

CITATION: *Chief Executive Officer, Territory Families v Keira Williams, Richard Damien Barnes, Rodney Barnes* [2021] NTLCO06

PARTIES: CHIEF EXECUTIVE OFFICER, TERRITORY FAMILIES
V
KEIRA WILLIAMS – MOTHER
V
RICHARD DAMIEN BARNES – FATHER
V
RODNEY BARNES – GRANDFATHER
V
DB – CHILD
AND
TRRB – CHILD

TITLE OF COURT: LOCAL COURT
FAMILY MATTERS JURISDICTION

JURISDICTION: YOUTH

FILE NO(S): 2020-01449-LC
2020-01450-LC

DELIVERED ON: 11 FEBRUARY 2021

DELIVERED AT: DARWIN

HEARING DATE(S): 8-9 DECEMBER 2020

DECISION OF: ACTING JUDGE SUE OLIVER

CATCHWORDS:

NIL

REPRESENTATION:

Counsel:

Applicant: Kudra Andrzej
Child – BR: Margaret Romeo
Child – TRRB:
Mother – KW: Thelma Gray
Third Party: Paul Morgan

Solicitors:

Applicant: Ward Keller
Child BR:
Child TRRB:
Mother KW:
Third Party: Piper Ellis Lawyers

Decision category classification: B

Decision ID number: 006

Number of paragraphs: 67

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

No. 2020-01449-LC
2020-01450-LC

BETWEEN

CHIEF EXECUTIVE OFFICER, TERRITORY
FAMILIES

V

KEIRA WILLIAMS – MOTHER

V

RICHARD DAMIEN BARNES – FATHER

V

RODNEY BARNES – GRANDFATHER

V

DB – CHILD

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TRRB – CHILD

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REASONS FOR DECISION
(Delivered 11 February 2021)

ACTING JUDGE OLIVER

Introduction

1. The Chief Executive Officer of the (then) Department of Territory Families (“the CEO”) has applied for a protection order for two siblings, D & T (“the boys”). D was born on 11 February 2011 and T on 25 December 2011. The boys are very close together in age so that at time of the hearing of this matter they were 9 years old and almost 9 years old. They have an older half sibling M who is under a long term protection order and at the time of the hearing D was living in the same placement as M, while T was in a separate placement. The CEO has sought an order for short term parental responsibility for the boys for a period of 12 months.
2. The boys have lived from a very early age with their grandfather RB (“the grandfather”) who participated in the proceedings. In his affidavit of 22 July 2020, the grandfather says that D was coming up to one year old and T about 3 months old when the parents came to stay with him. Sometime after that they individually left. The Father wanted to leave T in Tennant Creek with the grandfather and take D with him. The grandfather refused and both of the boys have remained with him since that time. The father has sometimes resided in the grandfather’s house as the boys have been growing up. The grandfather opposes the making of a protection order and asks that the boys be returned to his care.
3. The mother of the boys also participated in the hearing. She does not oppose the order sought but hopes to work towards a reunification with her sons sometime in the future. At the least, she hopes to have more contact with them than has been occurring.
4. Although the father RDB (“the father”) was earlier represented in the proceedings and filed an affidavit, he did not appear at the hearing. His position with respect to the order that is sought, and as to the conduct of the grandfather with respect to the care of the boys, has dramatically changed from what was initially reported in the affidavit of the Territory Families caseworker Mr Saunyuma¹ that he supported the removal of the boys from the care of the grandfather on the basis that they had been harmed in the grandfather’s care, to later² supporting the grandfather’s position that no order be made because the grandfather takes good care of them. As he was not subject to cross examination and noting the inconsistencies referred to, very little weight can be placed on his views expressed in the affidavit.

¹ Affidavit Morris Saunyama 30 March 2020 at [42].

² Affidavit RTB 21 August 2020.

5. Mr Saunyama's affidavit refers to records from two Territory Families staff members of their meeting with the father on 26 March 2020 following the enactment of a temporary protection order for the boys. In addition to him stating concerns of drug use by his brother TB and TB's partner in the grandfather's home and of his own partner Ms N smacking D "about the head daily", the father said that the grandfather is always asking for money, drinks every day and spends all his money on cartons of beer and tobacco, only buys the food he likes, and that the boys get basics. His brother T and his partner hid their food in their room. He told the caseworkers that the boys should remain in the care of Territory Families.
6. However, on 21 August 2020 the father deposed in an affidavit that the children were "safe with [the grandfather]" and that "he has always provided them with adequate care". He said that "There is always good food in the home and the children are well fed." He had "never witnessed [the grandfather] harm the children in any way" and that [the grandfather] "does not drink to excess around the children. He drinks about a half a carton per week and when he does have a drink, he usually has a feed and then goes to bed." He said that the things that he said that was reported in the affidavit of Mr Saunyama were "nasty and untrue" and were said because he had had an argument with the grandfather who had asked him to leave the home.
7. Much of the language used in this affidavit appears inconsistent with the father's manner of speaking in reports by caseworkers. For example, in his affidavit he states, "I do not want the children growing up and experiencing a lot of psychological distress because of feeling isolated, alienated from their culture, and confused about their identity" and "I am worried that removing the children from [the grandfather] is unnecessarily creating instability for the children, and that it will cause them long-term trauma". Affidavits are the evidence of the deponent and legal practitioners should take care that the deponent's evidence is expressed in their own words not in the words of a university educated practitioner.

The Applications and Prior Notifications

8. On 20 March 2020, a Temporary Protection Order for the boys was made by the Local Court following provisional protection being enacted the previous day. Provisional protection had earlier been enacted for D only on 12 January 2020, but he had been returned to his grandfather. Subsequently, this application was brought on 30 March 2020 and the boys have been under the care and control of the CEO since that time on adjournment orders.
9. The enactment of provisional protection appears to have been brought about following the disclosure by both boys, on separate occasions, that each of them had been hit by the grandfather with a steel pole. T said recently that this was on his head about a week before but that he has also been hit on the buttocks on other

occasions and D said he was hit “anywhere he can.”³ The boys made further disclosures including that they reported that they were called names on a daily basis, including T said “poofter” and “cunt” and that the grandfather says “fuck you” if T asks for anything including food. T said “Pop doesn’t buy good food. Never has money. Pop buys rubbish food. No cereal in the house. There is bread but the toaster full of cockroaches. [T] goes to school hungry.”⁴ D said he was called names on a daily basis which makes him feel sad. D also said that the grandfather will not buy him new clothes and that his clothes don’t fit. Both said there was never any food at home. Both reported not having a toothbrush and the grandfather refusing to buy them one. T reported he has to sleep in the lounge because the “adult children” are sleeping in the bedroom.

10. D said he was slapped around the head and neck daily by the father’s partner JN which is consistent with what the father initially told the caseworkers but which the father retracted in his later affidavit. The allegation though is consistent with what a caseworker reported the father said at a meeting with him at Territory Families office on 26 March 2020, that is, that JN smacked D about the head daily.⁵ In a meeting with Territory Families caseworkers on 25 March 2020, the grandfather likewise said that Ms N would hit D around the head, shoulders and anywhere she could on a daily basis. Neither it seems thought to intervene in what appears to have constituted a series of criminal assaults on this young child⁶ other than the father saying that he was telling her to “only tell them off verbally and not call them names”⁷ let alone report this to police.
11. There have been 40 notifications concerning the boys between 11 February 2011 (the date of D’s birth) and 18 March 2020. The affidavit of Mr Saunyama says that the boys moved to the care of their grandfather around October 2012. This seems reasonably consistent with the grandfather’s timeline referred to above, which is that the boys and their parents came to live with him, and that the parents subsequently and individually left. Mr Jacob Kelly, the current caseworker for the boys, says in his affidavit that 36 of these notifications have been between 9 November 2012 and 9 March 2020 which is the period that the boys have been in the care of the grandfather. This is reasonably consistent with when the grandfather took over care of the boys noting that there was a period during which the parents were at the grandfather’s before both individually left.

³ Affidavit of Morris Saunyama at [12] a disclosure was made by T on 12 March 2020 and at [18] by D on 16 March 2020 of this and the other matters referred to in both caseworkers’ affidavits.

⁴ Affidavit of Jacob Kelly deposed 29 July 2020 at [57(g)].

⁵ Ibid at [42].

⁶ Daily hitting a young child, around the head in particular, could not be considered to be justifiable force pursuant to section 27 of the Criminal Code to discipline, manage or control the child.

⁷ Affidavit of Morris Saunyama at [42(e) and (f)].

12. The notifications about the boys have involved emotional harm (10 occasions) physical harm (the disclosure of being struck with the steel pipe by the grandfather), exposure to alcohol misuse and violence (6 occasions), possible sexual harm or exploitation (3 occasions), neglect (21 occasions), lack of adequate supervision and neglect of basic care needs (including, but not limited to, the provision of food), D engaging in criminal conduct and volatile substance use.⁸
13. A notification made to Territory Families about D on 5 March 2020 that he was wandering the streets at night and had told the notifier that he was hungry and was locked out of home and again on 11 March 2020 that he was falling asleep at school and is often in dirty, torn clothing are consistent with the things said by the boys about their care at their grandfather's home.
14. The affidavit of Mr Kelly expands on the nature of some of the multiple notifications. There was an incident in July 2019 between 10.30 and 11pm when D was almost hit by the notifier's vehicle when he jumped in front of it. The notifier knew D so stopped to see if she could take him home. She observed him to be heightened and thought he was under the influence of alcohol/drugs. D would have been 8 years old at this time.⁹
15. On 3 August 2019 there was a notification that D had told school staff he was smoking gunja and drinking alcohol on weekends. Concern was raised that he had been seen with older teenagers in town late at night, that he does not want to go home and that he will eat and says he us hungry although he has just eaten more than two children would eat.¹⁰
16. D also said that he runs away when the grandfather calls him names. It is well recorded and admitted both by the grandfather and the father that D was running away and spending nights on the streets of Tennant Creek. There are 16 matters recorded by police between 14 May 2019 and 19 March 2020 when D came to their attention either as a welfare issue, including petrol sniffing in March 2020, or engaged in stealing. Two "domestic disturbances" are recorded involving D and the father and the grandfather.
17. On 19 October 2019, a Territory Families officer had made a volatile substance abuse referral for D to the relevant health service. What action, if any, was taken by that agency (the Central Australia Health Alcohol and other Drugs Service "ADSCA") is not known. There is nothing that suggests the Chief Health Officer acted upon this which if so, would be astonishing, given that it was for a then 8 year old child. Once D was in care and the VSA had resolved the case was closed.

⁸ Affidavit of Jacob Kelly deposed 29 July 2020 at [57].

⁹ Ibid at [58].

¹⁰Ibid at [58].

18. D's school Wellbeing Check and Attendance report was provided to Territory Families. The contents support what D told the Territory Families caseworkers. Amongst other things it is reported that he has food stained clothes "which can be ripped up at times." His personal hygiene is poor, and he appears tired during the day. On one occasion (5 March 2020 – consistent with what was reported in [13] above) he fell asleep in the classroom for around 4 hours. He never brings food to school and gets breakfast, recess and lunch from the school canteen. His behaviour was problematic, and he was academically below year level standards.
19. These independent reports cast doubt on the father's assertion in his affidavit and of the grandfather that the boys are well fed and there is always good food in the home. There is clear evidence both from the notifications, the school report and the boy's themselves that this was not the case. I do not accept the evidence of the father and grandfather on this matter.
20. There is little reported about T's education other than that his school attendance had been 84% in "the current term". It is not clear whether that is a reference to the short period between the start of the school year and March when the boys were taken into care in which case it would be over a period of around 7-8 weeks.

Police involvement with the father and grandfather

21. Mr Saunyama's affidavit also records extensive police involvement with the father between January 2018 and March 2020 the majority being described as "Domestic Disturbance." Twelve of these reports involve the grandfather in the "domestic disturbance" and in five of them the grandfather is reported as "intoxicated" and on one occasion "heavily intoxicated." T was present during the incident on 12 January 2020 when both the grandfather and father were said to be intoxicated, arguing and threatening violence against each other.¹¹
22. The grandfather in his Response admitted the Police attendances at his property but did not admit the reasons for their attendance.
23. The grandfather has a conviction for driving with a medium range blood alcohol content (0.113%) for an offence on 18 February 2020 when the boys were still in his care. The grandfather refers to this incident in his affidavit of 11 August 2020. He says:

"[27] I have an order to be on the banned drinker register. That order is because of a drink driving I did in February this year. I had some drinks at home and then I went in the car to look for a young man I gave money to. He asked me for some money for cigarette papers and

¹¹ Ibid at [29] and [37].

I told him if he went to the shops and got some dog food for me, he could use the change to buy cigarette papers. I gave him the money, but he never came back so I went to look for him. The police pulled me over in town and I lost my licence and went on that banned drinker register. The children were not with me at any time when I was in the car and this had nothing to do with them.

[28] I do not drink every day. I drink about three times a week and I don't get full drunk. **I only have a couple of cans.**" (emphasis added)

24. It is not known what time of the day the drink driving occurred. If during the day, perhaps when the boys were at school, it is a concern that the grandfather had consumed alcohol to the level recorded and is inconsistent with his claim about moderate drinking about three times a week. If it was during the evening, then it raises a concern as to who was caring for the boys while the grandfather was driving around town.
25. Police records¹² record an incident 14 April 2020 where there was a domestic disturbance, and the grandfather is recorded as being heavily intoxicated despite being on the Banned Drinkers Register. It records this event taking place in front of DB who, although he was under the daily care and control of the CEO at that time, had been absconding from his placement.¹³
26. In his evidence in reference to current criminal charges of assault police and property damage (smashing a window of his son TB's car) from 9 May 2020, the grandfather was asked:

"Okay, so, that's an ongoing matter? ---Yes, but this is what Territory Families saying I got criminal – I'm not a violent person. I have never injured anybody or put anybody in hospital or killed anyone or, you know. They say I got all these outbursts. Well, sometime when no one listen to you, you gotta raise your voice a bit to get your point across especially in court when you're representing yourself."¹⁴

27. In his affidavit of 22 July 2020, the grandfather said at [51]

"I have always had troubles with the police in Tennant Creek. I feel like they target me for some reason I don't understand. I have never really been in much trouble for crimes, except for some trespassing on Brunette Downs, which is my land and that has been recognised now and Northern Land Council are helping me move there. So, I don't know

¹² Affidavit of Jacob Kelly deposed 31 July 2020 at [5].

¹³ See [35] below of this decision.

¹⁴ Transcript at p7.

why the police keep coming for me. They come for me all the time or they drive past my street every day looking at us. I have made complaints about what I think is police harassment. Some time ago a Court said the police had to give me some money for harassing me, but it hasn't stopped them."

28. The grandfather's account that he is not a violent person is inconsistent with his antecedent criminal history.¹⁵ Although there is no record of violent offending convictions since the boys came into his care, he does have convictions for violent offending including in the Supreme Court on 27 August 2009 when he was sentenced to 9 months imprisonment for making a threat to kill and 6 months for using a carriage service to harass giving a total effective sentence of 12 months. It appears he was released forthwith. In May 2000, he was sentenced in the Supreme Court in Alice Springs for two aggravated assaults committed in February 1998 for which he received a total effective sentence of 3 years backdated to 7 February 2000 and then released on a suspended sentence. In October 2000 he was convicted of an assault from January 2000 and sentenced to 1 month imprisonment suspended on the rising of the court.
29. The grandfather has also had three trespass notices given to him. Two are from 17 January 2020 being the United Service Station and 25 Ambrose Street and another on 23 April 2020 from the Territory Families Barkly office which is said to be in response to threats against a lawyer.¹⁶
30. The incident on 9 May 2020 resulted in the Police issuing a Police Domestic Violence Order with his son TB named as the protected person.¹⁷
31. In his evidence, the grandfather claimed to be continually harassed by police blaming the troubles at his house on his two sons and their partners for the drinking and arguing in his home. He does not seem to have reflected that it has been his responsibility to provide a safe home environment for the boys and it is only after they were removed from his care that he appears to have taken some action regarding this.

Grandfather's engagement with support and health services

32. Presumably as a consequence of D being taken into provisional protection on 12 January 2020 and then returned to the grandfather, the grandfather was referred to the Anyinginyi Intensive Family Support Service (AIFSS) for family support. The case was closed by the service after only 8 days because the grandfather had

¹⁵ Exhibit 2.

¹⁶ Affidavit of Jacob Kelly deposed 31 July 2020 at [5].

¹⁷ Affidavit of Jacob Kelly deposed 31 July 2020 at [5].

- become abusive to the case worker and refused to be involved with the service.¹⁸ In his meeting with Territory Families caseworkers on 25 March 2020, the grandfather said this was because he did not like the workers because they were asking him to do things rather than focussing on the boys and what they need like food.¹⁹
33. In the affidavit of a Territory Families caseworker,²⁰ a meeting with the father on 13 July 2020 is reported. The caseworker noted that each time the discussion arose surrounding the grandfather, the father would become anxious. There was a lengthy discussion about the grandfather and the caseworker reports the father saying “he’s always been negative to me and the boys. He took those boys away from me. He uses those kids’ money to fuel his addiction for grog and expensive tobacco.”
34. In his oral evidence the grandfather was far more focused on himself, including alleged police harassment and his inability to work with Mr Kelly, than on the boys. In his evidence he said that he only has trouble with Mr Kelly who “...has the behaviour of authority or representing the courts or the police and I just can’t work along with his direction.”
35. However, it is not just Mr Kelly with whom the grandfather has a problem. There is a clear pattern of abuse directed to caseworkers, for example, a Ms Zigenbine when she asked for the mothers contact details, and a failure to work co-operatively with support services, for example the AIFSS referred to above. A transcript of court proceedings in Tennant Creek from 23 April 2020 refers to the lack of co-operation from the grandfather when D had absconded from his placement and that when Ms Noll, a lawyer with Territory Families was trying to locate D, he became extremely abusive to her.²¹ This incident of D absconding and the grandfather’s lack of co-operation described in the transcript, is what prompted the Court to make the order that the grandfather not have any direct or indirect contact with the children except when a representative of the Chief Executive Officer is present.
36. The grandfather has used quite vile and inappropriate language to Territory Families workers²² and the boys similarly report such language directed to them. The affidavit of Jacob Kelly provides a report of the telephone contact with the boys on 3 June 2020. In reference to D’s current carer, he told D “[D] you should stay away from the Hill Billy White Trash woman you got there.”²³ In the following phone call with T, he brought up the court proceedings and in reference to the

¹⁸ Affidavit Morris Saunyama at [40] and [41].

¹⁹ Ibid at [43]

²⁰ Affidavit of Jacob Kelly deposed 29 July 2020 at [35]

²¹ Transcript at Tab 8 of the Trial Book.

²² See various incidents described at [39] and [40] of the Affidavit of Jacob Kelly deposed 29 July 2020.

²³ Ibid at [42].

- Territory Families lawyer criticised her standard of dress. When told this was inappropriate to discuss in front of T, he said “What’s wrong with you people it’s wrong how you tell people how to talk with kids and family to each other.” The caseworker then decided to terminate the call and the grandfather said, “it’s wrong how you tell people how to talk to each other.” And further “You are the same as the fucking police, telling us how to do things like what we can and can’t do”.²⁴
37. There are numerous other incidents of the grandfather using racial abuse (“white cunts” “white trash”) including to police when they were concerned because the boys were left alone in the car at a local club in October 2018 while the grandfather was consuming alcohol.²⁵
 38. There is a clear and consistent pattern in the grandfather’s behaviour. In his evidence at the hearing, he sought to blame his lack of co-operation with Territory Families on his relationship with Mr Kelly. However, it is clear from the many incidents recorded that there has been a lack of co-operation with other caseworkers. He does not co-operate with the school and he makes disparaging remarks about the school and the teachers.
 39. The grandfathers appalling language has had an impact at least on the child D. Mr Kelly refers further in his affidavit to a number of notifications received by Territory Families about D.²⁶ For example, on 13 August 2019, D who was then only 8 years old, set off a fire alarm in class and then yelled “fat fucking cunts” to the fireman that arrived. The notifier further stated D threatened the class teacher that he would rape them with a stick in their “boonga hole”, threatened to bash them and called them a “fat fucking slut”. D began school in term two and his behavioural difficulties had shifted from swearing and being non-compliant to threatening rape, exposing his penis, talking about drug and alcohol use, running away from school and assaulting school staff and students. When contact was made with the grandfather about this conduct, he is reported to have said that this was a school problem. The notifier has asked the grandfather to seek help from services because he states he cannot cope with D but when numbers are provided, he will not do this. The notifier reported conversations about D’s behaviour with the grandfather in which he said, “you should have choked him” or “you should have hit him back” or “someone should have taken him out and shot him”.

²⁴ Ibid.

²⁵ Ibid at [53].

²⁶ Ibid at [58] and [59].

40. In the same notification an issue was raised that “last term” in “the last 2 weeks of June 2019”, D had an infected cut on his foot and the school asked the grandfather to take him to Congress “he said he would be he didn’t. It became very bad and when the school approached [the grandfather] he refused to take him, so the school did.”²⁷
41. This report appears to correlate with the clinical notes obtained by the solicitor for the grandfather and annexed to her affidavit.²⁸On 7 June 2019, there is a clinical note “Brought in from school by Dad Lance. Hit back of L) heel a few days ago, scab formed. Knocked off scab today and started bleeding, want to have wound cleaned and dressed.” The wound was dressed, and he was given spare dressings to take home. On 21 June 2019, there is a following entry that he was seen for an “open skin sore on back of left heel foot, for some time. No discharge. Not sore to touch. Lymip nodos (sic) not up. PT can’t wear shoes but can walk on foot. Wound care. beride (sic) given + tensogrip”.
42. The following day, a notification was made that at school D took out his penis in front of the class and urinated on the basketball court. When asked by his teacher to explain what happened he said, “I will fuck you with a stick up your bunga.”
43. The inappropriate and sexualised nature of his language should raise great concern when it comes from a child of D’s age. Given the evidence of the bad language used by the grandfather to multiple caseworkers it is not surprising that the child D has adopted this manner of speech. It is detrimental to his development.
44. The Grandfather’s evidence has referred to the possibility of moving the boys to live on Brunette Downs of which he says he is a native title holder. He was questioned about this plan by the Children’s Legal Representative. In my view very little weight can be given to this as a proposal that would be in the best interests of the boys. First, there is no independent evidence that he was recognised as one of the groups that received native title. Secondly, his proposal is obscure. Even if he has been recognised as a recipient of Native Title, it is highly unlikely that that has conferred on him any right to permanent or semi-permanent residency on that station.

The Mother

45. As previously noted, the mother of the boys agrees with the orders sought by the applicant.
46. The mother KW was born on 9 August 1993 and is now 26 years old. She had a very unfortunate start to her young life. She was taken into care at 12 years old.

²⁷ Ibid at [58 xii].

²⁸ Affidavit of Allana Mariah Florence Grimster deposed 23 July 2020.

- She became pregnant with M, the older sibling of the boys, when she was 13 and gave birth to him at 14 years of age. She says that the father of that child, who was in his late 30's, was prosecuted for the sexual offence against her. The child M was removed from her care when he was about 9 months old and is under a long term order. She has continued to have contact with him mostly by phone.
47. She met the father of the boys when she was sixteen and gave birth to D at 17 years of age, quickly followed by the birth of T only 10 ½ months later. She and the father stayed in Darwin for a time other than a brief visit to Tennant Creek. After their return they were living in an Anglicare funded house for about three weeks when the Grandfather came to Darwin and took the boys and went back to Tennant Creek with the father. She says the boys were about 18 months and 9 months, respectively. Although she and the father later travelled to Tennant Creek she left again after some trouble and the father later phoned her from Tennant Creek and told her the grandfather was going to keep the boys.
48. In her affidavit²⁹ she relates a history of drinking heavily until sometime in 2013/14 "...I came to my senses and decided this life of alcohol abuse was not for me, I stopped drinking and smoking cigarettes."
49. In that affidavit she deposes to an incident in 2019 when she travelled to Tennant Creek to visit the boys. An arrangement was made for her to stay at the grandfather's house. She says that during the Saturday the grandfather was asking his sons for money for alcohol and he bought a case of VB. After drinking for some time, he told the boys to get him a beer. T started to cry because he did not want to do that, and the grandfather struck T in the face causing his nose to bleed. She says that later when he was really drunk, they called the police. The next day she arranged a transfer of money from her stepmother to take the bus back to Darwin.
50. At the time she deposed that affidavit in June 2020, the mother seemed to be making progress with her life. She was living in a one bedroom apartment and enrolled in the STEPS program to improve her education with a view to gaining employment. She said she was not using alcohol or drugs.
51. However, it seems that the progress that the mother was making with her life has somewhat stalled. In her undated affidavit filed on 24 November 2020, she deposed that she was back residing with her stepmother. She has had trouble keeping up the STEPS program due to financial difficulties. She is hoping to do a Parenting Plan program in 2021. There had been a halt in her telephone contact and other access with the boys.

²⁹ Affidavit deposed 7 August 2020.

52. The mother concedes that she is not presently in a position to care for her sons. It may be the case that this is not ever to eventuate. However, the boys have a right to know their mother and, in my view, it is in their interests to allow that relationship to develop. I would be concerned that if the boys were returned to the grandfather, given what is obvious hostility between the mother and the grandfather, that the boys would once again lose all contact with their mother.

The Children's Representative

53. The Childrens Representative does not support the proposal of the grandfather that the application be dismissed, and the children returned to him or that he be given parental responsibility for them. She acts on the best interests principle the children being too young to give instructions. Her report of their views³⁰ indicates that they are doing well in their respective placements and both nominated their uncle as being their first choice of who they would like to live with. Both nominated the grandfather as their second choice and their father third. In submissions she said that returning the children to their grandfather now would cause harm to the children because there would be no support systems or structures, and nothing has changed around the grandfather's care of them.

The Care and Protection of Children Act

54. Section 20 of the *Care and Protection of Children Act 2007* ("the Act") provides the grounds for finding a child is in need of care and protection if:
- (a) the child has suffered or is likely to suffer harm or exploitation because of an act or omission of a parent of the child; or
 - (b) the child is abandoned and no family member of the child is willing and able to care for the child; or
 - (c) the parents of the child are dead or unable or unwilling to care for the child and no other family member of the child is able and willing to do so; or
 - (d) the child is not under the control of any person and is engaged in conduct that causes or is likely to cause harm to the child or other persons.
55. In my view, both the child D and the child T can very clearly be said to have suffered harm as a result of the acts and omissions of the grandfather and of the father during the period/s that he resided with them at the grandfather's home. I accept the evidence from the disclosures to a caseworker that T and D have both been struck by the grandfather with a steel pipe at different times, together with the other allegations made by each boy as to their lack of proper care and nutrition.

³⁰ Childrens views dated 20 November 2020.

- There is no evidence of collusion in their reports and there are striking similarities in what each of them reported on separate occasions. Together with the numerous notifications from different sources, there is a clear picture that these children have been both abused and neglected particularly with respect to food and personal care. I reject the grandfather's evidence that he provides proper food for them. There is evidence that it has been the school which has been substantially providing food for them.
56. In addition, with respect to the child D, I am satisfied that when he was with his grandfather he was not under proper control and was engaging in conduct, namely volatile substance abuse and acts that would amount to offences were he old enough to bear criminal responsibility for them.
 57. I am satisfied on the balance of probabilities that each child is in need of care and protection. Indeed, in my view the evidence of harm and neglect to these children is overwhelming and the totality of the grandfather's evidence shows that he has little or no appreciation of the proper needs of children of the ages of these boys.
 58. Section 90 of the Act provides that the paramount consideration in determining matters under the Act is the best interests of the child.
 59. Pursuant to section 129, the Court is required to make a protection order if the Court is satisfied the child is in need of protection or would be but for the fact that the child is currently in the CEO's care and that the order is appropriate and the least intrusive means to safeguard the wellbeing of the child.
 60. The order that is proposed and supported by the mother and the Childrens Representative is for the CEO to have parental responsibility for the boys for a period of 12 months. The grandfather seeks that either no order be made, and the boys returned to him or that he be granted parental responsibility.
 61. Section 130 of the Act sets out the matters which the Court must consider in making a decision. Relevant to these children these are first, the wishes of the following: (i) the child; (ii) a parent of the child; (iii) a person proposed to be given daily care and control of, or parental responsibility for, the child under the order; (iv) any other person considered by the Court to have a direct and significant interest in the wellbeing of the child. I have referred above to this in my findings. The children have expressed that they would like to live with their uncle as their first preference and their grandfather and father second and third. It might be noted that other than their uncle T and the mother whom they have only recently become to know, these three are the only family members that they are likely to have been able to identify and they do not identify the grandfather as their first preference. The mother's view is that the CEO should have parental responsibility at this time whilst the grandfather, who has a direct and significant in the wellbeing of the

- children wishes them to be returned to him. The father's affidavit stated that he wants the children to be returned to the grandfather but as I have noted he did not attend the hearing, so the weight to be given to his view expressed in that affidavit (which was contrary to what he previously said to caseworkers) is lessened.
62. As the CEO proposes that daily care and control of, or parental responsibility for the children be given to the CEO, the Court must consider first, any report or recommendation given to the Court by the CEO about the proposal. In this case no specialist reports have been provided.
 63. Third and significantly, whether there is another person who is better suited to be given daily care and control of, or parental responsibility for, the child. In my view at the present time the grandfather is entirely unsuited to be given parental responsibility for these two little boys, particularly because he has not been able to address the very concerning and dangerous behaviour of D which in my view is most likely to have been symptomatic of his home circumstances. The grandfather has expressed a very odd view that this 8 and then 9 year old child has simply been acting out. To hear his view, one would think that he is talking about a wayward teenager not a small dependent child. He is at this time in my view, unable to provide the long term security and stability that these children require. It will require a complete change of attitude to engage with Territory Families to bring about a better circumstance in his parenting.
 64. Fourth, the Court must consider the steps taken by the Territory to provide the services necessary to address any likely risks of harm to the child; and secondly to ensure the services were provided in accordance with section 42(4). Given the way in which the grandfather has been interacting with Territory Families and his attitude to other organisations such as the school and police, there is, in my view, little prospect that if the children were returned to the grandfather that he would engage with Territory Families for the provision of the services that they need. Whilst it is true that he has engaged with health services for the children, it is also true that a close reading of the medical records shows that there are others, including the father and the school, who were seeking medical assistance for them, primarily for D.
 65. Finally, I am satisfied that giving parental responsibility to the CEO is the best means of safeguarding each of the children's wellbeing at this time. Given the circumstances of each parent and what I have found in relation to the grandfather, there is no one else who is better suited to be given that responsibility.
 66. Given the evidence and my findings, I remain doubtful that the grandfather will within the next 12 months engage with Territory Families in a way that could see the children safely returned to him. Nevertheless, he has had their care in the long term and should be afforded an opportunity to turn around the way in which he

has cared for these boys. That order is supported by the mother and the Children's Representative and a 12 month order will also provide an opportunity for the mother to better her circumstances and for the children to build a relationship with her, even if it is not one that eventually sees them in her care.

67. There will be a protection order for D and T giving parental responsibility to the CEO for 12 months from this date.

Dated this Eleventh day of February 2021



SUE OLIVER
A/LOCAL COURT JUDGE