

CITATION: *Re: Anthony* [2013] NTMC 010

TITLE OF COURT: LOCAL COURT

JURISDICTION: Family Matters

FILE NO(s): 21302221

DELIVERED ON: 15 May 2013

DELIVERED AT: Darwin

HEARING DATE(s): 15 April 2013

JUDGMENT OF: Hilary Hannam CM

CATCHWORDS:

Care & Protection of Children Act
Impact of exposure to domestic violence
Order of Court must be least intrusive option
Medical neglect
Impact of poor hygiene on health
Supervision orders

REPRESENTATION:

Counsel:

CEO Office of Children & Families: Ms Muccitelli
Child: Ms Orwin
Mother & Grandmother: Mr Strong
Father: Not Represented

Number of paragraphs: 56

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

No. 21302221

REASONS FOR JUDGMENT

(Delivered 16 May 2013)

Ms Hilary Hannam CM:

1. Anthony, a three year old Aboriginal boy was taken into the care of the CEO of the Office of Children and Families (the Department) in January this year. Immediately before being taken into care, Anthony had been admitted to the Royal Darwin Hospital in late December 2012 from a remote community as medical staff had observed sores on Anthony's skull to have progressed into infected boils which were deteriorating. At the time of his admission, Anthony was living with his parents in an extremely unhygienic home environment and his parents had failed to comply with medical treatment.
2. As the investigation by the Department progressed, it became clear that Anthony's mother had been the victim of fairly consistent and at times extreme domestic violence to which Anthony had been at times exposed and that Anthony himself had also been the victim of his father's violence. It also became apparent that there were other medical problems, in particular gut infections present for a lengthy period of time which also related to a lack of hygiene.
3. All parties agree that Anthony is in need of protection as he has suffered harm because of the acts of his father, being violence perpetrated towards himself and his mother to which he has been exposed. Harm has also been caused by the omission of both of his parents to ensure that he obtained

medical care at times, and failure to ensure that his home environment was sufficiently hygienic to prevent illness.

4. The CEO seeks a protection order with a short-term parental responsibility direction giving parental responsibility to the CEO for two years. Anthony's lawyer agrees that this order is the best means of safeguarding Anthony's wellbeing and is in his best interests. The legal representative for Anthony's mother and maternal grandmother seeks an order dismissing the application of the CEO or alternatively, an order giving short-term parental responsibility for two years to the mother and maternal grandmother jointly or a short-term parental responsibility order to the maternal grandmother for a period of two years.
5. Anthony's father had been served with the application and attended Court on a couple of occasions. On 4 April 2013 Anthony's father indicated that he opposed the CEO's order and thought that Anthony should remain in his mother's care. Anthony's father indicated that he did not want to come to Court for the hearing of the matter and as he was in custody, arrangements were not made to bring him to Court.

When must the Court make a Protection Order?

6. Under section 128 of the *Care and Protection of Children Act* (the Act), the Court may make a protection order as proposed by the CEO or specifying other directions in section 123 as the Court considers appropriate or may dismiss the application.
7. Under section 129 of the Act, the Court must make the protection order if satisfied that the child is in need of protection and the order is the best means of safeguarding the wellbeing of the child.
8. In these circumstances, where the parties have agreed and I am satisfied that Anthony is in need of protection, I first must consider whether to dismiss the application as sought by Anthony's mother and maternal grandmother.

Consideration of Dismissal of Application

9. Although the Act does not specifically state that the Court must consider the least intrusive action in relation to a child before a consideration of more intrusive action, section 8 sets out the role of family in the Principles

Underlying the Act as follows:

“(1) The family of a child has the primary responsibility for the care, upbringing and development of the child ...

(3) A child may be removed from the child’s family only if there is no other reasonable way to safeguard the wellbeing of the child”.

10. In my view, the words “may be removed” do not only refer to the point in time at which a child is actually first removed from his family, but operates with the effect that a child may remain removed from his family only if there is no other reasonable way to safeguard his wellbeing. This is also consistent with section 8(4) which states that where practicable and consistent with the child’s best interests, if a child is removed from family, the child should eventually be returned to the family.
11. Essentially, it is the submission of Anthony’s mother and grandmother that having become aware of the child protection concerns for Anthony, (that is exposure to domestic violence, ensuring medical attention at all times and the importance of a hygienic home environment) and having shown promising signs of addressing each of these issues, Anthony’s wellbeing is safeguarded by being returned to the care of his mother and grandmother. Therefore, it is submitted that a protection order of any kind is not required to safeguard Anthony’s wellbeing.

Mother’s understanding of Domestic Violence

12. It appears that there is now no dispute that Anthony’s mother has been the victim of quite severe domestic violence for a number of years. Unfortunately, the Court, and it appears the Department itself, does not even now have a complete picture of the extent of the violence. However, a

combination of police records, and the evidence of the mother herself reveals that the following incidents have occurred since Anthony's birth. In May 2010 when Anthony was a few weeks old, police were called to the parent's home after the mother reported to clinic staff that she had been assaulted by Anthony's father who, it appears was then arrested for aggravated assault and breaching a domestic violence order. A month later in June 2010, the father stabbed the mother in the leg with a pair of scissors in the family home. In October 2010, although the records are incomplete and unclear, it appears that the mother complained to police that when asleep she was woken by Anthony crying while lying in her arms and by the father punching her to her jaw telling her to breastfeed the baby. She sought medical attention from the health clinic and was treated by the nurse who notified the police of the assault. This assault was also in breach of a domestic violence order which allowed for no contact between the parties. The mother told police that she wanted to cease the relationship with the father. It is not clear whether the father was charged over the incident, but the police records indicate that the mother refused to make a formal complaint of assault.

13. There have also been breaches of the domestic violence order which is to the effect that Anthony's father was not to have any contact with his mother. For example, on 9 December 2010 the father was seen on the back verandah of the house with the mother in breach of the order.
14. On 27 December 2010, the police records indicate that the mother reported an assault on two consecutive days at different locations in Darwin and that she received medical attention for one of these assaults.
15. In May 2011 the police received a report that Anthony's father had bashed the mother and she received swelling to the face, but when police attended, she was adamant that there had been nothing more than a small verbal

argument. The mother was also described as being aware that her DVO was no longer in existence but did not think she needed to renew it.

16. On 19 May 2011 the mother presented at the clinic with a broken collar bone, swollen lip and face. Police records indicate that Anthony's father was sentenced to a significant term of imprisonment for aggravated assault in relation to this incident. The affidavit in support of the original order from the case manager also refers to this incident in May 2011 and describes it as including "the father holding Anthony and the mother hostage for up to 24 hours and threatening to "suicide" them". It was also reported that "Anthony had sustained physical injury to his face as a result of the father allegedly biting him and had a number of abrasions over his body". There are no other records in support of this incident and the mother denies in her affidavits and under cross-examination that it has occurred. There were further reports of violent incidents by the father towards the mother on 26 December 2012 and in January this year when the parents were in Darwin as Anthony was in care of the CEO and in the hospital.
17. In addition to the assaults upon herself, the records indicate other examples of father's controlling behaviour which are likely to have impacted upon Anthony. These include an occasion on 15 November 2010 where it appears that the maternal grandmother contacted police saying that Anthony's father would not let his mother go to the health clinic with Anthony.
18. From early December 2012, there were also ongoing reports about controlling behaviour by Anthony's father including concerns that he was preventing Anthony's mother taking Anthony to the health clinic, and the mother told nurses she was afraid of the father and wanted to leave him.
19. The incomplete police records also indicate that on at least one occasion the father was charged with assaulting Anthony and there is reference to a Court case having been completed and in the mother's evidence to her assisting in the prosecution, but it is not clear which incident this relates to.

20. The affidavit of the case manager also refers to the mother having attended the police station in January this year seeking a domestic violence order against the father in which she is said to have told police that in the past, the father attempted to choke her, that he shook Anthony when he was a baby, that he took Anthony inside the house when he was “naughty” and locked all the doors and that he had thrown Anthony across the room, resulting in him hitting his head against the wall.
21. Although domestic violence perpetrated by the father has clearly been a significant child protection concern throughout Anthony’s life, until I indicated that I would be assisted by some expert evidence concerning the impact of exposure to domestic violence upon children, this evidence was not obtained and the calling of this expert evidence was even initially resisted by the Department. Although the legal representative for the child is able to present evidence to the Court about such matters pursuant to section 146(7) of the Act, this course was not taken.
22. The Court was also not assisted by having a complete and accurate record of the extent of the father’s violence or the mother’s actions at the time. The parties also all objected to the Court questioning the mother about her understanding of the extent of domestic violence by reference to the Court records relating to the father. As a result of all of these factors, it is difficult to make an assessment of the extent of the violence and the important issue of the mother’s insight in relation to the father’s violence which goes to the heart of safeguarding Anthony’s wellbeing and protecting him from harm.

The impact of exposure to domestic violence

23. The evidence of the psychologist was of a general nature and was limited by the fact that she had not assessed the mother. The psychologist is clearly an expert in the area of child psychology and development, parenting and the impact of domestic violence upon parenting capacity and children. It is

most unfortunate that the psychologist or a similar expert was not asked to carry out an assessment of the mother and to the extent it was possible of Anthony. Nonetheless, her evidence is useful both in relation to the specific issue of domestic violence and due to her extensive experience in relation to the child protection system.

24. The psychologist started with the general proposition that the impact on children of domestic violence is significant and that the impression that very small children are not impacted by domestic violence is contrary to the research. She explained that very young children don't have the resources to escape from domestic violence and are dependent upon their primary attachment figure for protection. If domestic violence has left the caretaker in some way unable to respond to the needs of the child in a supportive and sensitive manner, then the impacts of fear and terror are greater on a small child than an older child who can escape from the situation.
25. The psychologist went on to explain how domestic violence has impacts physiologically on the brain development of a child, on the child's behaviour and is common in the development of the childhood post traumatic stress disorder. She also explained that exposure to domestic violence has emotional impacts upon a child and upon the attachment relationships and a child's school performance. Specifically in relation to the neurological impact, the psychologist explained that this was life long and that the longer the child is in a domestic violence situation, the harder it is to change the neurobiology of the brain.
26. The psychologist also referred to the typical behaviour of women who are victims of domestic violence and explained that some personality or other traits disallow them to escape personally and permanently from the situation and that most of the patterns she sees are people who escape for short periods and then reunite. She explained that some of these women have mental health issues and others have histories of domestic violence in that

they experienced it as children growing up and it has become a familiar environment in which they live. The psychologist said that often the victims are quite dependent personality types and needy in their relationships and are very much controlled by the perpetrator of the abuse.

27. Although the psychologist had not examined or conducted an assessment of the mother, she said that the research showed quite clearly that a high percentage of women that have been in domestic violence relationships, if they withdraw from that relationship, unless they have had lots of therapy and a lot of intervention do return to those partners.
28. In terms of avoiding either returning to an abusive partner or re-partnering with someone else who is abusive, the need and extent of intervention according to the psychologist depends upon whether the victim was raised in an abusive family environment herself, whereby the victim has become accustomed to abuse and has developed and evolved relationships in that context. She said that it was critical for a victim to actually seek services and support for themselves, to be able to understand the impact that violence has had on them, to understand the impact the violence has had on their children and that if there is an opportunity that there also be family counselling so that there is a support network around the person to protect them and support them in not returning to a violent relationship. The psychologist described this form of intervention as long-term and said that such a person should be undertaking very directed and very intensive counselling initially, and over at least two years.
29. Under cross-examination, the psychologist did not agree that it was difficult to say that the factors she referred to did not apply to the mother without a psychiatric evaluation because the factors she described were those which are seen in the majority of domestic violence cases. When questioned further about what she could say in the absence of conducting an assessment of the child, she said that he would probably have developmental issues,

attachment difficulties and is likely to show psychological changes consistent with a background of domestic violence. She said that she doubted it was possible for a child of two and half who has been exposed to some fairly serious chronic and ongoing domestic violence to not have been negatively impacted.

30. So far as the aspect of exposure to domestic violence is concerned, it is submitted by the mother and grandmother that the mother agrees that she is the victim of domestic violence which started at around the time she was pregnant with Anthony, that Anthony had witnessed some of it and was also the victim of his violence, but that she can now protect him from harm. Reference is made to the mother giving evidence to the police in relation to the violence perpetrated against Anthony and the evidence of the mother and maternal grandmother that they would go to the clinic to call the police if the father attends their home. Reliance was also placed on the evidence from the case manager that the community elders have banned the father from returning to the community. It is submitted that the risk of the father returning and harming the child either directly or by exposing him to domestic violence is not great enough to warrant Anthony staying in care, especially when weighed up against the other risks of harm if he were to remain in care.
31. It is submitted by the mother and grandmother that the evidence of the psychologist is general and not specific to this case. The mother also relies upon the fact that she has engaged with her lawyers and instructed for them to arrange for domestic violence counselling, which was to commence soon after the hearing. The mother also relies upon the fact that she has obtained a domestic violence order against the father for two years, gave evidence at his criminal hearing in relation to his assault upon the child, as well as the evidence that both the mother and maternal grandmother have made reports to the police about the father.

32. I do attach weight to the evidence of the psychologist in relation to domestic violence generally, its impact upon children, the pattern of behaviour of victims returning to abusive partners or forming further abusive relationships and the importance of intensive and ongoing treatment.
33. The submission of the Department does not refer at all to the issue of whether the mother has insight in relation to the impact of domestic violence on herself or Anthony, even though the case manager expressed some concerns that the mother may choose to return to have a relationship with the father. Although the case manager agreed that the mother and grandmother had implemented a number of strategies within the home to ensure safety, she stated that there was a very real risk about the mother returning to the father.
34. The police records indicate that on a number of occasions the mother has said that she does not want to remain in a relationship with the father and yet has continued, even after some serious incidents of violence towards herself and Anthony. It is also clear that previously the domestic violence order in place that was to prevent the father having any contact with the mother was not obeyed and that until Anthony had been taken into care, steps were not taken to obtain a further domestic violence order. It is also clear that the mother has previously asserted that there was no further domestic violence between her and the father at the same time that the violence was continuing. Police records indicate that the mother has changed her mind on a number of occasions about whether she wished to continue in the relationship and even when the matter was before the Court and the mother said she has not been in contact with the father, the mother visited the father at Berrimah Prison on two consecutive days.
35. Nonetheless, it is now not denied by either the mother or grandmother that domestic violence is a significant child protection concern in this case and it is encouraging to see that the mother has taken steps through her lawyer to

commence counselling. In light of all of the evidence however, I cannot conclude that domestic violence is currently sufficiently addressed such that it is still not a concern in relation to the protection of Anthony from harm.

Medical Neglect

36. Although there had been some concerns raised about Anthony's care in the past, the event that immediately precipitated this application was the circumstances leading up to Anthony's medical evacuation from an outstation to Darwin in late December 2012.
37. Anthony was originally taken to the community health centre by his mother on 14 December 2012 with a staph infection on his head and skull. The medical staff at the clinic provided the mother with medication to treat the sores, but by 24 December when Anthony was taken to the clinic again, medical staff observed the sores on his head and skull had progressed into huge boils. The staff then commenced Anthony on daily antibiotic injections but on 27 December the boils had deteriorated further, with the result that he was required to be transferred to Royal Darwin Hospital for immediate medical treatment. Anthony was described as being covered in faeces and unclothed when the police collected him and his mother on 27 December 2012.
38. A medical report of 7 February 2013 which summarises Anthony's medical history refers to him having been admitted to hospital on seven occasions in his short life. One of the ongoing problems present from around 18 months old is ongoing diarrhoea which was still present up until the time of hearing. Since coming into the care of the Department, the seriousness of Anthony's chronic diarrhoea was investigated by a doctor, which required Anthony to be admitted to hospital. As it became apparent in the course of the hearing that Anthony's medical needs and the relationship between his care and medical conditions needed to be expanded upon, the paediatrician was cross-examined. The paediatrician described the particularly persistent nature of

Anthony's diarrhoea despite the intervention and adequate nutrition whilst being in care, due to gut infections and organisms including tape worms. She explained that all of these conditions related to unhygienic living conditions.

39. The doctor said that she suspects that Anthony had suffered from gut problems probably about from one year of age and that from about 16 months onwards he probably had infective organisms that were not either identified or were not treated. As a result, his gut wall is damaged and it could take some months to recover. The doctor said that due to his age, when he returns to the community there is a moderately high risk that he will develop similar infections again, but that the clinic did have the capacity to deal with it as so long as he was presented and the problem was identified.
40. The doctor said that it was well recognised that hygiene measures can be very contributory to keeping people well. The doctor was also of the view that the skin infections, including boils were also related to hygiene and that such infections can have long term health implications, including long-term renal failure and rheumatic heart disease.
41. The doctor said that it was more than likely that Anthony would again develop skin infections if he were returned to the community, but they could be prevented by normal daily hygiene regimes of washing once or twice a day with soap and keeping him in clean clothes. The doctor was concerned that Indigenous families often live in a housing situation where hygiene measures may be limited and described it as distressing to health practitioners who work with Indigenous Australians that the standard of living accepted by Government [agencies] is not acceptable from a health practitioner's point of view.
42. Overall, the doctor considered Anthony's mother as sufficiently nurturing and concerned about Anthony's health issues. She felt that so long as

Anthony would not be exposed to violence and as long as he was receiving regular checkups at the clinic, that she did not have other concerns about the mother's capacity to look after him.

Hygiene

43. The relationship between Anthony's gut infections and skin infections and hygiene was identified by the doctor. She had not seen the home that Anthony is proposed to be living in under any of the orders sought, that is, with the maternal grandmother in the community. As the connection between hygiene and health developed as a significant issue in this matter, the child protection officer, who carried out the assessment of the maternal grandmother's home also gave oral evidence.
44. The doctor's view about acceptance within Government [agencies] of a standard of living in Indigenous communities which is not acceptable from a health practitioner's point of view was, in my view, evident in the testimony of the child protection officer. He said that he found the house acceptable, as it had a running toilet, a shower, a kitchen and two or three bedrooms. He was primarily concerned about safety issues such as electrical wires or physical means that may harm a child. Although this case relates to a significant degree to hygiene, the child protection officer said that especially in remote communities, he would be concerned with "basic hygiene" in a house which would be demonstrated by the absence of faeces or maggots in the house itself. He said that as there were no faeces or no maggots, there was no observable poor hygiene in the house.
45. Although the officer confirmed that there was hot and cold running water, including in the shower, he did not observe whether there was soap, clean towels or clean bedding. He did observe that there was not a table or chairs and that the mattresses were on the floor. He agreed that in a case concerning hygiene, issues such as soap and towels were critical. Despite having agreed these issues were critical and having heard the doctor say that

tables and chairs for meals and beds would help the situation with respect to infection, the child protection worker maintained that the house was adequate from a hygiene perspective.

46. In light of the doctor's evidence, I am concerned that there is a relationship between the physical standards at the grandmother's home and protecting Anthony from harm. I accept the submission by the child representative that neither the mother nor grandmother fully understand the impact of the lack of hygiene on the health of this child and that currently they still need to follow the directions of the CEO and medical staff to ensure the child's health is not compromised again.
47. Taking into account the risk of exposure to domestic violence and Anthony's medical conditions especially relating to hygiene, I am not satisfied that it would be in Anthony's best interests or safeguard his wellbeing to dismiss the application and allow Anthony to be returned to the care of his mother and grandmother in the community.
48. The next least intrusive option proposed is an order of parental responsibility shared between the mother and grandmother for two years or in the alternative that the grandmother be granted short-term parental responsibility for a period of two years.
49. Each of these orders involves no ongoing role for the Department. The concerns about the risk that the mother will either reconcile with the father or enter another violent relationship are not, in my view, addressed by an order in which she would share parental responsibility with the maternal grandmother. It is clear that in the past, the maternal grandmother has reported her daughter being the victim of domestic violence. However, the grandmother was unable to prevent her daughter from continuing in a violent relationship and I am not confident that at this stage, the grandmother will necessarily be able to protect Anthony from violence in the future.

50. All parties agree that Anthony's best interests would be met by him being cared for by his family in the community. However, as is noted in particular in the CEO's submissions, there is a significant difference between parental responsibility and daily care and control or placement under a placement arrangement.
51. There is no doubt that both the mother and maternal grandmother have a strong interest in and involvement in Anthony's life. However, at this stage, the mother has not yet demonstrated that she is capable of resuming care for Anthony and I accept the submission of the CEO that the grandmother is currently unsuited to exercise parental responsibility. I also accept the submission of Anthony's legal representative that Anthony's health is of paramount importance and that it is currently premature to place the onus of parental responsibility for Anthony on the grandmother. In my view, either of the alternate orders of parental responsibility would not be the best means of safeguarding Anthony's wellbeing.
52. Having indicated that it is not in Anthony's best interests to dismiss the application, nor would the making of the orders proposed by his mother or grandmother by the best means meant to safeguard his wellbeing, I still must consider whether the Department's proposed order is the best means of safeguarding Anthony's wellbeing. I have considered all of the submissions of the child's lawyer and the mother and grandmother's lawyer which refer to the matters to which the Court must have regard in determining the best interests of the child.
53. A protection order with a short-term parental responsibility direction to the CEO would satisfy the need to protect Anthony from harm and would ensure that his physical, emotional, intellectual, spiritual developmental and educational needs would be met. The family members currently do not have the capacity to care for Anthony on their own although both the mother and grandmother are willing to do so. Anthony's views and wishes are not

known in light of his maturity and understanding. The CEO's plan is to return Anthony to the care of the grandmother and mother and for the mother to assume full parental responsibility when the order expires. This proposal will address Anthony's need for permanency in his living arrangements and his need for stable and nurturing relationships. It also takes into account his cultural background.

54. As noted in the submission of Anthony's lawyer, the short-term order offers the mother the opportunity to address the domestic violence issues and for Anthony to recover from his medical issues. Although I am not satisfied that currently the hygiene standards in the home are necessarily appropriate, it is hoped that as the issue has been highlighted in this case, the Department will assist the grandmother and mother in an understanding of the importance of hygiene and assist in practical ways. I agree with the submission by the child's representative that a short-term order of two years would be consistent with the judgement of Kelly J in *WM & FM v CEO Department of Children and Families & Ors* [2012] NTSC 67. This is not a case where there is a risk that the child will form an attachment with an alternate carer whilst in care which may be jeopardised if the mother has not sufficiently addressed her issues that led to Anthony coming into care. In this case, Anthony will be cared for by his grandmother and mother during the two year order.
55. During the course of the hearing, when it became apparent that Anthony would be returning in the near future to the care of his maternal grandmother and mother in the community under any of the various orders proposed, I raised the issue of the appropriateness of a supervision direction under section 123 of the Act, which is a direction requiring that a person do or refrain from doing a specified thing directly related to the protection of the child or that the CEO must supervise the protection of the child in relation to specified matters. In particular, I was concerned about Anthony receiving appropriate medical attention in the community and the appropriate hygiene

standards in the grandmother's home being met and sought submissions as to whether these matters may be addressed by a supervision order.

56. The submissions of the mother and grandmother did not address the issue of a supervision order as the thrust of those submissions was that Anthony could now safely be returned to the care of his family without any other intervention by the Department.
57. So far as a supervision direction relating to the condition of the maternal grandmother's household is concerned, both the CEO and the child's representative submit that when the CEO has determined that the placement of a child is suitable, the making of a supervision order of this type would interfere with the CEO's exercise of parental responsibility. Although I have expressed concern about the adequacy of the assessment of the physical conditions of the grandmother's home, especially in relation to hygiene, I accept the submissions that it is beyond the power of the Court to address this issue by the imposition of a supervision order of this kind. It is not submitted that a supervision direction in relation to attendance at medical appointments is impermissible and both the child representative and the CEO submit that the Court ought to make such an order.
58. Being satisfied that the order sought by the CEO is the best means of safeguarding Anthony's wellbeing and having taken into account all of the matters in section 130, I make a protection order with a short-term parental responsibility direction giving parental responsibility for Anthony to the CEO for a period of two years. I also make a supervision direction requiring the grandmother to continue to take the child for regular medical checkups and comply with all directions given by the paediatrician or clinic in the event that Anthony is placed with her.

Dated this 16th day of May 2013

Hilary Hannam
CHIEF MAGISTRATE