmonious and lasted about half an hour. SV was relaxed,

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<sup>3</sup> SV has mistakenly (according to WB) decided that WB had betrayed her, and was disloyal, and is now placing her under pressure as to what she should say.

lying back in a sunchair, chatting with her father about cats and other light topics. Since then SV and her father have exchanged light conversational texts with SV including loving references. She is primarily interested in her cats and that forms a large part of the conversational subject.

[63] Nonetheless, SV cowers at the prospect of seeing her father, and she is overwhelmed by fear that he will take her away. Dr Webb tried to co-ordinate a café date between them, with all the reassurances in the world, but SV ultimately could not face it; her [name of condition deleted] re-emerged, and the date was cancelled.

[64] Had there been proved domestic violence, then it would not be difficult to conclude that SV is in need of protection. She is fearful of her father, but not for reasons centering on the risk of domestic violence reoccurring.

[65] Indeed, she is in need of protection, but a protection order under the Domestic Violence Act is not the mechanism by which it can be given, because Mr CL has not been guilty of domestic violence, whether it be assaultive, psychological abuse or other.

[66] Rather he has been attempting to parent SV, lovingly but at times ham-handedly. He himself volunteered that he would be the first to acknowledge he has made mistakes.

### **A better solution**

[67] At the conclusion of the hearing, I invited Ms PS, through Ms McNulty to apply under the Protection of Personal and Property Rights Act 1988 to apply for a personal order in relation to SV, requiring SV to remain living in accommodation provided by [name of care provider deleted]. That application, although filed on 7 April, has been considered by me on [date deleted], the day after SV's 18<sup>th</sup> birthday.

[68] Orders can be made only in relation to an individual 18 years or over, under the PPPR Act.

[69] All orders in relation to SV under the Care of Children Act, including the wardship order have now lapsed.

[70] The temporary protection order remains in force until the delivery of this judgment.

[71] I can make a personal order of the kind mentioned pursuant to s 10 if I am satisfied there is jurisdiction to do so, within the criteria in the PPPR Act, and in particular ss 5 and 6. They require me to be satisfied that SV:

- (a) Is presumed, until the contrary is proved, to have capacity to understand the nature and foresee the consequences of decisions in respect of matters relating to her personal care and welfare and to communicate those; and
- (b) SV lacks wholly or partly the capacity to understand the nature and to foresee the consequences of decisions in respect of matters relating to her personal care and welfare.

[72] Bearing in mind the primary objective of the Court under s 8 to make the least restrictive intervention possible in her life having regard to the degree of her incapacity, and to encourage her to fulfil her capacities to the greatest extent possible.

[73] Section 10 allows me to make an order requiring SV to be provided with a range of services, treatment or care, including living arrangements.

[74] Ms McNulty has applied for an interim order, ex parte because of the need to ensure SV has security of accommodation, the subject of which is the prime driver of SV's anxieties and self harming behaviours.

[75] Ms PS is not to my knowledge one of the persons entitled as of right under s 7 to apply for an order, and requires leave to bring this application. She was appointed testamentary guardian of SV by SV's mother. She has been SV's litigation guardian. She is a friend of SV and has the confidence of both factions of SV's



extended family. It is likely in time that she will be SV's property manager, although no application has yet been filed in relation to that question.

[76] It is entirely appropriate that she be granted leave to bring this application for a personal order.

[77] The evidence of Guy Eaden, in a report of 14 January 2015 said of SV:<sup>4</sup>

“Of significant nature here is SV's level of intellectual functioning. While she presents in conversation as somewhat perceptive, it is clear from her testing results that her slightly elevated verbal comprehension masks what is a significant intellectual deficit. Diagnostically this falls into the range between Mild and Moderate Intellectual Disability. SV's ability to think and reason both with and without the use of words is lower than 999/1000 of her peers, a significant factor in her presentation. Adding to this what appears to be a number of anxiety disordered behaviours such as [details deleted] and extreme reactions to delayed gratification and low frustration tolerance, paint a picture of an individual who lacks the locus of control to make informed decisions.

[78] Both he and Dr Webb conclude that SV is also particularly vulnerable to the suggestion of others.

[79] It is in that context that Dr Webb accepts that SV's capacity is significantly diminished. She said that from the hundreds of documents she had read, and the comments of family members, she considered there is a real risk of SV being “shanghaied”. She said that if SV had no protections in place, it would be like “releasing a busy, emotionally disturbed, 15 year old into the world”. And such a person would have an impaired ability to make decisions about her personal welfare.

[80] She emphasised that SV is capable of holding opinions about major decisions in her life (where to live, where to work, where to go for schooling) and is capable of making decisions about day to day matters (what to wear, what to eat etc). She is certainly capable of expressing her views.

[81] Dr Webb does not favour estimations of an intellectual impaired person's “mental age”. However, Mr Martin Kelly, who prepared a series of reports under s 133 in the COCA proceedings ventured to note that SV presented intellectually as a

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<sup>4</sup> Page 202 Case bundle

“younger child”.<sup>5</sup> His s 133 report dated 18 August 2014 refers to testing under the Kaufman Brief Intelligence Test 2<sup>nd</sup> edition. His report noted that people who know her well rate her subjectively as like an 8 to 10 year old. That report was, of course in mid 2014 and SV has developed since then, particularly in an environment where she has been protected against family conflict.

[82] Nonetheless it is abundantly clear to me that SV has at least a partial incapacity within the provisions of s 61A PPPR Act, and possibly a total capacity in relation to **some** aspects of her personal care and welfare, such that welfare guardianship might be appropriate.

[83] Dr Webb, however, is of the view that a personal order is necessary, but that SV is probably “too bright” to justify a welfare guardianship order. She also believes SV will need a property manager if/when she inherits significant assets from her mother. Of course, the appointment of a property manager can be made where there is a partial lack of competence (s 25 PPPR Act).

[84] Given that SV’s primary cause of anxiety, which in turn drives her self harming behaviour, relates to her insecurity of tenure at [name of care provider deleted], I am quite satisfied that a personal order requiring that SV be provided with accommodation at a residential facility operated by [name of care provider deleted] is appropriate. I am quite satisfied that there is jurisdiction to make a personal order.

[85] At this stage the order is to operate as an interim one, for a period of six months, pursuant to s 14 PPPR Act. I direct the application be served on [name of care provider deleted] and upon Mr CL.

[86] I need to be clear to Mr CL that, from what I have heard in these proceedings, there is no chance whatsoever that I would consider an outcome where SV is placed in his residential care. SV is now independent, subject to the jurisdiction of this court and he no longer has guardianship rights in respect of her.

## **Conclusion**

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<sup>5</sup> His s 133 report dated 18 August

[87] Accordingly, I find there are no grounds to justify making a protection order. The temporary protection order and all directions pursuant to it are discharged.

[88] I make a personal order directing that SV be provided with residential accommodation at an institution operated by [name of care provider deleted] until further order of the Court and not be removed from that accommodation without the approval of the Court.

[89] The applications under the PPPR Act are adjourned for review before me once service has been effected and a report obtained from Lawyer to be appointed under s 65 to represent SV. That lawyer is to be Mrs Graham.

[90] Ms McNulty's appointment as Lawyer to Assist is extended to incorporate the PPPR Act proceedings.

R J Murfitt  
Family Court Judge

Signed in Christchurch on \_\_\_\_\_ 2016 at \_\_\_\_\_ am/pm