

CITATION: *Re: Charlotte* [2012] NTMC 041

TITLE OF COURT: Local Court
JURISDICTION: Family Matters
FILE NO(s): 21009075
DELIVERED ON: 22 November 2012
DELIVERED AT: Darwin
HEARING DATE(s): 12, 13 November 2012
JUDGMENT OF: Hilary Hannam CM

CATCHWORDS:

Child in need of protection due to mother's mental illness
Short (5 year) long-term parental responsibility direction
No risk to stability

REPRESENTATION:

Counsel:

CEO: Ms Yellub
Child: Ms Margaret Orwin
Mother: Ms Palavra
Father: Ms Bennett

Judgment category classification: A
Judgment ID number: [2012] NTMC 041
Number of paragraphs: 22

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

No. 21009075

REASONS FOR JUDGMENT

(Delivered 22 November 2012)

Ms Hilary Hannam CM:

1. This matter concerns Charlotte, who is seven. Charlotte is of African descent, her mother having been accepted as a refugee in 2001. Charlotte's father is currently on a bridging visa.
2. Charlotte's mother, Emily, has long standing mental health issues. She suffers from paranoid schizophrenia which has compromised her capacity to care for Charlotte. Charlotte's father who lives interstate has had little involvement in her care especially in recent years.
3. Emily's treating psychiatrist says that Emily does not accept she has a mental illness. To date there have been various treatments tried. At times Emily has been compliant and sometimes she has improved but she essentially is afflicted by a fixed delusion. Emily has demonstrated impaired insight and judgment and has the potential for acting on her delusions when acutely unwell. Her illness is also characterised by significantly impaired motivation and this symptom and the delusions are only partly responsive to treatment. Although the treating psychiatrist says Emily is unlikely to change in the next five years, the CEO is proposing and the parties consent to an order giving parental responsibility to the CEO for five years.
4. All parties agree that Charlotte would be in need of protection but for the fact that she is currently in the CEO's care. I am satisfied that this is the

case. According to the Act the Court must make a Protection Order in these circumstances if it is the best means of safeguarding the wellbeing of the child.

5. The Court must, according to the Act, regard the best interests of a child as paramount in exercising the jurisdiction, and also must so far as practicable uphold the principles in Part 1.3 of the Act. The question for the Court to determine is whether the order proposed is the best means of safeguarding Charlotte's wellbeing and is in her best interests.

Why is Charlotte a child in need of protection?

6. Agencies concerned with child welfare and protection have had a concern for Charlotte for most of her life. According to the documents filed when an order was first sought, when Charlotte was an infant and living with her mother in New South Wales, there were four notifications in relation to the mother's emotional state between 2005 and 2006.
7. In 2008 and 2009 there were two incidents where Charlotte was taken into care due to her mother being taken into custody and there being no other family carer available. There were also notifications at that time concerning Emily's aggressive behaviour and verbal and physical abuse of Charlotte.
8. On 19 February 2010 NT Police had concerns that Emily may pose an immediate risk of harm to Charlotte as she had threatened to harm the child and had a plan of how she would harm herself and Charlotte which was feasible. The threat to harm Charlotte was based upon Emily's delusional belief that Lebanese Arabs in Sydney were telling her to hurt Charlotte. The mother was at that stage admitted to the psychiatric ward at Royal Darwin Hospital as an involuntary patient where she remained until 6 April 2010 and was discharged under a Community Management Order.
9. Although the incident in February 2010 was the precipitating incident for being taken into care, after being taken into care it became clear that

Charlotte had suffered in other ways as a result of her mother's illness. For example, Charlotte was observed to engage in socially inappropriate and sexually inappropriate behaviours. Charlotte also reported that previously when in her mother's care, her mother would slap her on her face and body when she was angry and hit her with a shoe on her forehead and body with another implement which appeared to be a wooden spoon.

10. The impact of Emily's mental illness upon her capacity to care for Charlotte results in Charlotte being a child in need of protection in a number of ways. Firstly, the mother's illness is characterised by significantly impaired motivation and poverty of thought content. Both the treating psychiatrist, Dr Smith, and a psychologist engaged to assess the mother's capacity to appropriately parent her daughter, Dr Cashion, refers to Emily not anticipating or being strongly aware of her daughter's need for interests and activities. Dr Smith describes Emily as generally silent and inert when she was observed with Charlotte and says that Emily would be unable to provide for her daughter's developmental needs for socialisation and activity if she were to have parental responsibility. He noted that it is generally Charlotte rather than her mother who initiates conversation and activity. Dr Cashion who also observed contact noted that Emily showed limited ability to interact in a meaningful way with her daughter.
11. Dr Cashion also expressed concern that Charlotte was required at times to assist her mother in a carer's role when they resided together and said that it would be inappropriate for Charlotte to have to take on that role at her age. He was also concerned that Charlotte was exposed to adult television and language when with her mother that was believed to have resulted in behavioural problems.
12. Dr Smith also noted that generally Emily has been noncompliant with her medication. This can result in Emily acting upon her delusions such as earlier in 2012 when her delusions re-intensified and she became

increasingly determined to go to Sydney to confront those she held responsible for her persecutory experiences. These acts and omissions by the mother, albeit as a result of her mental illness have resulted in Charlotte suffering harm as defined by the Act, including a significant detrimental effect caused by these acts and circumstances on her psychological and emotional wellbeing.

Is the Order proposed the best means of safeguarding the wellbeing of the child?

13. As all of the child protection concerns relate to the mother's mental illness, a critical question is the likely course of that illness. Dr Smith, Emily's treating psychiatrist stated in his most recent report of 17 October 2012 (Exhibit 2) that in his opinion it was very unlikely that Emily's clinical picture would change in the next five years.
14. Under cross-examination, whilst Dr Smith conceded that there had been times of some improvement, his opinion of her likely prognosis essentially remained the same, that he did not believe that it would change. There is no other evidence before the Court as to the likely course of Emily's illness.
15. Despite this prognosis Dr Smith says that the five year order has three advantages. Firstly, he is of the view that a five year order would prevent conflict and upheaval. In his report Dr Smith says that Emily regards being deprived of her parenting role as a form of unfairness which makes her become angry on occasions when she has to be confronted with the reality of the situation. In this regard Dr Smith recommends that the Department can work towards Emily having occasional overnight visits from her daughter and notes a particularly positive feature that Emily has now been assisted to move into a very good public housing unit which has two bedrooms and will be a very suitable place for her daughter to visit. In oral evidence he referred to encouraging as much healthy contact between mother and daughter as possible, and said that a reduction in the constant disruptive

episodes and anger will be beneficial not only to the mother, but importantly for these proceedings, to the child also.

16. Working towards overnight visits would also be, in his view, a strong motivation for the mother to remain engaged in treatment. Whilst Dr Smith did also note that there were still some risk factors presented by the level of psychomotor dysfunction whereby the mother does not initiate activities, anticipate Charlotte's needs and shows poor social judgment, he also referred to Charlotte's high level as resilience and was not of the view that this interaction would be positively harmful to Charlotte.
17. The second advantage identified by Dr Smith was that in five years Charlotte would be 12 and a half and would be more able to make her own decision about parental responsibility. Whilst I have some misgivings about even a mature child of 12 being placed in this position, the paramountcy of the child's best interests should act as a safeguard for Charlotte. Allowing the child to express her views at a stage when she is more mature is also consistent with section 11 of the Act and other provisions dealing with the participation of the child in the proceedings.
18. The third advantage is that a five year order will result in promoting the bond between Emily and her daughter. Despite the impact that Emily's mental illness has upon her parental capacity, Dr Smith, Dr Cashion and the Departmental workers have all observed that there is clearly a meaningful and important bond between Emily and Charlotte. The evidence of the case manager is that if a long-term order to the age of 18 were made, the focus of the services provided by the Department would shift to being provided to the child rather than to the parent and the level of contact facilitated by the Department would be reduced. I agree with the submission that this would tend to reduce the maintenance of attachment between the mother and the child.

19. The five year order will provide an opportunity to the mother to satisfy the CEO that Charlotte should be returned to her care at the end of that period. However, it is important and in the interests of both Emily and Charlotte, for the prospects of reunification to be grounded in reality. The care plan produced to this Court (Exhibit 5) suggests that Charlotte could be reunified with Emily by mid-2014, that is within two years. Dr Smith expressed the opinion that this was an unrealistic expectation and in his view giving Charlotte an unrealistic expectation would not be in her best interest. Dr Smith was surprised that this had been stated as the aim in the care plan and expected that his input with the Department as to whether Charlotte should be returned to her mother would have been expected. The case manager said in cross-examination that the treating psychiatrist's views would be taken into account.

Does a five year order risk Charlotte's stability?

20. Although Charlotte has been in the care of the CEO for almost three years, fortunately her case has not been marked by multiple placements and instability. Further, the order proposed is not another short-term order. Although I expressed some concern about an unrealistic reunification plan, these concerns have been addressed by the departmental officer assuring the Court that the treating psychiatrist's views will be taken into account in the reunification plan. In this case the current carer will be available for the next five years and the particularly good relationship between the carer and the child is anticipated to continue. Charlotte's views and wishes include that she is very happy where she is.

Will making the order proposed be in Charlotte's best interests?

21. Taking into account the matters referred to in section 10 relating to the best interests, the order proposed will address the need to protect Charlotte from harm, will ensure that her physical, emotional, intellectual, spiritual, developmental and education needs are met and will not involve a change in

her current circumstances. Emily is currently incapable of caring for her daughter and unlikely to become capable during the currency of the order. However, Charlotte does still appear to have a significant bond with her mother and her wish is to see her mother. Although permanency cannot be met by a five year order, the CEO has an obligation to apply for a further order if required to safeguard the child's wellbeing in the event that she is not safely returned to the care of her family at the expiry of this order.

22. In making a final order the Court is required to take into account certain matters under section 130. Firstly, there are the wishes of her parents and the CEO who all support the order proposed. I have considered all of the reports about the proposal including in particular, the care plan. There is no other person better suited to be given parental responsibility including in particular Charlotte's father and other family members and the order satisfies the needs for long term stability and security. I am satisfied that the order is the best means of safeguarding the child's wellbeing. Accordingly I make a Protection Order specifying a long-term parental responsibility order giving the CEO parental responsibility for Charlotte for a period of five years.

Dated this 22nd day of November 2012

Hilary Hannam
CHIEF MAGISTRATE