

CITATION: *Re: Sarah and Patricia* [2014] NTMC 025

TITLE OF COURT: Local Court

JURISDICTION: Family matters

FILE NO(s): 21415840 & 21415841

DELIVERED ON: 6 November 2014

DELIVERED AT: Darwin

HEARING DATE(s): 16 October 2014

JUDGMENT OF: Ms Elisabeth Armitage SM

CATCHWORDS:

Protection order, child in need of protection, best means of safeguarding wellbeing
Care Protection of Children Act sections 14, 15, 20, 129

REPRESENTATION:

Counsel:

CEO Department of	
Children and Families:	Ms Brown & Mr Fisher
Children:	Ms Voumard
Mother:	Not represented
Father:	Not represented
Maternal grandmother:	Mr Strong
Paternal grandmother:	Not represented

Judgment category classification:	C
Judgment ID number:	025
Number of paragraphs:	52

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

No. 21415840 & 21415841

REASONS FOR JUDGMENT

(Delivered 6 November 2014)

Ms Armitage SM:

1. The Chief Executive Officer (CEO) of the Department of Children and Families (the Department) applied for short term parental responsibility directions seeking parental responsibility for sisters Sarah, aged 5, and Patricia, aged 3, for a period of 12 months.
2. The CEO's applications are opposed by the girls' maternal grandmother who also applies for a short term parental responsibility direction for her granddaughters.

Background to the applications

3. Sarah and Patricia are Aboriginal and had been living with their natural parents and maternal grandparents in Wadeye. The girls' older sister Tayshar, aged 7, lives with the paternal grandmother in Yarralin.
4. In January 2014 the girls moved to Knuckey's Lagoon with their parents, apparently to escape violence in the Wadeye community. When the family moved to Knuckey's Lagoon several concerns about the girls' wellbeing

were reported to the Department. Notifications included concerns about violence and drunkenness in the house where they were living, significantly poor hygiene in the house, inadequate medical attention for sores on Patricia, and a substantiated incident of physical abuse of Sarah by her mother.

5. The Department intervened. A safety plan was established, and the girls' parents expressed their intention to move the family to Yarralin. While the Department was in the process of assisting the move, on 28 February 2014 it was notified of a serious incident of domestic violence by the father against the mother the previous evening.
6. From hospital, the girls' mother told the Department that she was concerned about the girls remaining with extended family at Knuckey's Lagoon while she was receiving medical treatment. The girls' mother said that when she was released from hospital she would not return to Knuckey's Lagoon but would take the girls to a shelter. It was agreed between the mother and the Department that the girls should be taken into Provisional Protection and would be returned to the mother when she was released from hospital and had a safe place to live.
7. The Department attended Knuckey's Lagoon and arranged with a grandmother to collect the girls later that day. Police were present and informed the Department that there was a full non-contact domestic violence order (DVO) in force restraining the girls' father from having any contact with the mother. When the Department later returned to collect the girls, the grandmother told the Department they had been taken by the father.
8. The following day the father (in contravention of the DVO) and the girls, attempted to visit the mother in hospital. Hospital staff took the girls and police attended and removed the father. As agreed between the mother and the Department, the girls were placed into Provisional Protection.

9. The mother was released from hospital to the Darwin Aboriginal and Islander Women's Shelter (DAIWS) on 3 March 2014 and the Department arranged to return the girls to her care. However, the mother left DAIWS at lunchtime that same day and did not return. The girls remained in care.
10. On 5 March 2014 the girls' foster carer reported concerns about both girls suffering from head lice, head sores and silent crying.
11. On 6 March 2014 Temporary Protection Orders were made in respect of both girls.
12. On 17 March 2014 the Department made contact with the girls' mother at Darwin Magistrates Court where she was facing three domestic violence related charges. The mother was bailed on conditions that required her to return and live in Wadeye. Following discussions between the Department, the girls' mother, and extended family, it was agreed that the Department would purchase tickets for the girls and their mother to fly to Wadeye on 19 March 2014. The girls were to be returned to their mother at the point of travel and following the completion of a Safety Plan.
13. On 18 March 2014 the Department confirmed that the girls' father was remanded in custody awaiting hearing and his court date was not yet fixed.
14. The girl's mother was not at home when the Department arrived on 19 March 2014 to collect her for her flight to Wadeye. She was later found at Casuarina and appeared to be intoxicated. She refused to fly that day and refused to go with an Aboriginal Community Worker.
15. On 20 March 2014 a Second Temporary Protection Order was made for each girl.
16. On 1 April 2014 the girls' maternal grandmother (from Wadeye) filed an affidavit attesting to her close relationship with the girls before they moved to Darwin and seeking joinder in any future applications by the CEO.

17. On 2 April 2014 the CEO filed her applications for short term parental responsibility. Respondents named in the applications were the girls' mother and father, their maternal grandmother and their paternal grandmother (from Yarralin, who was included at the request of the girls' father).
18. Between 3 April 2014 and 14 August 2014 various orders were made to progress the applications and daily care and control of the girls was given to the CEO.
19. On 22 July 2014 the maternal grandmother made applications for daily care and control of the girls during any further adjournment period. The maternal grandmother was granted daily care and control of both girls on 14 August 2014, and the following s138(4)(b) *Care and Protection of Children Act* (the Act) directions were also made:
 - (1) The maternal grandmother is to ensure the children attend school or day-care regularly and receive regular medical treatment as directed by clinic staff,
 - (2) The mother is not to take the children from the residence without permission of the maternal grandmother, and
 - (3) No alcohol or cannabis is to be on or used in the home or yard of the children.

These orders remained in force during all further adjournment periods.

When must the court make a protection order?

20. Under s128 of the Act the court may make a protection order as proposed by the CEO, or specify other directions mentioned in s123 as the court considers appropriate, or may dismiss the application.
21. Under s129 of the Act the court must make a protection order if satisfied the child is in need of protection and the order is the best means of safeguarding the wellbeing of the child.

Is each child in need of protection?

22. Section 20 of the Act provides that a child is in need of protection if the child has suffered or is likely to suffer harm or exploitation because of an act or omission of a parent of the child.
23. Section 15 defines harm as any significant detrimental effect caused by any act, omission or circumstance on the physical, psychological or emotional wellbeing or development of a child and can be caused by physical, psychological or emotional abuse or neglect of the child or exposure of the child to physical violence.
24. On 9 February 2011 the Department received and substantiated a report of emotional abuse and neglect of Sarah by her mother by failing to provide medical attention and food.
25. On 29 November 2011 the Department received and substantiated reports of emotional abuse of both girls due to their exposure to domestic violence between their parents.
26. On 15 February 2014 the Department received and substantiated a report of physical abuse of Sarah by her mother involving two punches to her lip resulting in a small cut.
27. On 17, 24 and 25 February 2014 Department staff visited the Knuckey's Lagoon house where the children were living and found it to be extremely unhygienic "with rubbish lying around and dog faeces on the floor", 7 dogs inside the house were lying on a mattress and one was suffering from a very bad skin infection, they observed debris and trash scattered throughout and "piles of empty VB cans near the front entrance".
28. On 28 February 2014 the Department received and substantiated reports of emotional abuse of both girls due to their exposure to domestic violence between their parents. It was reported that the previous evening the father was drunk and on "gunga". The father assaulted the mother by strangulation and knocked her to the ground when both girls were present (but Patricia

was asleep). Police attended and arrested the father and took out a full non-contact domestic violence order restraining him from contacting the mother. In breach of the order the father attempted to see the mother (in hospital) the following day and was arrested.

29. Following the assault, the mother was taken to the emergency department and hospitalised until 3 March 2014. As noted above, while in hospital the mother consented to Provisional Protection of both girls as she was concerned about them being exposed to alcohol and violence at the Knuckey's Lagoon residence. The mother's concerns were consistent with the Department's understanding that the Knuckey's Lagoon house had a reputation for "violence and drunkenness".
30. The mother was aware that upon her release from hospital into safe accommodation it was the Department's plan to return the girls to her care. In spite of this, upon release from hospital the mother did not remain at her safe accommodation, she did not tell the Department where she was, and she made no attempt to see or recover her girls.
31. On 4 March 2014 the father was seen at the Knuckey's Lagoon residence apparently affected by a drug (thought to be cannabis) and threatening suicide if the girls were not returned.
32. On 16 March 2014 the Department made contact with the mother when she attended court in response to domestic violence charges against her. As previously noted, arrangements were again made to return the girls to her care and flights to Wadeye were booked. The mother told Department staff that she had spent the weekend drinking and lost her Basics card, bank card and other personal items. The Department assisted her with her paperwork. The mother also reported she had been stabbed and the Department assisted her to report the matter to police.

33. The mother was not at home when the Department went to collect her for her flight to Wadeye and was later found intoxicated at Casuarina. She refused to fly that day and then remained living in Darwin in breach of her bail. She was seen by a staff member in the long-grass in Palmerston on 2 April 2014. She appeared intoxicated and although she was requested to attend a meeting the next day, she did not attend. The mother was seen again on 12 May 2014 near Woolworths at Palmerston. She appeared to be intoxicated and was carrying a clear plastic drink bottle that appeared to contain alcohol. Without contacting or informing the Department, the mother returned to Wadeye on 17 May 2014 but was again sighted in Palmerston on 9 June 2014. At some point the mother again returned to Wadeye. The mother has not participated in these proceedings, filed any evidence in response to the applications, nor sought access to her children while they were in the care of the Department.
34. The father remained in custody until about mid June 2014. Although the Department arranged for the girls to visit him in custody and he was observed to be warm with them, at no time did he seek to have the girls returned to his care. Instead he requested that the girls be placed with the paternal grandmother in Yarralin. Since his release from custody the father has not participated in these proceedings and has not filed any evidence in response to the applications or in support of his proposal.
35. The paternal grandmother has not participated in the proceedings nor filed any evidence in the proceedings.
36. The only responding party who has consistently and actively participated in these proceedings is the maternal grandmother. At a mention on 31 July 2014, counsel for the maternal grandmother conceded that the mother had placed the children at risk of harm when they were in Darwin.
37. On the basis of the uncontested Departmental evidence, I am satisfied that both children are in need of protection.

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

38. While it is not in dispute between the CEO and the maternal grandmother that it would not be in the best interests of the girls to be returned to either parent, they disagree as to how the girls' best interests are to be achieved. Each seeks short term parental responsibility orders. The father has expressed a strong preference that the girls be placed with the paternal grandmother.

39. In *Re Caroline and Jennifer* [2013] NTMC 015 at [16], Hannam CM considered what is meant by 'wellbeing':

Under s14 of the Act, the wellbeing of the child is defined as including physical, psychological and emotional wellbeing. 'Wellbeing' is not a defined expression and should be given its ordinary meaning of satisfactory condition of existence or welfare. In other words, the question is whether the order is the best means of protecting the welfare of the child.

40. In determining the best means of safeguarding the wellbeing of each child all the principles underlying the Act in Part 1.3 must be considered and upheld as far as practicable. In the circumstances of each case, however, the relevance of the various principles might vary. In this case I consider the following principles are particularly relevant:

(1) Section 8 provides for the role of the family. Families have the primary responsibility for the upbringing and development of their children and a child may be removed from the family "only if there is no other reasonable way to safeguard the wellbeing of the child".

(2) Section 10 provides that in determining the best interests of the child the court should consider:

- (a) the need to protect the child from harm and exploitation;
- (b) the capacity and willingness of the other family members to care for the child;

- (c) the nature and relationship of the child with the child's family;
- (d) the wishes and views of the child having regard to their maturity and understanding ;
- (e) the child's need for permanency in her living arrangements;
- (f) the child's need for stable and nurturing relationships;
- (g) the child's physical, emotional intellectual, spiritual, developmental and educational needs;
- (h) any special characteristics of the child; and
- (i) the likely effect on the child of any change in their circumstances.

(3) In respect of Aboriginal children section 12 provides that they should, as far as practicable, be placed with a member of the child's family and in close proximity to the child's family and community.

The parents' wishes

- 41. Under section 130 of the Act the court must have regard to the wishes of the parents.
- 42. The mother has substantially refused to engage with the Department, has not participated in these proceedings, and has not expressed her views with respect to the girls.
- 43. As to the father's preference for the girls to be with the paternal grandmother, as already noted neither the father nor the paternal grandmother have directly participated in these proceedings. The father expressed concerns about the care that the maternal grandmother might provide, but has not filed any evidence in support of either his concerns or his preference. The paternal grandmother has not sought to have access with either of the girls since they were taken into care. The only evidence as to

any contact by the paternal grandmother with either of the girls is provided by the maternal grandmother who states “they haven’t spent much time with” her¹.

44. The Department commenced a kinship assessment of the paternal grandmother. During a visit to Yarralin on 17 June 2014, the paternal grandmother advised that she was not aware she had been nominated to care for the girls. Her house (consisting of one room with limited communal facilities over the back fence) was assessed and considered inadequate to meet the physical needs and safety of the girls.

The CEO’s application

45. As to the CEO’s applications for parental responsibility Ms Brown submitted that the Department was better placed than the maternal grandmother to ensure the best interests of the girls. The Department indicated it would maintain the girls’ current placement with the maternal grandmother but wanted parental responsibility so that it could step in easily if there were any problems. The CEO pointed to the following matters in favour of its application substantially arising from concerns about the maternal grandmother’s application:

- (1) As noted above, the Department had received some notifications about the girls while living in Wadeye with their parents but in a home shared with the maternal grandparents. At least while the parents were exercising parental responsibility the maternal grandmother may not have always actively intervened in the best interests of the girls. However, I am satisfied that any such reluctance to act for the wellbeing of the girls would be removed if the maternal grandmother was granted parental responsibility.
- (2) The maternal grandmother relinquished one of her children, a profoundly disabled boy, into care. As to this, the maternal grandmother advises that the child was paralysed and welfare took him from hospital without consulting her. She reports that he is wheelchair bound and she visits him when she comes to

¹ Affidavit of maternal grandmother dated 3 June 2014 at [17]

Darwin². In my view, this history is not relevant to the current application.

- (3) The girls' mother was the subject of one report to the Department when she was 13 years old. It involved physical abuse of her by her father (the maternal grandfather) in circumstances where she was found wandering around Wadeye at night without supervision. It appears that the incident may have involved excessive or inappropriate discipline. As there were no further reports to the Department I conclude that the paternal grandfather did not repeat this behaviour. Further, given the substantial passage of time it appears to have little, if any real, relevance to the current application.
- (4) A rumour about the grandparents using marijuana was reported to Ms Rachel Patterson of the Community Child Safety and Wellbeing Team, Wadeye. In her affidavit Ms Patterson noted "this was third party information and no other information around this was provided"³. I give no weight to this unsubstantiated rumour.
- (5) In spite of the Nama house having passed a safety check, when the girls were returned to the maternal grandmother, Ms Rizqualla was concerned about its state, its lack of furnishings, and that there were no toys or pantry supplies. However, I note that food had been purchased on the grandmother's basics card in Wadeye before the girls were taken to Nama and no one else who has subsequently visited the property has raised any significant concerns about it⁴. Although the house may be sparsely furnished and basic, on the evidence before me I am satisfied it is of an acceptable standard to house the girls adequately.
- (6) Since the girls' return, the maternal grandmother has sought financial assistance from the Department for furniture, and when she was unable to purchase food or pay the power bill. The Department provided some funding for furniture and commenced carer payments (which would cease if parental responsibility were granted to the maternal grandmother). As to food and power bills, when the maternal grandmother received support from Ms Patterson, resources available to the family were identified, Centrelink payments were established,

² Affidavit of maternal grandmother dated 3 June 2015 at [18]

³ Affidavit of Rachel Patterson dated 26 September 2014 at [1.9]

⁴ See affidavits of Rachel Patterson dated 26 September 2014 and Catherine Voumard dated 23 September 2014

budgeting was discussed, and ad hoc funding refused⁵. Due to the limitations of public transport to and from the girls' school in Palumpa the maternal grandmother resigned from her employment in Wadeye but is searching for employment in Palumpa. Given the maternal grandmothers' work history I consider she has genuine prospects for securing employment in Palumpa. I note that the paternal grandfather has employment at the Nama market garden. In response to the CEO's concerns, the maternal grandmother states "I have been receiving some money from DCF (Welfare). I understand it will finish if I get parental responsibility and that is ok. They can have their money and I will have my grandkids"⁶. I am satisfied that the maternal grandmother has access to sufficient financial resources to meet the daily needs of both girls.

- (7) The CEO is concerned that both parents safely obtain access to the girls. The CEO contends it is better placed to ensure this occurs. However, since care and control was granted to the maternal grandmother there has been no evidence of safety or access concerns around contact with the mother. Indeed, positive interactions between the girls, their mother and the maternal grandmother have been observed. There is no evidence before the court to suggest that the maternal grandmother would impede safe access to the girls by the father or his extended family. To the contrary, the grandmother provided evidence that "we will talk to the mother and father and let them see Sarah and Patricia in a safe environment"⁷.

The maternal grandmother's application

46. As to the maternal grandmother's application, there was significant positive evidence before the court which in my view outweighed the concerns raised in the CEO's application.

- (1) On learning the girls had been taken into care, the maternal grandmother was in daily contact with the Department trying to find out what was happening and how and when the girls could be returned to her care⁸. She actively sought joinder in the proceedings⁹.

⁵ Affidavit of Rachel Patterson dated 26 September 2014 at [1.5-1.6]

⁶ Affidavit of maternal grandmother dated 2 October 2014 at [2]

⁷ Affidavit of maternal grandmother dated 2 October 2014 at [18]

⁸ Affidavit of Elizabeth Johnson dated 20 March 2014 at [20]

⁹ Affidavit of Suhaila Rizqallah dated 2 April 2014 at [29]

- (2) In her affidavit of 1 April 2014 the maternal grandmother provided evidence that she had lived with both girls since they were babies and had a strong bond with each of them. Throughout the proceedings the maternal grandmother has maintained and demonstrated her long term commitment to the welfare of both girls.
- (3) Early in the proceedings the Department confirmed, with character references from the Wadeye Safe House, the Government Engagement Coordinator, the Wadeye Health Clinic and Save the Children, that the maternal grandparents were supportive and appropriate carers for the girls¹⁰.
- (4) In the course of its assessment of the maternal grandmother as a kinship carer, the Department acknowledged “there was evidence that the maternal grandparents have focused on the interests and wellbeing of their children, in particular, with reference to their education” and have “demonstrated protective capacity in respect of their children”¹¹. The maternal grandmother’s current commitment to the girls’ schooling is evidenced in the report of Ms Voumard referred to below.
- (5) There were concerns about violence in the home in which the maternal grandparents’ lived in Wadeye¹². Responding to those concerns, the maternal grandparents moved to their four bedroom house at Nama. On 10 July 2014 the Department conducted and passed a safety check on the Nama house.
- (6) On 14 August 2014 the court granted daily care and control of both girls to the maternal grandmother and subsequently the Department approved them as foster carers.
- (7) Ms Rachel Patterson of the Community Child Safety and Wellbeing Team, Wadeye, provided an affidavit dated 26 September 2014. She reported the following relevant involvements with the family:
- (a) On 8 September 2014 she visited Nama outstation and spoke to the maternal grandfather who engaged and said they were managing well with the care of the children. Ms Patterson then visited the girls who were with their maternal grandmother and mother at Palumpa School.

¹⁰ Johnson, 20 March 2014, at [19]

¹¹ Affidavit of Suhaila Rizqallah dated 18 June 2014 at [6]

¹² Rizqallah, 18 June 2014, at [6]

The girls were reported as being clean, clothed and happy.

- (b) On 9 September 2014 she saw the girls and noted they were clean, playful, tidily dressed and chatty. Sarah had woken with a reddened eye and had been taken to the clinic. The maternal grandmother was observed purchasing appropriate food for the girls.
- (c) On 14 September 2014 Ms Patterson discussed budgeting with the maternal grandmother who was in Wadeye to purchase food.

(8) In her statement of 29 September 2014, Ms Catherine Voumard, the legal representative for the children, informed the court that, with the assistance of Ms Patterson, she visited the girls on 17 September 2014 and spoke to their teacher on 24 September 2014. Ms Voumard reported:

- (a) Patricia was well settled at Palumpa School, her attendance was regular and she always presented as dressed and clean.
- (b) Sarah did not want to live with a carer in Darwin, Sarah liked it at Nanna's house, and Sarah liked catching turtles and snakes with her grandfather.
- (c) Nama is a small settlement of 8 houses which is cleaner than Wadeye. There is a community garden where the paternal grandfather works. The maternal grandfather reported he was teaching the girls about their culture and minimising their time in Wadeye.
- (d) Both girls appeared clean and healthy.
- (e) Palumpa School provides two meals each day and Sarah reported that her Nanna cooked chicken and gave her Weetbix for breakfast.

(9) In her affidavit of 2 October 2014, the maternal grandmother attested to:

- (a) Understanding her financial responsibility for the girls.
- (b) Her commitment to providing healthy food.

- (c) Her commitment to ensuring the girls attended school every day and her engagement with the school.
 - (d) Her willingness to facilitate parental access “in a safe environment”.
 - (e) Her willingness to follow any directions the court might impose should she be granted parental responsibility.
- (10) In her affidavit of 3 June 2014, the maternal grandmother attested to:
- (a) Her history of employment at the Wadeye Safe House which included responsibilities for cleanliness, providing support and comfort, ensuring women and children are safe and reporting any concerns. This was supported by a reference from her employer¹³. From this I conclude that the maternal grandmother has demonstrated capacity to provide a clean, safe and nurturing environment for her granddaughters.
 - (b) The employment prospects for the girls grandfather in the Nama market garden (now realised).
 - (c) The need for both girls to be with family and learn their culture.
 - (d) Her strong desire and capacity to care for and take full responsibility for her granddaughters.

Decision

47. Taking into account all the matters referred to and applying the underlying principles of the Act, I am persuaded by the evidence that the maternal grandmother’s is committed and has the capacity to safeguard and positively enhance the wellbeing of each child. A short term parental responsibility order in favour of the maternal grandmother is, in my view, the best means of safeguarding the wellbeing of each child.

¹³ Ms Alison Stevens, Annexure “A”

48. As to the length of the order, I note the original application was for two years although during submissions there was discussion as to a one year order.
49. Taking into account:
- (1) The very significant instance of domestic violence which precipitated the removal of the girls into care;
 - (2) The history of other incidents of domestic violence within the family;
 - (3) The evidence of alcohol and other substance misuse by the parents;
 - (4) The effective abandonment of the girls by the mother when she was drinking;
 - (5) The parents' failure to provide any evidence in these proceedings; and
 - (6) The long standing, close, stable and nurturing relationship between each girl and the maternal grandmother;

I am satisfied that the best means of meeting the girls' needs for stability and protection is an order for two years.

50. Finally I must consider whether in addition to a parental responsibility order, additional supervision directions would be in the best interests of the girls. I note that supervision type directions were initially made when the maternal grandmother was granted daily care and control. There have been no issues with compliance over a period now in excess of four months. There were limited submissions in respect of such further directions. The CEO generally favoured supervision directions which would allow the Department to monitor the girls care. However, on behalf of the maternal grandmother it was contended that further directions were unnecessary given her commitment and demonstrated capacity to act in the best interests of both girls.

51. I am persuaded by the evidence presented in these proceedings that the grandmother has demonstrated a commitment and capacity to act in each girl's best interest. In my view, additional supervision orders are unnecessary and may, counterproductively, undermine the parental responsibility order granted to the maternal grandmother. Accordingly, in my view supervision orders are neither necessary nor the best means of securing the wellbeing of each child and I decline to make supervision orders.
52. Accordingly, I make a protection orders with short term parental responsibility directions giving parental responsibility for Sarah and Patricia to their maternal grandmother for a period of two years from today.

Dated this 6th day of November 2014.

Elisabeth Armitage
STIPENDIARY MAGISTRATE