

CITATION: *CEO Territory Families Housing & Communities v LL, SM, CT, CG and CS [2025] NTLC 2*

PARTIES: CEO Territory Families Housing & Communities

v

LL

TITLE OF COURT: LOCAL COURT

JURISDICTION: FAMILY MATTERS

FILE NO(s): 2022-01290-LC, 2022-02990-LC, 2022-02991-LC

DELIVERED ON: 7 February 2025

DELIVERED AT: Darwin

HEARING DATE(s): 19 and 20 June and 1 October 2024

DECISION OF: Judge Ben O'Loughlin

CATCHWORDS:

CARE AND PROTECTION – long term protection order – reasonable support – parental capacity

Care and Protection of Children Act 2007 ss 10, 10A, 129

BJW v EWC & Ors [2018] NTSC 47

REPRESENTATION:

Counsel Applicant: Ms P Tragear

Counsel Mother: Ms F Keppert

Counsel Father: Ms E Baker

Child Representative: Ms J Tinning

Solicitor Father: Legal Aid NT

Decision category classification: B
Decision ID number: [2024] NTLC 2
Number of paragraphs: 69

IN THE LOCAL COURT (FAMILY MATTERS JURISDICTION)
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 2022-01290-LC, 2022-02990-LC, 2022-02991-LC

BETWEEN:

CEO Territory Families Housing & Communities
Applicant

AND:

LL
Mother

AND:

SM
Father

AND:

CT, CG, CS
Children

REASONS FOR DECISION
(Delivered 7 February 2025)

JUDGE O'LOUGHLIN

Introduction

1. The Applicant has applied for a long-term parental responsibility direction to give it parental responsibility until the children turn 18. The proposed order is in respect of three children: CT, CG and CS.

2. The mother and father consent to a two-year order but not the long-term order.
3. The mother's position is that the Court could not be satisfied that she will not be able to care for the children at some point during the proposed long-term orders. She argues the Applicant has not adequately supported her and that, with appropriate supports, she can care for the children.
4. The CEO is of the view that the mother will never have the capacity to care for the children and that reunification is not a realistic option, nor in the best interests of the children.
5. The children are keen to keep contact with their mother but are doing well with the current carer. The Applicant states it would facilitate that ongoing contact.

The Law

6. This matter is governed by the *Care and Protection of Children Act 2007*, where section 129 requires the Court to make a protection order if a child needs protection, and the proposed order is appropriate, and the least intrusive means to safeguard the child's wellbeing.
7. Both parents concede that an order should be made, but both argue that the period of the orders should be restricted to two years.
8. The Applicant has the burden of proving that the order until age 18 is appropriate.
9. Subsection 10 (1) of the Act states that when making decisions, the paramount concern is the best interests of the children. Subsection 10 (2) provides that consideration must also be given to 12 additional matters, including the capacity and willingness of the children's parents to care for them, the need to preserve relationships with the children's kinship group, and the possibility of reunifying the children with their parents.
10. Section 10A requires a decision involving intervention in the life of a child to be the least intrusive option that is consistent with the best interests of the child.
11. In *BJW v EWC & Ors* [2018] NTSC 47, Hiley J confirmed that when considering a long-term order, the court is required to perform a predictive assessment of future matters.

Background

12. The mother is 27 years old, and the odds were stacked against her before she was born. The evidence indicates her mother drank while pregnant, resulting in the mother (in this proceeding) being born with a mild intellectual disability consistent with FASD. She was placed into care at age two and during her childhood she was subject to emotional, physical, and sexual abuse. In her first ten years she had multiple placements and she developed some concerning behaviours. At least one carer found the mother too challenging to manage.
13. The mother continued to move from carer to carer and she suffered further abuse as a teenager. In her later teenage years she lived in emergency accommodation with one-on-

one care.

14. Such a traumatic childhood is likely to have long-term consequences. One expert, Kerrie Williams said in her report:

... studies have shown that survivors of childhood neglect or abuse will experience a negative impact that will adversely affect their health and well-being on many levels..... the more someone is exposed to chaos in childhood—violence, neglect, abuse, illegal drugs, alcohol, and so on—the more likely they will experience cognitive impairment, high-risk behaviours, and poor health outcomes.
15. The mother's first child is CT, and he came into the care of the Applicant two days after he was born in June 2015. He is currently nine years old.
16. In March 2016, parental responsibility for CT was given to his great-aunt, NN, and he lived with her until 2020 in Queensland. The mother had little engagement with NN for two years and she did not visit CT during this period.
17. In September 2018 the second son CG was treated for a laceration that was thought to be suspicious. In October the Applicant received a notification that the mother was smoking gunja and being verbally and physically abusive to CG.
18. CG was placed into the care of the Applicant on 31 October 2018.
19. The mother missed a number of meetings that were arranged for her to keep in contact with CG.
20. An agency visited the mother's house in February 2020, where there were eight dogs and one cat, and noticed dog faeces and urine on the lounge room floor. The mother said the dogs were vaccinated and were not a health risk to the children.
21. At about this time CS was admitted to hospital as he was not gaining weight and on one occasion a care provider thought that CS had not been fed. The mother claimed that CS slept for nine hours straight and was not fed during this period, which carers doubted was true. The mother was offered support with breastfeeding but she was resistant and abusive to the providers.
22. In March 2020, NN was struggling to care for her elderly grandmother, so she returned CT to the mother.
23. In March 2020 the dogs were removed from the house, but by April there were reports that the mother again had a large number of dogs (seven) in the house.
24. The brother of the mother rang the Applicant and said that the mother was stressed about looking after CS and CT and he had been caring for CS every day for 3 weeks. He said there was no food in her fridge and dogs were everywhere in the house. He said the mother was using money for gunja rather than food.
25. The brother said he would not return CS to his mother as she did not know how to look after him. The brother is no longer willing to look after the children.

26. On 17 April 2020 the mother was drinking beer and possibly smoking gunja with a female friend at the home and there was a fight or assault witnessed by CT.
27. On 20 April 2020 CT was at a nearby residence and had stuck his arm through a chain mesh fence and was bitten by a dog. The mother was said to be drinking and smoking gunja when this occurred. There are also reports that the mother was also using ice at around this time.
28. In April or May 2020, a further provisional protection order was made placing CT and CS under the care of the CEO.
29. CG will soon turn seven and he came into the care of the Applicant when he was six months old. CG has mild to moderate hearing loss, and he may have difficulties with speech and language and fine motor skills. CG has also been exposed to domestic violence.
30. The third child CS is five and came into the care of the Applicant when he was six weeks old. He has an NDIS plan having been diagnosed with developmental delays and a congenital leg abnormality.
31. Despite her terrible and traumatic childhood, the mother has recently led a more stable life, and this may be due to the help she gets from the Public Guardian. She took an active role in the hearing and gave moving evidence as to her love for her children and her desire to learn to be a good mother and raise them in a safe and loving environment.
32. The three boys are living together with a carer and are doing reasonably well given their earlier circumstances.

Expert Evidence

33. The mother called registered psychologist Vanessa Edwidge, who said:
 - The mother has the capacity to meet the needs of her children should she be adequately supported to do so.
 - It is important that agencies are able to provide long-term support. Working with her to identify practical issues first may assist with developing rapport. This could include housing, medical appointments, etc.
 - The mother requires assistance to support daily living, such as housekeeping, cooking, and cleaning. Successful supports would include positive role modelling by carefully selected, informed and understanding mentors who are not in custodial roles.
 - If the children were to be restored to the care of their mother, it would be expected that she would have all her supports in place to support her and her children.
 - It is my opinion that children are restored gradually back into the care of the mother to allow for adjustment and bonding. The process of restoration should facilitate regular face-to-face visits.

- The mother reported that she would require a support worker with her during this period to assist with cooking, bathing, and putting the children to bed. She reported that she would require this support initially so that she can observe what their routines are and how their routines are managed.
34. The required supports were explored in cross-examination, and Ms. Edwidge acknowledged that “it would be very difficult for the mother to manage three children without support.”
35. I agree, and I would add that the amount of support required by the mother would be extensive. It would be highly unlikely that the required level of care would be able to be provided by support agencies or through an NDIS package. The amount of support that the mother would need is beyond what can be expected of a government, agency or charity.
36. Kerry Williams, psychologist, prepared a joint report with psychologist Ms. Althouse for the Applicant. They stated the following opinions about the mother:
- She had a diagnosis of FASD and Borderline cognitive functioning, meaning she is likely to have a limited capacity to reason, plan, set priorities, and make sound moral and social judgments.
 - She had extensive trauma history that impacts her ability to regulate her emotions and behaviours. It is likely the mother will struggle to help her children regulate their emotions, particularly when she is susceptible to her own emotional dysregulation.
 - She had previously had been assessed as not having the parenting capacity to care for the first child.
 - Given she now has three children, her capacity would be significantly further challenged, especially in the context of meeting the care requirements of three young children with the added complexity of their special needs.
37. The trial book also contained a report by psychologist Cheryl Blakey, prepared in 2019, in which she found the mother:
- Had poor insight into her behaviour and tended to project blame on others;
 - Had a background and behaviours consistent with FASD;
 - Suffered substantial and repeated trauma, inflicted during her childhood, which has left her with significant reactivity;
 - In respect of the second child, there was no evidence of catastrophic or sustained abuse; rather, there was neglect and harm that occurred under the influence of substances and poor planning.
 - At age 16, she had an IQ assessed at 72, and an earlier report equated this score to a child of 8.3 years.
38. Given the extensive evidence in the trial book, I agree with the above conclusions of Williams, Althouse and Blakey. I don’t disagree with Ms Edwidge, but I find that the supports

she is proposing are simply not reasonable.

Reasonable Support Services

39. The mother referred to section 130(1)(ca), which requires the Court to take into account the steps taken by the Territory “to provide the services necessary to address any likely risks of harm to the child.” The mother argued that the steps were insufficient and that proper steps or efforts by the Applicant in the future could allow for the children to be returned to the care of the mother.
40. To some degree, this argument was supported by the mother’s expert, Ms. Edwidge, who emphasized the supports that the mother would need if she were to become the carer of the three boys. But the evidence in the trial book catalogues the extensive efforts that were made by the Applicant to engage the children with their mother.
41. Yes, the Applicant could have done more, but the resources are limited, and the resources described by Ms. Edwidge are beyond what is reasonable.

Reunification Efforts

42. I find that the Applicant has made reasonable efforts to reunify the mother and father with the three boys.
43. A reunification plan was created, but the mother did not properly engage with this plan. As an example, in November 2018, she was late for a visit, and the child was returned to his place of care. The mother yelled abuse at the staff of the Applicant. She missed some other visits too. On one occasion, she called to say that she could not visit because of domestic violence (by the father) and I accept this is a reasonable explanation to miss a visit.
44. On one occasion in September 2019, the mother attended to visit CG but was observed to be on her phone and not engaging with her son. On that day, she packed up the toys and wanted to end the visit early.
45. A week later, she missed a scheduled visit and said she was tired and did not want to attend. A month later, a person went to collect her for a visit, but there was no answer. The mother was later abusive to the agency organizing the visits.
46. Irregular visits continued, and by January 2020, the agency organizing said it would no longer continue to supervise, as the mother would usually be late or not show up.
47. There was a good run of reunification visits in June, July, and August 2021. She missed some meetings in October, and the Applicant called to say her children were missing her. She said she would visit the following Thursday, but she did not attend, and there were no visits from 16 October 2021 to January 2022.
48. Despite reasonable efforts by the Applicant, there were only some phone visits in 2022.
49. It appears there was an access visit in March 2023 and other phone contact only.

50. I find the Applicant made reasonable efforts to reunify the children with their parents and preserve the children's relationship with their parents.

Mother's Care

51. The children have only spent a small part of their lives being raised by their mother. But even over this short period there is extensive evidence as to the risk to the children as a result of the mother's substance abuse, lack of care, and lack of parenting capacity. Given all of these concerns, it was important for the mother to engage with offered support services, but she generally declined to take up these offers.
52. There are many other examples where the mother is not physically abusing the children but is neglecting them or exposing them to potential harm by making poor decisions.

The Father

53. The father of the youngest two boys was served with the application but did not lodge a response. He was in custody at the time of the hearing, and his presence was arranged by the Court. On the day of the hearing, he was unrepresented but indicated that he too resisted the long-term order.
54. Fortunately, he managed to obtain legal representation, and his solicitor filed useful submissions. There was no application to adjourn the hearing or reopen the hearing to allow the father to give evidence.
55. The evidence shows that the father has perpetrated domestic violence against the mother and has seven convictions for assault. A number of those assaults were against the mother. The Applicant has expressed reasonable concern about the father's violent behavior, which often involves alcohol. The records in the court book suggest he has a significant problem with alcohol and show that he has had hardly any involvement in the lives of his two sons.
56. The father also has a history of drug abuse and has regularly exposed the children to domestic violence. On one occasion, he took the mother's bank card and left her with no funds to care for CG. There is a report that the father was violent to the mother while she was pregnant with CS.
57. In January 2019 the father was contacted by the Applicant while he was in Holtze Correction Centre and arrangements were made for him to contact the Applicant to arrange for him to see CG upon his release. The father did not make contact with the Applicant.
58. Recently, there has been some contact, but most of this was organised by the Applicant. When the Applicant discussed parenting with the father he referred to the help and support that he would need from his family. The Applicant recorded the father's parenting abilities as "unknown", possibly because he spent so little time raising the children.
59. The father did not give evidence, but his actions over the last six or so years show that he has shown little interest in raising and caring for the boys. There is no evidence or basis to

believe that he has the capacity to change in the next 10 to 15 years. I find the father is not able to care for his two children during the term of the proposed order.

60. The father of the oldest boy CT is unknown.

Children's Representative

61. The representative of the children must act in the best interest of the children regardless of instructions. The representative met with the children on a number of occasions. The representative was of the view that a long-term order until they were 18 was in their best interest. I agree.

Conclusion

62. The mother has had a litigation guardian for a substantial part of these proceedings (until June 2024). She has also been the subject of an order under the Public Guardianship Act since 2015 in respect of property and financial affairs. The fact the guardianship order was made is consistent with the other evidence that the mother has an impaired ability to make reasoned decisions.

63. There is overwhelming evidence to show that the mother struggles to manage her own life and that she will not be able to properly care for the three boys.

64. I am satisfied that the mother and the father will not, over the next 10–15 years, become sufficiently capable of caring for the children.

65. The mother has the willingness but not the capacity to care for the children.

66. There can be little doubt that the mother loves her children and would like to care for them at some stage in the medium term. The children have a positive relationship with their mother and appear to love her.

67. All reasonable efforts have been made to achieve reunification, but these have not been successful, and further attempts are likely to cause harm to the children and harm their relationship with their mother.

68. The mother is a victim of domestic violence, and this is, of course, not her fault. If domestic violence were the only concern for the children's safety and well-being, I expect solutions could have been found, and a long-term order, or perhaps even a short-term order, would not be necessary.

69. I am satisfied that there are no other members of the children's family who will be able to care for them during the term of the proposed long-term order.