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AND THEIR FAMILIES ACT 1989, ANY REPORT OF THIS PROCEEDING
MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT
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**IN THE FAMILY COURT
AT AUCKLAND**

**FAM-2010-092-002869
[2016] NZFC 2974**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	CHIEF EXECUTIVE OF THE MINISTRY OF SOCIAL DEVELOPMENT Applicant
AND	FAYANA HELU First Respondent
AND	SAFAIA HELU Second Respondent

Hearing: 12 April 2016

Appearances: B Bali for the Chief Executive
A Motuliki on behalf of P Le'au'anae for the Respondent F Helu
S Foliaki for the Respondent S Helu
V Curac as Lawyer for the Children

Judgment: 12 April 2016

ORAL JUDGMENT OF JUDGE A G MAHON

[1] There are two applications before me for determination at this hearing:

- (a) by the Ministry for a declaration under s 67 of the Act based on the grounds in s 14(1)(a), (b) and (f).
- (b) by Ms Helu for discharge of the s 78 order and for a parenting order under the Care of Children Act 2004.

[2] I heard nearly a day's evidence in the case before the parties advised me they had been able to resolve the issues for my determination, subject to my approval of the resolution they have come to.

[3] I heard evidence from an educational psychologist, Anna Malone, who had completed a parenting assessment for the Ministry. In her report Ms Malone found an evidential basis, from her specialist perspective, for a declaration to be made. I quote from her report where she recorded that between 2012 and 2014 there were: "Numerous concerns regarding inter-parental conflict, domestic violence and parenting breaches." She assessed that the children have a particularly close relationship with their father and a close relationship with their mother. There are however concerns for the children in the care of either parent, particularly with Ms Helu.

[4] I also heard evidence from Bruce Bickerton who has for the past month or so been the social worker for this case. He was previously the social worker in 2012. Mr Bickerton supported a declaration being made. He has six years experience as a social worker for Child, Youth and Family.

[5] At the conclusion of the evidence as I have noted above, I was asked to give the parties time to explore the possible resolution of the applications before me after they had had the advantage of hearing the professionals' evidence in the case. I was then advised that agreement had been reached on the following basis:

- (a) Ms Helu accepted that it was appropriate a declaration was made under s 67 of the Act, which means that she accepts that the children are in need of care and protection.
- (b) Mr Helu no longer opposes the orders sought by Child, Youth and Family in this case.

[6] As a result of accepting a declaration could appropriately be made, Ms Helu advised that she sought leave from the Court to withdraw her applications for discharge of the s 78 order and for parenting orders.

[7] While it is not for the Court at this stage in these proceedings to determine the appropriate future parenting structure for the children, I was advised it was the general intention of the Ministry, after discussing the matter with both parents, counsel and lawyer for child, that there will be an increase in access. Access is currently only one hour supervised each fortnight for each parent.

[8] There is to be a round table meeting in the week of 2 May and present at that meeting will be those present in the courtroom (although not all lawyers may see the need to be present), Ms Malone, the counsellor Lyn Nicholls and the social worker. The purpose of that meeting is to try and agree on the details of the initial plan to support orders under ss 101 and 110 of the Act.

[9] The plan is likely to include the following requirements:

- (a) Mr Helu complete a course to address his gambling problems and a separate, culturally appropriate course, to address his alcohol consumption.
- (b) Both parents attend a Triple P parenting course, with a particular focus on teenage parenting.
- (c) All three children stay at the [name of school deleted] until completion of their schooling.

- (d) Most importantly for the parents today, there will be an increase in contact for both parents with the children just as soon as possible.

[10] Ms Curac describes the above “plan” as plan A, with plan B to occur in the event that plan A does not work. Under plan A if the above steps are successfully carried out, there will be a gradual transition of the children from the care of their current caregivers to the care of their father.

[11] I pause here to note that all reports about the care the children have received for the past 15 months or so in the care of the executive director have been extremely positive. It is not always in this Court that placements are as positive as this one and Child, Youth and Family is complimented for not only providing one but two positive placements for the children, in homes which adjoin each other.

[12] Plan A will involve a transition from the current placements to the primary care of the children’s father, but with extended weekend contact for the children with their mother. It will also include a provision that if the boys have sport on a Saturday morning (particularly rugby which they play in South Auckland) they will not come to their mother until after rugby on the Saturday morning. This will be positive for Lauryn, because she will then have special time with her mother.

[13] Plan B is a plan that will come into force if the planned transition back to primary care of Mr Helu and contact with Ms Helu does not work out. Under plan B the Ministry will be looking at permanent placement of the children with family members. It is certainly hoped that plan B does not have to be considered, given the very positive and forward thinking discussions that everyone has had in the last couple of days.

[14] Review of a plan for children of this age would normally be annually but in this case, given the disruption to the children in the past couple of years, it is agreed that the first review will be in six months.

[15] That is the agreement. The plans that I have referred to are part of the discussion going forward and all the Court is required to do today is to determine

whether or not a declaration should be made and the applications by Ms Helu to which I have referred to above.

[16] I am comfortable about making the orders sought by the parties but before doing so I need to briefly mention that after the agreement was reached yesterday, it was the uniform position of everyone that I should still meet with the children.

[17] I met with the children in the presence of Ms Curac today and I have reported back to the parents just now on what a positive meeting it was. The children were very excited that their parents had reached agreement on all the matters before the Court and were very aware that if their parents had not reached agreement I would have had to make a difficult decision. The children were respectful and polite as I have heard from all reports in this case. They showed an insight into what their own experiences have been in the last couple of years, an insight which meant that they also understood how difficult it had been for their parents to parent them at times. They were pleased to hear from me that their parents were committed to changing their parenting styles in the future. I did not have to go into the detail about the steps each parent will take, as my sense was they understood what was required. What all three children were very clear about however was how excited they were to be spending the increased time they are very shortly going to spend, with their parents. They also now understand the long-term plan to which I have referred above. It was a pleasure to meet with all three of the children.

Orders/Directions

[18] I grant leave to Ms Helu to withdraw her applications to discharge the s 78 order and for parenting orders.

[19] I make a declaration under s 67 of the Act that the children are in need of care and protection on the grounds in s 14(1)(a), (b) and (f).

[20] I adjourn this case to enable the Ministry to prepare the necessary plan in support of applications for s 101 and 110 orders.

[21] I continue the s 78 order in the meantime.

[22] The next Court event will be Monday 16 May, by which time the Ministry is to have filed the substantive applications, together with the supporting plan. If the plan is agreed to by the parents then the file is to be immediately referred to me in chambers for making orders. If not the file is to be still referred to me for further directions.

[23] I finally note that the file is to be case-managed by me.

A G Mahon
Family Court Judge