

CITATION: *Re: Ryan* [2013] NTMC 003

TITLE OF COURT: LOCAL COURT
JURISDICTION: Family Matters
FILE NO(s): 21139665
DELIVERED ON: 18 April 2013
DELIVERED AT: Darwin
HEARING DATE(s): 8 & 9 October 2012, 22 February 2013, 4
March 2013 & 3 April 2013
JUDGMENT OF: Hilary Hannam CM

CATCHWORDS:

Chronic physical and mental health problems arising from malnutrition

Harm constituted by malnutrition under *Care and Protection of Children Act*

Necessity for Protection Order where parent has made agreement with other family members for protection of child

Legal basis for exercise of parental responsibility

REPRESENTATION:

Counsel:

CEO Office of Children & Families: Mr Fisher
Child: Mr Hubber, Maley's Barristers and Solicitors
Mother: Mr Woodcock (Counsel) instructed by NAAJA

Judgement category classification: A
Judgement ID number: [2013] NTMC 003
Number of paragraphs: 60

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

No. 21139665

REASONS FOR JUDGMENT

(Delivered 18 April 2013)

Ms Hilary Hannam CM:

1. This matter concerns Ryan, who is four. Ryan is an Aboriginal boy who has been raised in East Arnhem Land. Ryan's mother, Sharon, was caring for him prior to him being taken into the care of the CEO of the Department of Children and Families ("the Department"). Ryan's father has not been involved in his life and has not participated in these proceedings.
2. Ryan was taken into care as he has been malnourished, at times severely, and requires substantial intervention to help him overcome his malnutrition. When he was first taken into care Ryan was placed with foster parents in Darwin. From December 2011 he was placed by the CEO with other family members, Toby and Cathy.
3. Everyone agrees that because of his malnutrition Ryan is in need of protection. Sharon, Toby, Cathy and other family members want Ryan to continue to live with Toby and Cathy and be brought up by them as their child.
4. The CEO says that the order which is in Ryan's best interests is for the CEO to have parental responsibility for Ryan until he is 18.
5. Sharon says that although she accepts that Ryan is in need of protection, she does not think that any order is necessary because she has already agreed

with Toby and Cathy that Ryan will grow up with them as their child and this can happen without any Court order. If any order is believed to be necessary by the Court, then Sharon says this should be a two year order giving Toby and Cathy parental responsibility, with a supervision direction concerning medical treatment if that is required.

History

6. Although there is no dispute that Ryan suffers from malnutrition currently and at the time he was taken into care, some history of his malnutrition and the attempts to address it need to be outlined for consideration of the appropriate order.
7. Ryan, who was born in October 2008, has been known to the Department for most of his life. He was first hospitalised in March 2009 (Exhibit 1) when he was five months old and the Department had been providing intensive support to his mother from when he was the age of 11 months. He was required to be admitted to hospital many times between the age of five months and two years.
8. After he was discharged in January 2011 following his sixth admission, a community plan was put in place involving a number of agencies assisting Sharon in ensuring that Ryan, who was two, received enough food and gained weight. However, it soon became clear that this plan was not working as Ryan was again admitted to hospital in April 2011. When he was admitted, his weight was lower than his previous discharge weight. He was at that time taken into care for two months with agreement from Sharon and when living with a foster carer in Darwin, his health, weight and appearance improved remarkably (Exhibit 1, and Exhibit 16).
9. Ryan was returned to Sharon and her extended family in June 2011 and services were again put in place to assist Sharon in ensuring that Ryan gained weight. In August, Officers of the Department saw that Ryan was

skinny, bony and unwell and he was again admitted into hospital. Various family members were suggested as appropriate carers at the time but none were found to be ultimately suitable. In September 2011 Sharon agreed to another temporary placement arrangement for Ryan who, following discharge from hospital, was placed again with foster carers. Again Ryan's health and weight improved with those foster carers.

10. The application for Protection Order was made on 24 November 2011 following a 14 day Temporary Protection Order. At that stage the Department was seeking a Protection Order with a short-term parental responsibility direction and daily care and control direction to the CEO for 12 months.
11. On 15 December 2011 Ryan was placed by the CEO into the care of Cathy and Toby following them having been found suitable by the CEO. Ryan remained in the care of Cathy and Toby since that date, up until February this year when he was again placed in foster care.

Ryan's progress with Toby and Cathy

12. Ryan was in the care of Toby and Cathy from 15 December 2011 until February 2013. A number of the affidavits, including those of Departmental Officers and Ryan's previous lawyer, Ms Morgan, indicate that Ryan had been seen to be happy, settled and well cared for in the community in this family placement and at pre-school.
13. However, the paediatrician, Dr McLennan, and other health professionals involved in his care have noted that Ryan experienced significant weight loss apparently from about April 2012. It also became apparent that Ryan began exhibiting behavioural problems related to eating.
14. In a medical report dated 21 May 2012 (Annexure 2, Exhibit 8) Ryan was described as having severe malnutrition. At this stage he was reported by his

carers to be well and eating, although it was sometimes difficult to get him to eat.

15. On 25 June 2012 Ryan was described as experiencing moderate malnutrition by Dr McLennan. Once again he was reported by his carers to be eating a range of foods but Dr McLennan noted that this had not been observed by other staff. Dr McLennan noted that at that stage he was on nutritional supplements and that although he needed speech therapy this was only available to a limited extent in the community. On this date she also said that he had several factors including oral hypersensitivity and that this was now compounded with behavioural issues. Dr McLennan felt that a percutaneous gastrostomy tube, a very invasive procedure (PEG) should be considered.
16. In a further report a few days later, on 29 June, Dr McLennan said “Ryan needs an ongoing, stable care arrangement with carers that provide a normal, supportive environment. Additionally he should interact with other children so that he can model on normal eating behaviour and childhood play”. She also recommended that he attend a Families as First Teachers group or preschool, receive ongoing intensive speech therapy, which would be required for years, and that if he demonstrated ongoing failure to gain weight then a PEG should be considered.
17. Over the next few months, Ryan is described as having “ongoing malnourishment”.
18. In September 2012 medical professionals formulated a plan which was agreed to by family members and in particular, Cathy and Toby, that Ryan would be brought to Royal Darwin Hospital and remain in Darwin to develop an intensive feeding and behavioural plan, as all possible interventions in the community were seen to be unsuccessful. At the date of the first hearing days in October 2012, this plan had only just commenced.

Cathy and Toby

19. Cathy has filed one statement and has not been cross-examined. This statement made in October last year sets out the daily routine for Ryan. Cathy describes that a “grandmother” Sarah gets up with Ryan and cooks him porridge and weet-bix, that she gets Ryan ready for school, which includes showering him and that she goes to school with him (it is understood that this is a reference to Families as First Teachers or pre-school), and that after school they play, walk to the beach or go hunting with Ryan. Cathy says that when Ryan cries, she grabs him and takes him to watch a video or makes him sleep and that if other children crowd him or pick on him, she takes him for a walk. She says that close family help her with Ryan if he gets tired or frustrated and that if she gets tired, then grandma or “the other mob” cares for Ryan. She says that she wants to care for him and help him and he will be safe with her and that she wants Ryan to grow up to be healthy with family
20. Toby, who is Cathy’s husband, has also prepared a number of affidavits and gave oral evidence at the recent further hearing of this matter.
21. At the time Toby filed his first affidavit (Exhibit 6, 17 May 2012), according to the medical evidence, Ryan was at a stage where he was experiencing a significant weight loss. In a medical report dated four days later, Ryan was described as having severe malnutrition, and at this stage he had begun exhibiting behavioural problems related to eating. Toby described Ryan at that time as looking very healthy and happy and said that he and Cathy make sure that Ryan eats every day. He also said that since Ryan had been living with them, he had not got sick or lost weight. Toby also said that Cathy takes him to Families as First Teachers program during the week.
22. Ryan was at the time of the hearing in October 2012 at Royal Darwin Hospital and Toby had accompanied him to be part of the program to get

Ryan to the point where he could eat independently and gain weight. At that stage, Ryan's behaviour with his eating was described as "continuing to be a worry".

23. Prior to being brought into Darwin for this special program, Mr Fales, the Departmental case worker said that the Department did not have any particular concerns about Toby and Cathy's care of Ryan, but that the concerns about his weight came from the Department of Health. Prior to being brought into Darwin, Ryan was being weighed either weekly or bi-weekly, but Mr Fales said there were occasions where the weigh-ins were missed if the carers weren't feeling well, if Ryan was sick or there was a ceremony or funeral occurring. Overall, he described the carers as fairly consistent. Dr Stewart, a senior medical practitioner in Maningrida in September 2012 also described Cathy and Toby as appropriate and of a good quality in contrast to the years of neglect and lack of food whilst in his mother's care.
24. Mr Fales was asked questions about various scenarios, including the situation proposed by Ryan's mother that no order be made by the Court. Mr Fales said that he would be concerned about this situation, particularly in relation to Toby and Cathy's negotiation with the health professionals concerning Ryan's care. He said that he would be worried "that the family may just agree with whatever is being said in front of them ... because Toby and Cathy can be very compliant and want to please people".
25. He also said that it was through the Department's intervention that Toby and Cathy were located and found as family members.

Events Following the Original Hearing

26. Rather than give a decision in November 2012, on the date I had originally intended, I requested an up to date report to see how the intervention at the hospital had proceeded. A further affidavit from Mr Fales was filed

annexing an email from another paediatrician, Dr Cornelius about the current situation. As I had concerns about the matters that the paediatrician had raised which were directly related to the central issue in the matter, further evidence was heard in February this year from Dr Cornelius in relation to the matters that had occurred since the October hearing.

27. By the time the hearing was resumed, Ryan was once again in foster care, having been removed from Toby and Cathy's care on 12 February 2013. At the resumed hearing, the CEO also filed an amended application seeking a long-term parental responsibility direction giving parental responsibility of Ryan to the CEO until 18.
28. The evidence given by the paediatrician, Dr Cornelius, in an affidavit, reports and orally is that the admission to hospital in October 2012 had not gone as expected due to a number of factors, including those beyond the control of the family. Dr Cornelius had taken over care of Ryan in September 2012 and was aware that he had chronic malnutrition, that he had been admitted to Royal Darwin Hospital on a number of occasions for different infections and that the previous paediatrician had been of the opinion that he had an oral aversion. Following a speech assessment, the doctor was of the opinion that Ryan did not suffer from an oral aversion and that the purpose of the admission to hospital was to encourage the carers, Toby and Cathy, to assist with parenting and behaviour strategies to make it easier for Ryan to feed. Dr Cornelius described these strategies as "very easy" and were concerned with Ryan maintaining attention while eating and included the carer sitting with Ryan at the table for 30 minutes to feed him and rewarding him for having taken food. She commented that the reward that was particularly effective was going to school if he had a good breakfast, which she says he loved.
29. Dr Cornelius said that after two weeks in late October 2012, Ryan's carers decided to leave the hospital and went back to Maningrida to try and

implement the strategies they had learnt in the community. In addition to the feeding strategies, the carers were also asked to take Ryan to the Families as First Teachers group in Maningrida where parents can go to have supervised education and meals, together with other parents of the children's peers and given other instructions.

30. Dr Cornelius had formed the view by 16 November 2012 based on her observations in the hospital and the last three weeks in the community that Cathy was not able to provide for Ryan's needs and was not engaging in the suggestions made at discharge of getting Ryan up every morning, feeding him a decent breakfast one-to-one and taking him to pre-school. Ryan was still sleeping at 11.00am whenever home visits were conducted over the previous three weeks, had not had breakfast and was not at FAFT. Although several members of the health and education staff had spoken to Cathy and other family members to emphasise the importance of these strategies, the family were not as involved as they needed to be. The occupational therapist informed Dr Cornelius that at his home, Ryan was not engaged in the activities offered for other people, which the doctor described as totally different to his presentation in the hospital. She was, at that stage, already concerned about chronic physical and mental health problems in the future and felt that the social environment Ryan needed was not consistently available to him.
31. On 9 January 2013, as part of Dr Cornelius' regular visits to Maningrida, she reviewed Ryan. The doctor described him as suffering from severe malnutrition and said that there was a potential risk of Ryan developing signs of starvation if his weight did not improve which could cause potential organ damage and death. Ryan presented in the presence of Toby, who reported no problems at home and said that Ryan was "feeding okay".
32. Dr Cornelius was however concerned that Toby, due to his work commitments "might not reliably be present in the household during the day

or sleeping”, in which case, the care of Ryan would fall back on Cathy and Cathy’s mother. She again expressed concerns about Ryan being asleep until midday and not regularly attending the FAFT School. Dr Cornelius remained concerned about Cathy’s capacity to support Ryan’s feeding and noted that unless there was one-to-one attention to Ryan while he was eating, then he would not eat by himself. The doctor restated her earlier belief that Toby was bonding very closely to Ryan and was providing good care for him, including his feeding, but was not available on many occasions.

33. Others in the community such as the FAFT co-ordinator also noted a change in Cathy’s level of engagement and told Mr Fales that since Ryan had come back from Darwin, he had remained inside the home.
34. The decision to once again place Ryan in foster care was made as a result of these reports of Dr Cornelius. The removal of Ryan from Toby on 12 February was clearly upsetting and distressing for Ryan, who was described as crying and not wanting to separate from Toby. Ryan has been described as eating a large amount and non-stop since coming into care, but no other information has been provided about his current circumstances.

Submissions on behalf of Ryan’s Mother

The evidence of Dr Cornelius

35. The proposition that a long-term order of parental responsibility to the CEO until Ryan is 18 is in Ryan’s best interest, is to a large extent based on the opinion of Dr Cornelius. It is submitted by the mother’s legal representative that the evidence of Dr Cornelius is of little probative value.
36. Dr Cornelius is a paediatrician, who as at February 2013 had been working at the Royal Darwin Hospital for six months. She gained her medical qualifications in Switzerland and has worked in Australia for six and a half years and in particular, in Hobart prior to coming to Darwin. None of her

qualifications or medical evidence concerning critical issues such as the implications of malnutrition from a medical point of view were challenged under cross-examination. Unsurprisingly, as a paediatrician trained in Switzerland and having practiced in Hobart, Dr Cornelius had not previously dealt with children suffering from malnutrition and relied to some degree upon some of the experience of colleague doctors who had been in the Northern Territory for 20-30 years and had seen many children with malnutrition. As there was no general challenge under cross-examination as to her expertise as a paediatrician, I do not accept the fact that she relied upon the advice of her colleagues as a reason to attach little weight to her evidence.

37. At one stage of her evidence, Dr Cornelius referred to her opinion as one as a human being as opposed to a paediatrician, which it is submitted also affects the probative value of that evidence. At that point in the evidence, the doctor was describing ordinary human activities such as families interacting with each other when eating, which is not in fact evidence given as a paediatrician, but had relevance to the cause of Ryan's malnutrition. In my view, this expression does not affect the probative value of her evidence.
38. It was also submitted that Dr Cornelius was reluctant to make "proper" concessions in cross-examination, with the example given relating to the period of Ryan's hospitalisation in October 2012. In light of the totality of the doctor's evidence about the weight gain that would be expected in a child of this age, I do not agree that she has failed to make a proper concession. It has also been submitted that as the doctor did not use an interpreter when she gave instructions to Cathy and Toby upon discharge, this affects the probative value of her evidence. In oral evidence, Toby indicated that he did understand what he was expected to do after he returned to Maningrida.

39. It is submitted that removing Ryan from Toby and Cathy was unjustified and not supported by the evidence. In support of this submission, Mr Woodcock refers to the close bond between Toby and Ryan and the opinion expressed by Dr Stewart, the senior medical practitioner in Maningrida on 21 September 2012. Dr Stewart said that the care provided by Toby and Cathy is appropriate and of a good quality and that the doctor would want to see Ryan remain in their care. The doctor's report which is annexed to Exhibit 9 is described as having been compiled by reviewing Ryan's clinical records and Dr Stewart said that his knowledge of Ryan's clinical condition "comes from a relatively small number of clinical consultations with myself and a greater number of child safety meetings held in Maningrida". In summary he states that Ryan's current abnormal food behaviour and persistently poor weight gain has arisen out of years of neglect and lack of food security whilst in Sharon's care. In this context, he said that the care with Toby and Cathy is appropriate and of a good quality and he would want to see him remain in their care. In my view, it appears that Dr Stewart is making a distinction between the care provided to Ryan by his mother and the care provided by Toby and Cathy. Further, this report was provided prior to the October admission in hospital and the evidence of Dr Cornelius that in January 2013 Ryan was suffering from severe malnutrition.
40. There are also a number of submissions made on behalf of the mother to the effect that Ryan has not gained weight whilst in the care of Toby and Cathy, despite having been appropriately fed and that he has also failed to gain weight even when in foster care. In my view, the only evidence that Ryan has been appropriately fed by Toby and Cathy comes from Toby and Cathy themselves and is inconsistent with all of the medical evidence as to the reason for his malnutrition. Dr Stewart, the medical practitioner in Maningrida said that Ryan's pattern of malnutrition is medically consistent with a lack of food (annexure to Exhibit 9). Dr McLennan, the first paediatrician provided a number of reports and ultimately concluded

(Exhibit 7) that an underlying medical cause for the severe degree of failure to thrive had not been found which “implies that a lack of calorithic intake is the underlying cause”. Dr Cornelius expanded upon the reasons for Ryan not gaining weight including his social environment. This was referred to in a number of her reports (including the email of 16 November attached to Exhibit 18) and the report of 25 October 2012 (Exhibit 16) and also in her oral evidence.

41. Further, there is evidence from a number of sources that Ryan has gained weight when in foster care. For example, in Exhibit 7, Dr McLennan states “when Ryan is admitted to hospital or when he has been living in Darwin in care, he has demonstrated weight gain or weight maintenance”.
42. When Ryan was placed in foster care in April 2011, he gained weight and he also gained weight when he was taken into care in September 2011 (paragraph 35, Exhibit 1). On 5 December 2011, shortly before being placed with Toby and Cathy, Ryan was observed to have put on 700 grams of weight at his appointment with the paediatrician (paragraph 4, Exhibit 2). I agree with the submission that the CEO ought to have provided evidence to the Court about Ryan’s weight in his most recent foster care placement. However, in my view, this does not necessarily lead to the inference that the information has not been provided as he has not put on weight during his current placement. In light of the evidence of Dr McLennan, which is not the subject of any adverse submissions, together with the other evidence to which I have referred, I do not conclude that Ryan was appropriately fed whilst in the care of Toby and Cathy and I do conclude that he has, on a number of occasions, put on weight when in foster care.
43. It is submitted that any order that takes Ryan away from Toby and Cathy is not in Ryan’s best interests. However, it is clear from both the evidence of Mr Fales and the submissions of Mr Fisher, on behalf of the CEO that at some point in the future, Ryan may be returned to the care of Toby and

Cathy or to another appropriate carer in the Maningrida community if that is in his best interests.

44. Although the written submissions on behalf of the mother refer to an order that takes Ryan away from Toby and Cathy, it is the mother's primary position that no order need to be made. In these circumstances, as Ryan's parent, it is said that Sharon will exercise parental responsibility herself, and will agree with Toby and Cathy for them to raise Ryan as their child. In his submissions, Mr Woodcock, on behalf of the mother, addresses each of the criteria in section 10 and submits that having Toby and Cathy raise Ryan by agreement with his mother, is in his best interest. In my view, it is not in Ryan's best interest to have the important issue of parental responsibility remaining unclear. In the absence of an order, there would be no legal basis for Toby and Cathy to exercise parental responsibility for Ryan and Sharon could lawfully at any time either remove Ryan from them into her own care or into the care of another person.
45. The alternative order which was advocated at the outset by the mother and which Mr Hubber, on behalf of Ryan also supports, is an order of a short-term order of shared parental responsibility between the CEO and Toby and Cathy.
46. Mr Hubber's submission, as the legal representative for Ryan, is that a two year order of joint parental responsibility between the CEO and Toby and Cathy would be in Ryan's best interests. Mr Hubber based this submission upon the clear strong bond between Ryan and Toby and Toby's willingness with further assistance to provide the appropriate care for Ryan. He submitted that Toby was willing to learn in relation to Ryan's medical needs and that if Toby were properly engaged, he would be able to meet those needs.
47. In my view, the history of the matter demonstrates that there have been considerable efforts over a long period of time made by the CEO to assist

firstly the mother, then other family members, including Toby and Cathy to obtain the appropriate skills which are parenting rather than medical skills. The strategies of sitting with a child as he eats to avoid distraction, rewarding him when eats satisfactorily, having him socialise with other peers in his home community, ensuring that he develops habits such as not sleeping in and having a good breakfast are not particularly complicated. In oral evidence, it appears that Toby understood that these strategies were expected of him and Cathy and also agreed that Cathy appeared to have lost the capacity to put these simple strategies in place. It is noted that on each occasion Ryan has been in foster care, including the current placement he quickly develops a good appetite and eats well. He was also seen to be socialising and engaging well with other children during the October hospital admission.

48. Toby submitted that he would like an order which allowed for him, the CEO and Cathy to make joint decisions and work as a team. He asked for this order to be in place for a good while, until Ryan grows up, but felt that it was best for Ryan to come back and live with him and Cathy as soon as possible. He said that he would like Ryan to stay with welfare until he was healthy and strong and then he could come back to them so he could go to ceremonies by the age. It is clear that Toby, as well as the legal representatives for the child and the mother place great emphasis on cultural factors which are clearly very significant for the wellbeing of an Indigenous child who has been raised in an Indigenous community.
49. As previously indicated, I am satisfied that Ryan is in need of protection on the ground that he has suffered harm because of an omission of a parent and on the ground that the parents are unable to care for him and no other family member is able and willing to do so. The harm to Ryan's physical wellbeing due to the omission of his mother to nurture and feed him appropriately falls within the definition of harm under the Act.

50. The second question for the Court to determine is whether the order proposed is the best means of safeguarding the wellbeing of Ryan. In making the decision about this issue, the Court must uphold the principles set out in sections 6 – 12 of the Act and always consider the best interests of the child as paramount. There are also specific matters to which I must have regard under section 130 of the Act.
51. So far as Ryan's best interests are concerned, the order proposed, that is a long-term order of parental responsibility would, in my view be in his best interests against the criteria set out in section 10. The particular harm with which the Court is concerned is the harm to Ryan's physical and potentially emotional and psychological wellbeing arising from his malnutrition. On the evidence before the Court as to the reason for his malnutrition and his progress on a number of occasions in care, I am satisfied that the order proposed will protect him from harm.
52. There is no doubt as to Toby's willingness to care for Ryan, although on the current state of the evidence, the same cannot be said of Cathy. The capacity of both Toby and Cathy on the other hand unfortunately has not been demonstrated, despite the significant efforts over a long period of time for the placement with them to be successful.
53. It is clear from the evidence that there is a strong bond and a healthy sense of authority exercised by Toby over Ryan and that their relationship is loving. I have some concerns on the current state of the evidence as to the nature of the relationship between Ryan and Cathy. Whilst it appears to be a loving one, I have some concerns about whether it is an appropriately nurturing one. The wishes and views of the child are unknown and it is submitted by Mr Hubber and accepted by the Court that he is not in a position to express a view.
54. Ryan's need for permanency in his living arrangements would be satisfied by a long-term order of parental responsibility to the CEO as upon the

making of that order, the CEO would be required to find a long-term placement for Ryan which meets his needs throughout the period of the order. The Department must of course apply the principles in relation to Aboriginal children in making this decision.

55. So far as the need for stable and nurturing relationships are concerned, there is no doubt that Ryan has missed out on these in life. There is evidence from all of the doctors of an absence of a nurturing relationship whilst in the care of his mother and Dr Cornelius expressed some concerns about whether this was also occurring whilst in the care of Toby and Cathy, especially so far as Cathy was concerned. Under a long-term order of parental responsibility, it would be incumbent upon the CEO to find a placement for Ryan which is stable and nurturing.
56. On the evidence before me, Ryan's physical, intellectual and educational needs would be met under a long-term order of parental responsibility. His emotional needs may very well have been compromised by the separation from his carer Toby, but there is no reason to suggest that these would not be met by a suitable long-term carer with whom he would be placed by the Office of Children and Families. Ryan's spiritual development and the important aspect of his culture will also be promoted by the Department ensuring an appropriate level of contact between Ryan and his extended family throughout the order.
57. The special characteristic of the need for hospitalisation in the event that it is required would also be met under a long-term order. However, as the doctors have explained, the issue of Ryan's malnutrition is not primarily a medical one, but an issue which relates to his social environment, nurturing and appropriate eating habits. So far as the change in Ryan's circumstances are concerned, he has unfortunately in his short life suffered a number of changes of circumstance. He led a particularly chaotic and transient life with his mother prior to coming into care, but on the evidence has quickly

adapted to a number of foster placements and also quickly adapted to his life with Toby and Cathy. Whilst it was clearly upsetting for him to be physically separated from Toby, it is difficult to say with certainty what the effect of the various changes has had on him. It is incumbent of course upon the CEO under any order to minimise the level of change for any child in care so that the opportunities to bond with and attach to a new carer are maximised.

58. I have had regard to the various principles set out in sections 6 – 12 of the Act and particularly section 8 and section 12. All principles are however, subject to the best interests of the child. Although section 8 does give the family the primary responsibility for the care and upbringing of the child, in light of Dr Cornelius' about the severity of Ryan's malnutrition and the potential for significant harm and even death, removing him from the care of Toby and Cathy was in my view the only reasonable way to safeguard Ryan's wellbeing.
59. The long-term order of parental responsibility is likewise in my view the best means of safeguarding the wellbeing of Ryan. Only a long-term order can give the legal responsibility for Ryan to a nominated person for the whole of Ryan's life. Efforts to keep him sufficiently well nourished have been tried through various means for most of his life. At first, this was done by the CEO supporting Ryan's mother from when he was 11 months old. There were two periods of Ryan being taken into care under a voluntary agreement for two months each and community plans put in place involving a number of agencies and family members assisting Sharon with Ryan on two occasions following hospital admissions. Extensive efforts were also put in place to support Toby and Cathy in the care of Ryan and even though fairly simple measures were required, these efforts did not succeed. Against a background of several years of support, which have not ensured Ryan was appropriately cared for, Ryan is entitled to an order which meets his best interest of long-term nurturing and stability.

60. The short-term orders proposed as alternatives or the making of no order at all, would, in light of the history of the matter, not meet Ryan's best interests. I have considered the wishes of Sharon, Toby, Cathy and the CEO, all of the reports and other material in relation to the matter. For all of the reasons given, I do not find that Toby is a person who is better suited to be given daily care and control or parental responsibility for the child and unfortunately on the evidence before me, Cathy is not suited for either of these responsibilities. Despite the extensive involvement of the family over the years, there is no other person better suited to be given daily care and control or parental responsibility for Ryan. Ryan's needs for long-term security and stability require in this case a long-term order. Being satisfied of all of these matters, I make a protection order specifying a long-term order of parental responsibility giving parental responsibility for Ryan to the CEO until he reaches the age of 18.

Dated this 18th day of April 2013

Hilary Hannam
CHIEF MAGISTRATE