

CITATION: *Amanda Bowen v J.C.* [2005] NTMC 041

PARTIES: AMANDA BOWEN

v

J.C.

TITLE OF COURT: Family Matters Court

JURISDICTION: Alice Springs

FILE NO(s): 20504276

DELIVERED ON: 28 June 2005

DELIVERED AT: Alice Springs

HEARING DATE(s): 22/06/2005 and 23/06/2005

JUDGMENT OF: M Little SM

CATCHWORDS:

REPRESENTATION:

Counsel:

Minister:	Mr Heitmann
Mother:	Mr Goldflam
Child:	Mr Whitelum

Solicitors:

Minister:	Mr Heitmann
Mother:	NTLAC
Child:	Morgan Buckley

Judgment category classification:

Judgment ID number: [2005] NTMC 041

Number of paragraphs: 17

IN THE FAMILY MATTERS COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20504276

BETWEEN:

Amanda Bowen

AND:

J.C.

REASONS FOR JUDGMENT

(Delivered 28 June 2005)

Ms M LITTLE SM:

1. An application has been filed that the child JC be found in need of care. On 23 February 2005 Mr Ward DCM adjourned the application by consent and ordered that custody and access to be at the sole discretion of the Minister. On 9 March 2005 the case was adjourned to 23 March 2005 and the order as to the custody and access was to continue. On the 23 March 2005 Mr Birch SM ordered, pursuant to section 47 of the Community Welfare Act, that custody and access of the Child JC (born 16 June 2004) was to be at discretion of the Minister. The matter was adjourned to 4 May 2005. On 4 May 2005 the matter was adjourned until 22 June 2005 with the order pursuant to section 47 to continue.
2. Pursuant to the Ministers discretion the child was placed with the mother until he was removed from her care on 27 May 2005 (apart from sometime in early April 2005 when he was also removed from her care). On 22 June 2005 the Minister sought to have the section 47 order continue and the case adjourned for 3 weeks in order for a report to be prepared. The mother did not oppose the adjournment but opposed the continuation of the order that the Minister have discretion as to

custody and access of the child. Counsel for the child supported the Ministers application. The mother sought an order that custody of the child JC be with her in the period of the three week adjournment. That was opposed by the Minister and the Childs lawyer.

3. Eight exhibits were tendered and they were as follows: Exhibit 1 Statutory Declaration by the Mother dated 22 June 2005, Exhibit 2 Letter from Leon Petchkovsky Associate Professor of Psychiatry at the University of Queensland to Marcus Tabart relating to the mother, Exhibit 3 report from FACS dated 23 June 2005, Exhibit 4 Report of FACS dated 11 April 2005, Exhibit 5 Report of FACS dated 23 February 2005, Exhibit 6 Report of Tracey Quinney, Exhibit 7 Report of Dr Pauline Meemeduma dated 7 March 2005 and Exhibit 8 Holding Order Application dated 11 February 2005. These were not all tendered by consent but are received for the purposes of this interim application. Pursuant to section 39 (2) of the Community Welfare Act the Court is not bound by the rules of evidence but may inform itself on any matters it thinks fit. I am of the view that this interim hearing should proceed on the written exhibits before me, together with any agreed facts.
4. It was agreed by all parties that, with respect to another child of the Mothers, a finding had been made that the child KK was a child in need of care, on the basis that she had suffered maltreatment. The finding in that case is relevant to these proceedings pursuant to section 39 (1)(b) of the Community Welfare Act.
5. The father of the child JC has now been identified and service will be attended to as soon as possible. Once service has been effected the Court will be in a position to know if the father wishes to take an active role in the proceedings and of any proposals and applications he makes. Pursuant to section 37 (3) of the Community Welfare Act I am satisfied it is appropriate to proceed notwithstanding that the Father has not been served at this stage.
6. I am told that the Mother has previously been diagnosed with Severe Borderline Personality Disorder. This is the condition which the Ministers representative asserts she has. Exhibit 2 (tendered by the mother)raises the prospect that she has an alternative disorder namely Severe Histrionic Personality Disorder. For the

purposes of the proceedings at this stage it is not necessary for me to make any findings as to what disorder the mother has (if any). Nevertheless the behaviours of the mother are relevant to this interim application and in particular as to any effects that her behaviour is having on the child J.C. Exhibit 2 refers to some of the Mothers demonstrative behaviours as being consistent with the latter diagnosis.

7. With respect to whether the Family Court case of Cowling 1998 FLC 92:801 can assist in how to make the decision in this matter, I find it useful in the sense that interim decisions are said to be “made on the papers” and while I do not ignore the rest of the approach in Cowling 1998 FLC 92:801, I find the Community Welfare Act itself gives a framework for decision making. The Act is to provide for the protection and care of children and the promotion of family welfare, and for other purposes. The Court shall consider (interalia) the need to safeguard the welfare and development of the child (section 43 (1)(a) of the Community Welfare Act). This sub paragraph reveals the child protection function of the Family Matters Court, rather than the resolution of a dispute between (usually) family members as to who should have the day to day care of a child, which is the Family Court’s role with respect to children. This different focus means that issues such as continuation and stability, often called the status quo, will not usually be as prominent in a Family Matters Case as they are in the Family Court. The need to safeguard the welfare and development of the child will override issues of status quo.
8. Exhibit 1 is the mother’s affidavit dated the 22 June 2005. She has stated that some of her behaviours of late have been unsatisfactory. She says that the child appeared somewhat upset and surprised by her behaviour in recent times (see paragraphs 5 and 6 of the affidavit exhibit 1). She concedes that if she continues to act in this manner on a long term basis around the child it could be emotionally damaging to him. She also states that the child was not harmed or hurt in anyway physically and sustained no lasting emotional distress or damage as a consequence of this recent behaviour (paragraph 4 of the affidavit Exhibit 1). I acknowledge that the mother is being extremely frank and indeed shows insight into her behaviour and the effect upon the child. However I can not accept that she is

qualified to make the statement she made in Paragraph 4 of the affidavit with respect to the question of long term emotional distress or damage.

9. There has been a long history of interaction between the Department and the mother. This relates primarily to the child referred to in Paragraph 4 of these reasons. Following the birth of JC there has been interaction between the Department and the mother since early in his life.
10. In the Court Report dated the 23 June 2005 (Exhibit 3) the Department sets out a series of reports and incidents commencing late April 2005. Towards the end of May 2005 the reports and notifications were occurring on a more regular basis. The child JC was born on the 16 June 2004. He is just 1 year of age. He is not in a position to seek assistance when his mother's behaviour becomes unpredictable.
11. Ms C's relationship with Ms Quinney (psychologist) is obviously an important relationship in the long term development of Ms C's parenting and coping skills. In Exhibit 6, the report of Tracey Quinney dated 27 March 2005, she states (and her name is amended for this decision) "Ms C has made many changes yet her ability to sustain these changes is fundamentally still in question. Concerns lie in her ability to provide an environment of predictability and continuity of care for her son particularly when she feels stressors in her life. It is at these times that the socially inappropriate behaviours come to the fore and where the risk factors mentioned previously to the baby are at the highest. Ms C needs to continue to work on her ability to provide stability, continuity and predictability of care, her supports networks and her socially inappropriate behaviour (sic). At the time of writing this report, Ms C is still fluctuating in her behaviour and concerns lie in the continued risk factors to the baby due to her ability to sustain the changes she has made and continue to make".
12. The notifications and the incidents set out in the report of the 23 June 2005 are an indication of the concerns that Ms Quinney has in her report. Ms Quinney acknowledges that the mother has made many changes yet says that her ability to sustain these changes is fundamentally still in question. The fact that Ms C has made many changes in her behaviour has resulted in the child being in her care for

much of his life and in particular since custody has been at the discretion of the Minister.

13. Exhibit 7, the report of Dr Meemeduma, speaks of the unpredictability of the mother's behaviour and the need to manage that behaviour to avoid safety risks to the child. In exhibit 7 the need for continuity, stability and predictability is highlighted. These three principles are said to be central to determine whether an environment is appropriate to meet the needs and rights of children to a safe and developmentally appropriate child care environment. Dr Meemeduma also says that it is no longer assumed that the best interests of the child are synonymous with the best interests of the child giver. I agree with Mr Goldflams submission that the long term issues are not necessarily as important when considering an application such as he has made (for an order for custody to the Mother for a period of three weeks) however the risk of long term effects can not be ignored in this decision. There is also the difficult task of assessing just when effects can be said to moving towards long term effects.
14. In my view the incidents which came to the attention of FACS show a level of unpredictability which demonstrate there is a substantial risk to the child in particular that unless such behaviour is curtailed or he is excluded from the behaviour there is a substantial risk that he may suffer emotional impairment. I make this finding on an interim basis. I am not asked to make an interim in need of care order, but make this finding in order to move towards whether to make the order sought by the Minister.
15. The report of the 21 June 2005 demonstrates that prima facie the Department had good reason to be concerned about the possibility that the child may be at risk. In my view they have not made an arbitrary decision to remove the child from the care of the mother. They have taken this decision following a series of notifications which they have outlined in the report of the 23 June 2005 (exhibit 3). The decision does not preclude them from returning the child to the mothers care during any period of time when they have the discretion as to who is to care for the child.

16. Pursuant to section 43 (1) (a) of the Community Welfare Act the Court shall consider the need to safeguard the welfare and development of the child. This consideration is paramount and that is not disputed. Mr Goldflam has highlighted two other considerations under the sub section, in particular sub paragraph (c) and sub paragraph (d). These are matters which must be considered when deciding on any applications under part 6 of the Community Welfare Act (including this application). There is no evidence before the Court to suggest that FACS has not been promoting the relationship between the child and he her in this case. The evidence is that they have worked towards maintaining an improved relationship between mother and child. Sub paragraph (a) remains that the primary consideration. I am satisfied that the Department has exercised its discretion in the way it has taking into account that paramount consideration. Whilst it may be desirable to maintain continuity with the Childs usual ethnic and social environment, this can not be seen as a consideration which overrides sub paragraph a. The Child in this matter is at about the age where he has some real awareness of changes in social environments. He has responded to changes in his social environment as he witnesses his mother's behavioural changes. He is conscious of those changes and finds them alarming. The mother herself has referred to this in her affidavit (exhibit 1).
17. As stated earlier this is an interim application I am satisfied that it is appropriate to deal with this application on the basis of the written material together with concessions made in submissions. On the basis of that material I am satisfied, taking into account the need to safeguard the welfare and development of the child that, pursuant to section 47 of the Community Welfare Act, the custody and access of the child is to be at the discretion of the Minister and for that order to continue until the next adjournment.

Dated this 28th day of June 2005.

Melanie Little
STIPENDIARY MAGISTRATE