

CITATION: *Re: CEO of the Office of Children & Families* [2012] NTMC 042

Re: “Smith Children”

TITLE OF COURT: Local Court

JURISDICTION: Family Matters

FILE NO(s): 21214768, 21214769, 21214770

DELIVERED ON: 6 December 2012

DELIVERED AT: Darwin

HEARING DATE(s): 19 & 20 November 2012

JUDGMENT OF: Hilary Hannam CM

CATCHWORDS:

Care and Protection of Children Act

Harm due to disrupted attachment; nature of “attachment”.

Importance of secure attachment for future development; assessment of parents’ capacity to change; opportunity to demonstrate change must be based in reality; the need for long-term stability and predictability; detriment to children in short-term order; order to 18 will allow children to form secure attachment.

REPRESENTATION:

Counsel:

CEO:	Mr Fisher
Child:	Ms Orwin
Mother:	Ms Bowen
Father:	Self Represented

Judgment category classification: A

Judgment ID number: [2012] NTMC 042

Number of paragraphs: 32

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

No. 21214768, 21214769, 21214770

REASONS FOR JUDGMENT

(Delivered 6 December 2012)

Ms Hilary Hannam CM:

1. Fiona has five children. At least three of them, Harry who is nine, Amy who is eight and Chloe who is five are the children of Mr Smith. Mr Smith is also probably the father of Katie who is four and Jack who is almost two.
2. Sadly Fiona is a young mother who has raised the children almost entirely by herself without the support of their father. She has not been able to meet their needs and the children were in need of protection when they were taken into the care of the CEO of the Office of Children and Families in April of this year. Everyone agrees that the children are in need of protection because of the acts and omissions of their parents. I am also satisfied that this is true. According to the Act, the Court must make a Protection Order in these circumstances if it is the best means of safeguarding the wellbeing of the children.
3. The CEO is asking for a direction to be specified in a Protection Order giving the CEO parental responsibility for each of the children until they are 18 and the children's lawyer agrees that this is the appropriate order for the Court to make. The Court has already made a long-term protection direction for Harry and Amy and so this decision now relates to the younger three children. The children's mother is asking the Court to make a shorter order, as she says that she will be able to care for the three younger children again

at some time in the future. The father, who only participated in the hearing one day, agrees with the mother.

4. The Court must, according to the Act, regard the best interests of the children as the most important thing when making its decisions and must also as far as practicable uphold the principles in Part 1.3 of the Act. The question for the Court to determine is whether the orders proposed are the best means of safeguarding the children's wellbeing and are in their best interests.

Why are the children in need of protection?

5. Based on the extensive history of reports that the children have been harmed between 2009 and 2012 and matters that have come to light since the children have been in care, it is clear that the children have suffered harm in a number of ways.
6. The mother has punished the children excessively physically and been violent towards them. Examples include Amy presenting at school with a swollen egg on her head complaining that her mother had hit and flogged her in 2009 and in 2010 complaining that she received a bruise when her mother kicked and punched her. In January 2011 Harry was seen with a visible slap mark on his face which was caused by his mother hitting him. In September 2011 the mother was observed at a shopping centre hitting Chloe, aged four on the back causing the child to fall to the ground and hitting Harry in the head with a closed fist. Harry, who regularly runs away from school, was smacked and hit with a spoon or other implements including a cord or belt on regular occasions. On at least one occasion Harry was restrained by his mother who used a chain around his feet to tie him to the bed. Harry, Amy and Chloe all complained of being regularly hit by their mother, including being punched, smacked and slapped and Chloe also complained of being hit by her father.

7. Harry has been perpetrating sexual abuse on his younger sisters Amy and Chloe for a number of years. Amy reported ongoing touching by Harry on her genitals, which she said her parents were aware of. Harry was still displaying sexualised behaviours such as recording himself on the mother's phone getting an erection as recently as July 2012. The psychologist who assessed each of the children, Ms Griffin, described this sexualised behaviour as a trauma reaction. The psychologist notes that there is intergenerational sexual abuse in the family of the father. She also noted that Harry and Amy stated individually that Harry at age four found a 'yucky' pornographic DVD at the mother's home and he and Amy aged three watched it. The sexual abuse between siblings commenced at this time.
8. The children's father has been convicted and sentenced to a suspended sentence for requesting a 15 year old and 11 year old to take photographs of their genitals or to expose themselves to him in return for cigarettes and alcohol. The mother was not concerned about the father having unsupervised contact with the children at their age, despite this offending. It also appears that the mother was aware of the sexualised behaviour for a number of years from when Harry was living with his father for some time when he was about four. At around that time, the mother found Harry in the bath with Amy, lying on top of her and attempting sexual intercourse. Each of the parents blames the other for inappropriately having exposed the children to sexual conduct by adults. In omitting to understand the cause and impact of his abusive behaviours, the parents have caused harm to Harry and his sisters.
9. It also appears that the children have been exposed to domestic violence between the parents. Following being taken into care, Chloe said that her father hits her mother, smacking and pinching her everywhere and uses swear words when he does it.

10. The children have also been quite seriously neglected. For example, Harry is illiterate and has other serious deficits in academic ability. The psychologist says that given that his non-verbal skills are within the normal range, it is likely that his lack of literacy is due to neglect. Amy's neglect was exemplified when she lived with her paternal aunt who reported that Amy had never been shown how to eat with a knife and fork. Chloe's IQ has been assessed in the very advanced level and the fact that she is underperforming at school indicates a lack of stimulation, in the opinion of the psychologist. The discrepancy between Katie's verbal and non-verbal scores indicates, in the opinion of the psychologist, environmental deprivation.

Is the Order proposed in the best interests of the children?

11. In this case, I attach great weight to the evidence of Ms Griffin, the psychologist which is contained in her first report (Exhibit 4), supplementary report (Exhibit 5) and her oral evidence, all of which is consistent. In particular, she provides critical evidence of many of the matters the Court must have regard to in determining the children's best interests, these being:-
- the need to protect the children from harm;
 - the nature of the children's relationship with their parents;
 - the children's need for stable and nurturing relationships;
 - the capacity of the children's parents to care for them;
 - the children's need for permanency;
 - the children's physical, developmental, emotional and intellectual needs being met.
12. Ms Griffin explained in Exhibit 4 and expanded in her oral evidence the concept of "attachment". At page 20 in her report she said:

“The quality of the attachment between a child and their caregiver is in essence an emotional connection that acts as a template, an internal working model, for future relationships and many aspects of a child’s life including social functioning, well-being, competency, personality and perception of self and others. The degree of responsiveness or nurturing of the caregiver to the child results in different styles of attachment ... A secure attachment allows the human baby brain to be wired so it associates human interaction with care and pleasure. ...

It has been estimated that 80% of maltreated children display insecure attachment reactions and behaviours. This may be because maltreated children are raised in chaotic, disorganised and inconsistent caring environments. A child may have little opportunity to perceive themselves as loveable, special or worthy of attention and care. Insecure attachment can lead to a number of mental health problems such as oppositional defiant disorder, conduct disorder and Post Traumatic Stress Disorder and behavioural issues such as: anger, aggression, temper tantrums, attention seeking, demanding, bullying and controlling behaviours, emotionally disconnected from self and/or difficulty engaging with others or responding to overt care and attention, passivity, sleep disturbances, nightmares, regressive behaviours and abuse related behaviours such as sexualised behaviours.”

13. Although the Court is now concerned with the three younger children, the nature of the attachment with the older two children, who were exposed to their parents’ abuse and neglect the longest, is helpful in indicating the nature of the attachment that the younger three have formed with their parents.
14. Harry, in the words of the psychologist, “has a disrupted attachment and is traumatised”. The psychologist explained that the type of attachment shown in Harry reduces his capacity for empathy. As he has not significantly attached to a caregiver, he lacks empathy in terms of the impact of his behaviours on others. The sexual abuse Harry perpetrates is described as an abuse reactive symptom due to trauma and described as about power and control over the object of his affection.

15. Amy is also described as having disrupted attachment. The extremely bad behaviour described by the psychologist as infantile rages are due to the disrupted attachment, neglectful parenting and trauma.
16. Chloe is described as indiscriminately affectionate to strangers, a common presentation for children with disrupted attachment and her little or no attachment to her mother is also supported by one of the tests administered by the psychologist. The observed interactions between the mother and all her children on two occasions at access were also consistent with a distant or disrupted attachment to the primary caregiver.
17. Under cross-examination, Ms Griffin said that forming a secure attachment was one of the preconditions to the children developing a feeling of being safe and that unless they feel safe, they cannot calm themselves or self-regulate their emotions.
18. The inability to regulate their emotions and challenging behaviours is evident, according to Ms Griffin in all of the children to varying degrees. Harry and Amy showed such violent and aggressive behaviour that they had to be separated in foster care from their other siblings and both have displayed incidents of infantile rage since being in care. On numerous occasions in each of the reports and in oral evidence, Ms Griffin referred to the children as being traumatised and their behaviours being trauma responses. She said that predictability, consistency and safety are essential in overcoming trauma.
19. Ms Griffin was clear that fundamental to the children being able to overcome their trauma reactive behaviours and develop in a psychologically and emotionally healthy way was their development of a secure attachment with a caregiver. She felt that predictability, consistency and safety could in part be provided to the children by them knowing clearly the long-term plans for their future, but said that while the children are unsure of whether they will be returning to their parents, they continue without the stability of

knowing their immediate future. She noted on a number of occasions that the children “need to be given permission to fully attach to their current caregivers”. Ms Griffin did not believe that maintaining a connection with the parents while hoping for them to improve, in the absence of knowing their long-term future, was in their best interests.

Could the best interests of the children be met by a shorter order?

20. In arguing for a shorter order, Ms Bowen, for the mother, relied in particular on the mother’s capacity and willingness to care for the children. So far as willingness is concerned, Ms Bowen relied upon the level of cooperation the mother has shown when working with the Department, her reliability and practical way of assisting the children at access visits, and the absence of negative features such as undermining the children’s placements.
21. However, Ms Griffin’s evidence about the mother’s capacity to change based on the tests she has administered, observations of the mother’s interaction with the children and the reports of the mother’s own history of abuse do not unfortunately demonstrate that she has the capacity to change. In her second report, Exhibit 5 in particular, the parents’ capacity to change was evaluated by Ms Griffin using Alan Carr’s ‘Judging Treatability in Child Abuse’ in his Handbook of Child and Adolescent Clinical Psychology as a framework. This framework refers to four treatability criteria and if the family met ‘two or fewer conditions’, it is unlikely they will benefit from treatment. None of the criteria, being acceptance of responsibility for abuse, commitment to meeting their children’s needs, commitment to improving their own psychological wellbeing or ability to change were met by either parent.
22. Despite being extensively cross-examined by the mother’s representative, Ms Griffin remained firm. She did not agree that the children may have exaggerated about the mother’s behaviour towards them and found the opposite to be true, with a high degree of consistency between the children.

She did not agree that the 123 Magic parenting course, even if completed twice, was the type of program that would assist in improving the parents' parenting skills and stated numerous times that these were highly traumatised children with very special needs.

23. Ms Griffin maintained that both parents were reluctant to acknowledge the problems that are present in their own lives and that neither parent has demonstrated any desire to improve their own psychological wellbeing. The psychologist remained of the view that the parents did not have the capacity, flexibility or emotional fortitude to follow through on changing their parenting and noted that both parents' low intelligence and their own abuse histories, limited their capacity for change.
24. The mother's lawyer also relied on the nature of the children's relationship to their family, together with s 8 of the Act to argue for a short-term order. I have already examined at some length Ms Griffin's evidence as to the nature of the relationship as a reason to indicate that a long-term order is in their best interests, rather than a short-term one.
25. Section 8 which states, among other things, that the family of a child has the primary responsibility for the care, upbringing and development of the child and that a child may be removed only if there is no other reasonable way to safeguard the wellbeing of the child, is also subject to the paramount interest, the best interests of the child. Section 8(4) which provides that if a child is removed from his or her family that he or she should be eventually returned to the family is also subject to being consistent with best interests.
26. In this case, the parents have unfortunately demonstrated that they have not met the best interests of their children, having regard to virtually all of the matters set out in s 10(2). There is also, despite cross-examination, virtually no evidence that they will be able to demonstrate a capacity to change in the future. Under cross-examination, Ms Griffin did not agree that the absence of notifications to the Department (as it then was) during the currency of the

assistance given by Catholic Care did demonstrate that the children's circumstances had improved. This is supported by the fact that after the assistance ceased, the mother again admitted that she was not coping, and the children's disclosures and behaviour, made it clear that she was not meeting their needs.

27. Similarly, when cross-examined at length about her opinion that the mother did not show likelihood to change within 2-3 years and asked this question "hasn't she demonstrated an ability to change", Ms Griffin said "she (the mother) hasn't started the process".
28. In this case, based on the evidence, it would be positively detrimental to these children for a short-term order to be made. The parents, or the mother in particular, should only be given an opportunity to demonstrate to the Department that she can address the child protection concerns, if this is grounded in reality. There must be some evidence of a capacity to change as opposed to a hope or best intentions. In the eight months that the children have been in care, there is no evidence that the mother has addressed any of the criteria for change referred to by the psychologist, even those matters that she could do without the children in her care, such as acknowledging the harm to them and addressing her own psychological wellbeing.
29. A short-term order would not address the most significant issue of relevance to the harm perpetrated against these children, that is their need for a secure attachment to a caregiver. The absence of a secure attachment is at the heart of their physical, psychological and emotional harm and if these needs, as well as their developmental and educational needs are to be met and they are to be protected from harm, they must be able to form a secure attachment with a carer. In this case, the psychological evidence, to which I attach great weight, is that "while the children are unsure of whether they will be returning to their parents, they continue to live without the stability of knowing their immediate future. The children need to be given permission

to fully attach to their current caregivers and the Department to be able to make long term plans for the children's wellbeing".

30. A short-term order will not give them the stability which is a pre-requisite to them forming a secure attachment, nor will it give them predictability, another essential requirement in overcoming their trauma.
31. The need for stable and nurturing relationships is not only referred to in s 10(2), but the "needs of the child for long-term stability and security" is a matter which I must consider in making an order under s 130. I must also consider the wishes of the children, but in this case, they have not been sought, quite properly in my view, due to their age. I have also considered the wishes of the parents who are asking for an order of parental responsibility to the CEO of 2-3 years. I have also considered the reports, in particular those containing the plans for the children to remain with their current carers, who have cared for them since coming into care, who are available for the long-term future and to whom they have started to form a secure attachment. There is no other person who is better suited to be given daily care and control of or parental responsibility for the children. In this regard, I have particularly considered the father, who is not only not asking for them to be placed in his care, but who is equally responsible for them being in need of protection, and shows no insight or capacity to meeting their needs.
32. For the reasons given, only a long-term order of parental responsibility until each child turns 18 will safeguard their wellbeing and is in their best interests. In each case, I make a protection order specifying a long-term parental responsibility direction giving parental responsibility to the CEO until each child turns 18 years of age.

Dated this 6th day of December 2012

Hilary Hannam
CHIEF MAGISTRATE