

CITATION: *Re: Michael* [2011] NTMC 049

PARTIES: CEO FOR CHILDREN & FAMILIES

TITLE OF COURT: Local Court

JURISDICTION: Family Matters

FILE NO(s): 21120925

DELIVERED ON: 16 November 2011

DELIVERED AT: Darwin

HEARING DATE(s): 16 November 2011

JUDGMENT OF: Hilary Hannam CM

CATCHWORDS:

Care and Protection of Children Act

REPRESENTATION:

Counsel:

CEO: Cridlands MB Lawyers
Child: Maleys
Mother:
Father: NT Legal Aid Commission

Judgment category classification:

Judgment ID number: [2011] NTMC 049

Number of paragraphs: 27

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21120925

BETWEEN:

CEO FOR CHILDREN & FAMILIES

REASONS FOR JUDGMENT

(Delivered 16 November 2011)

Ms Hilary Hannam CM:

1. This matter concerns Michael who is five. Michael has been removed from the care of his parents and I am satisfied that he would be in need of protection, but for the fact that he is currently in the CEO's care. In these circumstances, the Court is required by section 129 of the *Care and Protection of Children Act* to make a protection order if the order is the best means of safeguarding Michael's wellbeing.
2. The order, as proposed by the CEO, is to give short-term parental responsibility to the CEO for at least 12 months. Michael's legal representative submits to the Court that a 12 month order will not be sufficient to meet Michael's best interests. Although it is not entirely clear what is being suggested by Michael's father, I understand that he is prepared to accept a supervision direction, which involves the CEO supervising Michael's protection, who should, in his view, be returned to him.
3. The Court may make the order proposed by the CEO or specify other directions mentioned in section 123 as the Court considers appropriate. Essentially section 128 allows the Court to give a direction ranging from a supervision direction to a long-term parental responsibility direction to the

age of 18. In addition to having to be satisfied that the order is the best means of safeguarding his wellbeing and making a decision which is above all in Michael's best interests as required by section 10, I am also required to consider any report or recommendation given by the CEO about the proposal and consider Michael's needs for long-term stability and security, as well as any other matter that I consider relevant. So far as reports are concerned, I have today been handed a care plan by the CEO about the proposal.

4. Although various submissions have been put to me about plans, intentions or hopes for the future by the CEO and the father in particular, the law requires that I must be satisfied that the order is the best means of safeguarding the wellbeing of the child and that I specify the directions that I consider appropriate. In other words, the Court can only act on the basis of what is in Michael's best interests on the information known to it. As the father's plans and the intentions of the CEO as revealed in the care plan are based, to a large extent, on information which is not currently known, I am required to make an assessment of the future, in part, based upon what has occurred in the past.
5. The Department of Children and Families have had concerns about and interest in Michael for most of his life. In total, there have been 13 notifications about him from January 2007 when he was six months old. Although the first two notifications specifically concerned actions by his mother, when Michael was seven months old, it was alleged that his mother had left him with a friend without adequate provisions such as milk or bottles. When Michael was three, there were a number of notifications alleging neglect and inadequate supervision and in particular, that he was left in public places unsupervised. These concerns are not addressed by the father and it is unknown why he did not act protectively and supervise his child himself.

6. In August 2009, when Michael was three, he was taken into provisional protection for three days and it appears that he was then “placed” (otherwise than in accordance with the Act) into the care of a family member on the basis that the father had issues with alcohol misuse and neglect. Once again, this is not addressed in the father’s affidavit.
7. When Michael was almost four the mother was admitted to hospital as a result of an assault upon her by the father and at around the same time, the Department was satisfied that Michael had been neglected due to his parent’s use of alcohol and him being left without adequate supervision and being exposed to violence between his parents. The father was subsequently charged, convicted and sentenced to a suspended term of imprisonment for this assault. A short time later, although some assistance was being provided to the family to address concerns, Michael was found naked and running across the roads in suburban Darwin when he was four. At that time, he was returned to the care of his father by Police. These issues are not addressed in the father’s affidavit.
8. According to the father’s own affidavit, on 31 August 2010, when Michael was four, the father was charged with an aggravated assault upon the mother, for which he was later convicted and placed on a suspended sentence. One of the conditions of the two suspended sentences was that the father was to complete the Indigenous Family Violence Program, which he did not do. He was also required to refrain from consuming drugs and alcohol, which he also did not do.
9. In February and March of this year, the Department received notifications that Michael was neglected as he was exposed to anti-social behaviour, over-crowding and alcohol and drug use in his home environment and that he had not received medical attention. The Department were also advised that at this time a maternal family member had been caring for Michael, provided him with food and clothing and had enrolled him in pre-school,

without support from his parents. None of these matters are addressed in the father's affidavit. There are specific allegations that Michael's father neglected him in failing to provide adequate clothes and food and exposed him to drug activity. On one visit of 4 March 2011, the father appeared to the DCF officers to be heavily intoxicated.

10. Through March to May this year, various family members took care of Michael in Darwin and elsewhere.
11. Shortly after Michael's fifth birthday in June of this year, he was alleged to have been dirty and hungry and locked out of his father's home, with the parents being drunk inside the property. The father confirmed that the parents had been drinking and Michael told child protection workers that his parents had been drinking and fighting and that he was hungry. A few days later Police attended the home and found Michael's mother to be intoxicated. Following this incident, a temporary protection order and then a protection order was sought.
12. In the only affidavit sworn by the father, there is little recognition by him that he understands fully the reasons for Michael's removal and the child protection concerns. Although the father does recognise that he has problems with the consumption of alcohol and cannabis, there does not appear to be any recognition of the impact that the consumption of these substances has on his capacity to protect Michael adequately. Although the father does state that he "went off the rails over the past two years" and that drugs and alcohol were the main cause of his behaviour and that the worst thing that has happened is that his son has been removed from him, there is no mention of matters such as neglect by inadequate supervision, exposing Michael to domestic violence, failing to provide adequate clothing or food, exposing Michael to drug use and drug paraphernalia and the failure to provide medical attention.

13. The steps that the father proposes to take to make what he describes as a better life for his son and himself are largely actions that he is required to take under the suspended sentence which he initially failed to do. In summary, in my view, there is very limited recognition by the father as to his omissions and actions which were responsible for Michael being in need of protection. Whilst the steps that he proposes to take and have, to some extent, already undertaken to address some of those concerns, a large number of them are unrecognised and there are no plans to address them on the evidence before me.
14. After Michael was initially taken into care, the mother appeared to be willing to take steps to address concerns that the Department had in relation to her care for Michael. At that stage, in July, the father did not engage with the Department. The mother has subsequently disengaged with the proceedings.
15. The father has only had limited contact with his son since he has been taken into care and in recent times, this is because he is now required to live outside Darwin, pursuant to his suspended sentence. In the meantime, Michael has been living with carers with whom it appears that he has made a good connection and he is described as very stable and relaxed. There has been very little contact between Michael and his parents, though he is having contact with extended family while living in Darwin.
16. The mother, although having some limited contact from time to time, has essentially disengaged from these proceedings and the Court is unaware of her view about the proposed order. It is clear however that she is not seeking that Michael be returned to her care.
17. There is no explanation as to why the father is not present in Court today, particularly as the matter had been listed for hearing. In an affidavit of 7 November, a Departmental officer states that the father was abusive during a telephone call on 27 September 2011, engaged in very limited conversation

with DCF workers concerning his engagement with services in a conversation on 19 October and also engaged in very limited conversation concerning the outcome of Michael's dental and paediatric appointments in the course of the conversation on 3 November 2011. Whilst these matters may not of themselves seem to be of enormous significance, the father is not available today for him to be cross-examined upon them and they are significant in light of the submissions made on his behalf, that the appropriate order for the Court to make is a supervision order, as they relate to his own capacity to work with the Department.

18. Attempts have been made from at least March of this year for appropriate family members to be identified to care for Michael. Both Michael's maternal and paternal family members have been considered and at times various short-term arrangements have been entered into, including during the periods of time when the Department had concerns about the capacity of the parents. Various issues have been raised as impediments to the placements being found as appropriate. These include negative relationships between family members, concerns about disputes over Michael's paternity, the family members own health issues, concerns about engagement in domestic violence by and between carers, employment and difficulties with school being arranged for Michael. Other concerns seem to be unwillingness of family members to undertake the checks required by DCF and on occasions, simply making contact with family members.
19. Currently it appears that DCF are considering Diana and Gail, extended family members as possible carers. However, in paragraph 68 of the affidavit of 7 November 2011 the DCF worker said that the father had expressed concern that if Diana is caring for Michael, then there would be continual problems with the families arguing. Further, it is clear that the father lives with Diana, although the father's own affidavit does not state this. There is no proposal as to how such a placement would work on a practical level if the Court were to make an order other than the supervision

order sought by the father, including the short-term order of parental responsibility sought by the Department itself. The second person who has been identified, both by DCF and it would appear by the father as a possible suitable carer is Gail. It is unclear what her relationship is with Michael or any details about her circumstances. The care plan identifies the school that Michael would attend if he were to be placed with Gail. There are no other proposals in the care plan relating to either of these placements and at this stage, both of these people are unassessed. It is also of concern that according to the 7 November 2011 affidavit, Gail herself has expressed that she felt that Diana would be the most appropriate person to care for Michael and that in paragraph 73 that Gail was willing to be assessed only as a respite carer, if Diana needed a break. The affidavit goes on to say that a decision had been made that it was not in Michael's best interests for him to be placed with Diana due to the father residing there and threats that the father has made to DCF to abscond with Michael if he is returned to him. Gail was also described as being unclear as to whether she could care for Michael.

20. Under section 130(1)(d), the Court must take into account any of the matters it considers relevant. These include the reasons for Michael coming into care in the first place, the father's understanding of those reasons and taking appropriate steps to address them, all of which I have already referred to. In addition, particularly as the order must be the best means of safeguarding the wellbeing of the child, his need for long-term stability and security must specifically be considered and as his best interests include his need for permanency in his living arrangements and his need for stable and nurturing relationships, I must consider on the basis of the information known to me now, what will occur throughout the proposed order and when it comes to an end.
21. The proposal by Michael's father that he take care of his son under the supervision of the Department would not, in my view, be in his best

interests, nor would it be the best means to safeguard his wellbeing. As I have already indicated, in my view, the father shows little insight in recognising his role in failing to protect his son, he proposes to take steps only in relation to some of those factors and even those measures are in the very early days. So much of the father's proposal is also unknown, including such essential matters as where he will live. There is also no proposal for him to do anything other than that which he is required to do pursuant to his suspended sentence.

22. So far as the proposal of the CEO is concerned, it is clear from the care plan and the steps that have been taken to date and appear to be proposed, the CEO is of the view that Michael should be reunified with his parents and that that will be proposed to occur within a 12 month period. As Michael is an Aboriginal child and the Court must uphold the principles including those in respect of Aboriginal children contained in section 12 and concerning the role of the family in section 8 and have regard to section 10(2)(h), it is appropriate that every reasonable step be taken to identify a family member where that is consistent with Michael's best interest. However, in this case, I accept the submission made by Michael's legal representative that there seems to have been enormous efforts made to identify a family member which appears to be meeting the needs of the family members, rather than Michael. I am concerned that under the current care plan, DCF continue to describe Diana and Gail as appropriate family members who are willing to be assessed as carers, when there is evidence to the contrary in the most recent affidavit in relation to both suitability and willingness. I am concerned at the emphasis being placed on identifying family members with whom Michael could be placed in the short-term, that is up until any proposed reunification, or in the event that reunification does not occur.
23. The prospects of Michael being successfully reunited with his parents, on the basis of the evidence before me is, in my view, unduly optimistic. It is not known whether the parents may reunite as a couple in the future and if

so, where they would live. There is no evidence at all before me from the mother and I cannot conclude that she has any understanding of the issues that led to Michael's removal in the first place, nor has addressed or plans to address any of the child protection concerns. On the evidence before me, I could not conclude that Michael could be safely returned to his parents or either of them if his best interests are to be met.

24. As the current care plan and the length of the order proposed by the CEO is consistent with a reunification plan that is, in my view, not in Michael's best interest, it would not be appropriate for a 12 month parental responsibility direction to be made. Further, on the evidence before me, there is no real possibility that the reunification could safely occur within a two year period and meet Michael's best interests for the same reasons.
25. Currently, Michael is well settled and being well cared for. He is described as being in a stable placement, referring to the carers as aunty and uncle and appears to be relaxed and engaged with his carers. He is attending basketball and frequently sees some of his extended family members. Michael is attending school and in summary, appears to have developed nurturing relationships with his carers. I further understand that these carers would be available in the long-term, which would meet Michael's need for stability and permanency in his living arrangements and would be the best means of ensuring that his physical, emotional, intellectual development and educational needs are met. I would be concerned, having regard to the likely effect of any change in his circumstances, if he were to be moved from his current placement.
26. As I stated at the outset, I must proceed with the matter on the information known to me. Bearing in mind the role of the family set out in section 8 and in particular, sub-section 4(b), combined with the ability under section 137 for parents to apply for revocation of the order where it is being suggested that the parents have addressed the child protection concerns, I am satisfied

that in the event that that occurs, the parents can apply to the Court to have the order revoked.

27. For all of the reasons given, I am satisfied that a direction giving parental responsibility for Michael to the CEO until he reaches the age of 18 is the best means of safeguarding his wellbeing and meets the paramount concern of his best interest. As I also propose making a further order that Michael not be moved from his current placement without his legal representative being given 28 days prior notice, I am satisfied that giving the responsibility to the CEO is the best means of safeguarding Michael's wellbeing and that there is no one else who is better suited to be given the responsibility as required by section 132. The formal orders of the Court are that parental responsibility for the child is given to the CEO until the child turns 18 years of age and that the CEO must refrain from moving the child from his current placement unless the CEO gives 28 days prior notice of that intention to the legal representative for the child. In the event that the current lawyer ceases to be able to legally represent the child, then the CEO is to give prior notice to another independent legal representative for the child.

Dated this 16th day of November 2011

Hilary Hannam
CHIEF MAGISTRATE