

CITATION: *Jackie Walsh v K.S.* [2005] NTMC 087

PARTIES: JACKIE WALSH

v

K.S

TITLE OF COURT: Family Matters

JURISDICTION: Family Matters – Alice Springs

FILE NO(s): 20510044

DELIVERED ON: 29 November 2005

DELIVERED AT: Alice Springs

HEARING DATE(s): 23 November 2005

JUDGMENT OF: M Little

CATCHWORDS:

REPRESENTATION:

Counsel:

Minister:	M Heitmann
Mother:	M Preston
Child:	J Stirk
Party seeking to join:	R Goldflam

Solicitors:

Minister:	Mark Heitman
Mother:	Murray Preston
Child:	Povey Stirk
Party seeking to join:	NTLAC

Judgment category classification:

Judgment ID number: [2005] NTMC 087

Number of paragraphs: 10

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

No. 20510044

BETWEEN:

JACKIE WALSH
Minister

AND:

K.S
Child

REASONS FOR JUDGMENT

(Delivered 29 November 2005)

Ms M LITTLE SM:

1. Before the Family Matters Court is an application by the Minister that RL be joined as a party in the matter of KS. This application was joined by Mr. Goldflam acting on behalf of RL. RL is in a de facto relationship with the mother of the child and has been for approximately four years. KS was born on 1 November 1997 and has just turned eight years of age.
2. The father of the child, KS is unknown. The mother of the child has declined to advise who is the father of the child and has declined to give any reasons as to why she has not nominated the father. Of course there may be express and even understandable reasons why this has occurred, but the Court does not know. The mother has acknowledged to Dr. Blunt that she knows who the father is. As a consequence, the natural father has not been served with this application. The mother has told Dr. Blunt that the father was present at the birth. That being the case, the hospital records may reveal that name of KS's father. A man named MG is KS's 'psychological' father. I do not know

if he has been served with the application, but he certainly plays no part in the proceedings.

3. Both the mother and RL are charged with unlawfully causing grievous harm to a child, JL. JL is the 6 year old child of RL. JL's mother is RM. The summary of his injuries are on page 2 of Dr Blunts report of the 5 November 2005. Suffice to say there is a range of serious injuries to JL. He had been in the care of RL and the mother at or around the time of the injuries. RL has admitted causing some of the injuries. The cause of the rest of the injuries are, as yet, undetermined. The charge of grievous harm is currently before the Court of Summary Jurisdiction awaiting an oral committal. The Family Matters Court proceedings relating to KS was commenced by the Minister following the presentation of JL to the Alice Springs Hospital at the end of April 2005. The Minister also commenced proceedings relating to two other children, DS and PS, being the children of RL and KS.
4. Pursuant to s 36 (4) of the Community Welfare Act, in relation to an application that a child be declared in need of care, the Minister, the parents, guardians or persons having the custody of a child are or shall be deemed to be parties to the application. At all relevant times RL did not fall into any of the categories set out in s 36 (4) of the Community Welfare Act. Prior to the commencement of these proceedings RL may have been within one of these categories. He has not been present at any of the Family Matters Court Hearings relating to KS.
5. I have not been referred to any cases on the question of what are relevant matters when considering an application to join a party to Family Matters proceedings. I will consider what I believe are the relevant matters in the circumstances of the case. The catalyst for the application was the presentation of JL to the Alice Springs Hospital with serious injuries. Applications were brought with respect to the other 3 children in the

household, including this application relating to KS.

6. The report of clinical psychologist Dr Lucy Blunt 5 November 2005 sets out that the child KS alleges she has been hit by RL with the item which is described as a 'whacker'. She alleges that she has been hit on numerous occasions by RL with this item. As part of the assessment process leading to the report, an incident was witnessed by Dr. Blunt and her impression from this incident (and her other observations) was that;

“K does not trust R and finds him unpredictable- never being really sure of where she stands with him...”
(page 6 of the report dated 5 November 2005).

Dr Blunt formed the view that RL treated KS differently to the children PS and DS. The mother stated that she thought he did treat KS differently, including disciplining the child KS for things that she (the mother) would not have disciplined the child for. RL said he tried to treat them all the same way. While the three children were residing together prior to JL being presented to the Alice Springs Hospital, I have material before me which prima facie suggests that they were being treated differently

Earlier in the report, Dr. Blunt sets out that JL stated that it was only he and KS who were hit with the 'whacker'. What JL and KS have in common is that they are not the natural children of both the mother and RL. JL's mother is RM and KS's father is unknown.

7. The report of Dr. Blunt suggests that the child JL became the target and brunt of the release of stress – that he was victimised in the household. The material I have from Dr. Blunt suggests that, whilst not treated anywhere nearly as bad as JL, KS was to some extent being treated in the same manner

as JL. I have material before me which suggests that they were treated differently to the other two children.

8. One important issue is that KS is to be a key witness in the on going prosecution. That is a difficult position for an eight year old. Once again, this places her in a very different position to PS and DS - children who are too young to give evidence. While it could be argued that for the Court to treat KS differently by not joining RL as a party may perpetuate her being treated differently in the family, I have no material before me which gives that notion any weight.
9. Given the nature of the Family Matters jurisdiction, I would not normally join parties unless it was warranted in all the circumstances of the case, taking into account that the Community Welfare Act focuses on the best interests of the child. In all the circumstances of this case I can not see that joining RL as a party is in the best interest of the child KS. I decline to join RL as a party.
10. There have been lengthy meetings in this and the other related matters which lead to an agreed position being presented to the Court on 23 November 2005. In this matter the parties sought an order that RL be a joint guardian (together with the mother, the maternal grand parents and the Minister), with custody at the discretion of the Minister. I declined to make an order that included RL as a joint guardian. I also ordered that the Minister could not place the child into custody of the mother unless the Court so allows. Dr. Blunt's report raises a number of concerns with respect to RL's relationship with KS which, in my view, did not justify the order as proposed being made. I made that decision in the whole of the circumstances of the case and acting, as the Court must, in the best interests of the child. This is a separate question to that of whether he is joined as a party. To the extent the reasons I decline to join him as a party are relevant to this question, I rely upon these reasons. Arguably even the mother should be excluded from a joint

guardianship order until after the prosecution is completed especially as KS is to be a prosecution witness. However, I formed the view that that part of the proposed order should be made in the child's best interests.

Dated this 29th day of November 2005.

M Little
STIPENDIARY MAGISTRATE