

**IN THE CHILDREN'S COURT
OF NEW SOUTH WALES
AT QUEANBEYAN**

MITCHELL SCM

File No: 189(a)-189(g)/05

21 April 2006

In the matters of Samantha, Nicholas, Chris, Campbell, Geoffrey, Cynthia, and Byron

Reasons for Judgment

1. Perhaps the two most universal aspects of these care proceedings, instituted by the Director General of the Department of Community Services on 9 December 2005 and established on 15 December 2005 are, firstly, that they have taken place in the midst of contested parenting proceedings under the Family Law Act 1975 and, secondly, that the damage and harm occasioned to the children of separating parents awaiting a judicial determination of those Family Law proceedings have actually been assessed and "quantified" and recognised in a practical way as giving rise to a need for care and protection.
2. The parents, who were together for some thirteen years, separated acrimoniously, in about October 2005 and interlocutory applications seeking interim parenting orders came on before a Federal Magistrate sitting at Canberra on 28 November 2005 when each of the parents was legally represented and each had affidavit evidence before the court.
3. In the event, the learned Federal Magistrate who, in accordance with what I was informed from the bar table was the "usual practice" heard no oral evidence and no cross examination and who would otherwise have "decided the matter on the papers", made orders by consent. A copy of these orders is before me as Exhibit 2. Those orders provided that four of the children should live with the mother and the other three with the father. Those of the four children living with the mother were to have daily contact with the father and the three children living with the father were to have contact with the mother "as agreed between the parties".
4. There were orders restraining each party consuming alcohol, leaving the children unattended and denigrating the other party.
5. As events have established and as, I believe, should have been clear at least to the parties and their legal representatives on 28 November 2005, those orders were utterly inadequate to protect the children from emotional damage arising from the behaviour of the parents and particularly the father and, indeed, the orders provided additional opportunity for selfish and irresponsible behaviour so burdensome to the children until on or about 9 December 2005 interim care orders were made in this court placing each of the children in the parental responsibility of the Minister pending further order.
6. Pursuant to an assessment order, Ms Annabel Wyndham, an authorised clinician, prepared a painstaking and very perceptive report on behalf of the Children's Court Clinic which describes a good deal of the father's manipulative behaviour and his vindictive treatment of the mother and, more particularly, the impact of that behaviour on the children.
7. Ms Wyndham who saw each child mostly with each parent reported that, although the children are attached to each parent, it is the mother who is the primary attachment figure and the father a secondary attachment figure for each child, notwithstanding that the two older boys, and particularly Nicholas, are showing strong identification with the father. Ms Wyndham went on to report sound attachment of the children to their various siblings and that they "were keenly aware of and needed to know each other's whereabouts and welfare". She sees them as needing to remain together, "experiencing the continuity and stability that their sound development to adulthood requires."
8. Regarding their parent's separation, Ms Wyndham reported that "while it is appropriate that they understood why they were or are in care in general terms, it has been damaging for them to be

involved in the war between their parents". Ms Wyndham's opinion is that "they have been hurt by their parents hurting each other, particularly the father attacking the mother" and her opinion is that they "have suffered severe emotional distress in the period since marital separation". In her view "a normally emotionally difficult and hurtful period has been exacerbated enormously by the behaviour of the father. He behaved in an immature and irresponsible manner, intent on gaining his own ends without proper concern for the needs of the children and employing his own form of stubborn illogicality. Having forced the children into a war of loyalties, the children will not be able to fully let go of the confused and angry emotions engendered – particularly the older boys. It will ameliorate for some but not for all of them, feeding and perhaps causing family friction over time. This is particularly so for Nicholas in his pre-pubescent stage of emerging stronger identification with his father".

9. Ms Wyndham has no doubt that each of the children has suffered and has been damaged and she is clear in her evidence, drawing on her own observation of the father and the children, that the cause of their deficiencies has been the father's immaturity and refusal to put the children's needs ahead of his own in the areas of their stability, security, education and relationship with their mother. She sees the father as "quite a danger" to the children when he grows up and stops "pulling the children apart". In her assessment, she describes various aspects of the father's behaviour towards the children, in the course of her interviews with them, as destructive, inappropriate and manipulative. In particular, Ms Wyndham remarked upon the father's insistence on questioning the children on their attitudes towards their parents, on emphasising that it was a result of their mother's behaviour that they had been placed in care, on criticising the mother's behaviour, and on adding to the children's evident sense of having to choose between their parents.

10. In cross-examination, I found Ms Wyndham to be a very thoughtful and perceptive witness and I would be inclined to place a great deal of reliance upon her professional opinions.

11. In support of his case, the Director-General relies on affidavits of Leanne Maulin affirmed on 9, 14 and 26 December 2005 and 14 February 2006 together with care plans and affidavits of Jackie Parsons of 9 December 2005 and 14 February 2006. Both Ms Parsons and Ms Maulin were cross-examined. Each described various instances of the father's failure to place the children's interests ahead of his own. There is, for instance, his insistence that the children be submitted to parenting testing although in light of his behaviour since separation, I do not accept that he had any doubt whatsoever that he is their father. There is his visit to a local licensed club, with two of the children, for the stated purpose of photographing the mother there so as to demonstrate her drunkenness to the Department of Community Services. There is his stated intention of incurring trouble for the mother with "Centrelink" and his opinion expressed to Ms Maulin that, because they were not living with him, the children would be better off in care.

12. There are his allegations that the mother was a negligent and abusive mother, frequently drunk, addicted to gambling and even, so I was invited to infer, a sexual threat to Nicholas while at the same time, seeking orders which would have the children residing with their mother for every second week. All these allegations are denied by the mother and none is espoused by departmental officers and I am confident that they are untrue.

13. There are the father's persistent breaches of AVOs made to protect the mother, and his removal of the motor car which has previously been in her possession. There is his "gift" to the mother, whom he accuses of drunkenness, of a bottle of whiskey. There is the father's admitted use of the children in order to lure the mother back to cohabitation with him and, in particular, his offer of a bribe to Samantha in the shape of Bratz Dolls should she succeed in persuading the mother to return.

14. There is the father's decision to disabuse the children about the mother being at Bateman's Bay rather than Albury.

15. There are any number of instances of this type demonstrating the father's campaign against the mother with no regard for the feelings of the children. Most were denied, during cross-examination, if not in his affidavit, by the father, but having heard his evidence and watched his behaviour and affect, both in and out of the witness box, I do not regard Mr Eastley as a witness of truth and I prefer the evidence of the mother and by the two Department of Community Services officers.

The father relied on his affidavits of 14 and 19 December 2005 and 7 April 2006, and on the affidavit of his sister, Tracy Eastley of 7 April 2006.

It is clear, in my opinion, that the father is unable to provide the children with an acceptable degree of emotional security. Whether or not he can or will change his attitude is something for the future but, in the course of the hearing, I saw and heard nothing to convince me that this is the case. In the meantime, it seems to me that the children are in need of care and protection and I do not see a realistic possibility of restoration to his care.

So far as the mother is concerned, I have read her affidavits of 14 February and 12 April 200+. She appeared before me, gave evidence and was cross-examined. I doubt that her drinking and gambling were ever of the order described by the father. She denies it and, as she remarked, she did not have the available finance to sustain such habits at any event. The Director-General's officers who have maintained close contacts with her are satisfied that the father's allegations in this regard are greatly exaggerated. Certainly, Mr Eastley is a most unreliable witness, motivated as he is by extraordinary bitterness. The mother's evidence, which I accept, is that, except on one occasion when, having made proper arrangements for the care of the children, she "went out and had a couple of drinks", as perhaps more than a couple of drinks to celebrate her birthday, she has not used alcohol since early 2006.

The mother had been the primary caregiver of the children despite the continuing interest of the father. She has expressed an acknowledgement of the deficiencies of coping with seven often boisterous and now significantly emotionally "at risk" children and she is prepared to engage with PANOC, to continue counselling with Barnardos or such other agency as may be recommended to her and, most importantly, she is prepared to engage such officers of the Department of Community Services. On the other hand, she is emotionally frail after what appears to have been a quite difficult relationship with the father, a most acrimonious and unsettling separation and a somewhat troubled childhood. According to Ms Wyndham, the mother needs time and professional help in order to realise her potential as a parent and, in the meanwhile, the children will need the care and protection of the Minister.

The intention of the Director-general, if he is successful in these proceedings, is that the children will progressively be placed in the mother's care. I am confident that with the supports to be put in place, she will care for them properly and they will be spared the manipulation and pressure at their father's hands which Ms Wyndham says has been so troubling and dangerous to them. Ms Wyndham recommends at least three years as a period within which, the mother will benefit from the Minister's intervention and the father, if he is properly motivated, might grow in maturity and responsibility and learn to place his children's interests above his own. To the extent that he does this, the Minister might find that contact would be of benefit to the children.

It is a pity that these matters had to be dealt with in this Court under the Care legislation rather than elsewhere under the Family law Act but it is now clear that the opportunity to provide necessary relief under that Act and in a timely fashion was lost on 28 November 2005. With respect, I think that, in those circumstances, the Director-General was well advised to bring this application in the Children's Court so as to secure appropriate care and protection for the children. I am confident that, in the parental responsibility of the Minister and in the care of the mother, the children will prosper.

For those reasons, I order that parental responsibility for each of the children, the subject of these applications, be allocated to the Minister for a period of three years from today. All other applications in these proceedings are dismissed.