

CITATION: *Re Caroline & Jennifer* [2013] NTMC 015

PARTIES:

TITLE OF COURT: Local Court

JURISDICTION: Family Matters

FILE NO(s): 21038472, 21038473

DELIVERED ON: 4 July 2013

DELIVERED AT: Darwin

HEARING DATE(s): 12 June 2013

JUDGMENT OF: Chief Magistrate Hannam

**CATCHWORDS:**

*Care and Protection of Children Act* s 130(1)(c)(iii) – needs of the child for long-term stability and security.

“Permanency Planning” under NT Law.

**REPRESENTATION:**

Applicant: Ms Brown/Ms Muccitelli – OCF  
Childs Representative: Mr Kudra - Cridlands

Judgment category classification: A  
Judgment ID number: [2013] NTMC 015  
Number of paragraphs: 54

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

No. 21038472, 21038473

REASONS FOR JUDGMENT

(Delivered 4 July 2013)

Chief Magistrate Hannam:

1. On 12 June 2013 I made a protection order in relation to two children and indicated that I would give the reasons for that decision at a later stage. These are my reasons for that decision.
2. Jennifer who is 13 and Caroline who is almost 8, together with their brother Wayne have been known to the Office of Children and Families ('OCF' or 'the Department') and previous child welfare departments for all of their lives.
3. The children have also been under the care of the CEO of the OCF under a number of guardianship and parental responsibility orders made by Courts for a large part of their lives.
4. On occasions, there have been attempts to reunify the children with their parents and Wayne has been living in his father's care for some time. Jennifer also has been living with her father since December last year, though the CEO has retained parental responsibility and then daily care and control for her and Caroline since the matter has been before the Court.

5. The reason the children have been in care is because of the volatile relationship between their parents and exposure of the children to violence, the mother's extensive poly drug use, the father's alcohol misuse, the mother's mental condition and behavioural problems characterised by aggression, abusive language and emotional outbursts, inappropriate supervision, the mother's insecure accommodation and concerns about Jennifer caring for her younger siblings.
6. The current application seeking a further extension of the order giving parental responsibility for Jennifer and Caroline to the CEO is the seventh short-term order sought for Jennifer and the sixth for Caroline. There is no application in relation to Wayne. The affidavit filed in support of this application and some of the previous applications state that the reason the CEO is seeking a further extension is to give the parents the opportunity to address the issues that impact on their ability to meet their children's needs.

### **The Law**

7. Under section 136(3) of the Act, the part of the Act dealing with an application for a protection order equally applies to an application for an extension of the order.
8. Under section 128 of the Act, the Court may make the protection order as proposed (that is, in this case a two year order) may specify any other direction mentioned in section 123 as the Court considers appropriate, or may dismiss the application.
9. The Court must make the protection order if the Court is satisfied that the child is in need of protection or would be in need of protection but for the fact that the child is currently in the CEO's care and the order is the best means of safeguarding the wellbeing of the child. Therefore, the first question that arises is whether each of the children is in need of protection.

### **Is each child in need of protection?**

10. Section 20 of the Act sets out when a child is in need of care and protection and includes the child having suffered or being likely to suffer harm because of an act or omission of a parent of the child.
11. 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.
12. On the evidence before me both Caroline and Jennifer have been exposed to physical violence between their parents and psychological and emotional neglect for many years whilst in their parents' care. This is an unusual case in that the children have been in the care of their parents, or their father in particular, for many years whilst under a range of guardianship orders or protection orders, at the time of suffering harm.
13. Some of the particular examples of physical neglect include the children being left at home without appropriate adult supervision and the father's failure when they were returned to him to protect them from the mother and permitting her to reside in the family home. There are a number of examples of the children being exposed to domestic violence between the parents and the police attending the home and finding the father in an intoxicated state. There is evidence that Jennifer, from about the age of 10 was caring for her younger siblings, and that the parents were misusing substances which affected their parenting capacity. The mother's mental health, related in part to her substance misuse, has also often resulted in the children being harmed. The evidence suggests that these circumstances prevailed for a number of years, as similar issues arose in each of the previous applications.

14. In January 2013 when the Department sought the current further extension of the protection order, according to the supporting affidavit, the Department still had concerns about the father's progress in addressing the matters that resulted in the children being removed from his care and his willingness to engage with the OCF, despite Jennifer and Wayne being in his care. Concerns that the mother had recommenced drinking, that her aggressive behaviour had not changed and that her mental health was fragile and continued to impact upon her parenting capacity remained current.
15. Neither parent has filed any evidence in relation to the application. 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?**

16. Under section 14 of the Act, the wellbeing of a child is defined as including the child's 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.
17. This question is very closely associated with the paramount consideration for the Court in exercising the Family Matters jurisdiction and whenever a decision involving a child is made, that is, the best interests of the child. Section 10(2) of the Act sets out a number of matters to which consideration should be given in determining the best interests of a child. Section 10 falls within the Principles Underlying the Act, which must, as far as practicable, be upheld whenever a power is exercised or a function is performed under the Act. These Principles include the role of the family, child participation and principles relating to Aboriginal children, but where there is a conflict or inconsistency between a principle and the paramount principle, the other principle must yield to the paramount principle of best interests.

18. In determining whether the order is the best means of safeguarding the wellbeing of each child and is in their best interests, the Court must examine how the protection order will operate in reality. The Court must also consider the reports about the proposal under s 130(1)(c)(i). Jennifer has already been returned to the care of her father since December 2012, and Caroline has been with her current carer since November 2010. The proposal is that Caroline is to remain with this carer until she is reunited with her father once the CEO has determined that Jennifer is sufficiently settled.
19. Although I will consider each of the matters set out in section 10(2) in determining the best interests of the children, there are some matters which have particular significance in relation to these children to which I will specifically refer.

### **Protection from Harm**

20. Firstly, the need to protect the children from harm is particularly relevant in this matter. The most significant area of harm in relation to these children arises from the behaviour by the parents towards each other and the behaviour of the mother towards her children.

### **Domestic Violence and Parents' Relationship**

21. It appears on the evidence before me that the mother is by nature a volatile person and the relationship between her and the father is volatile and conflictual. Neither of the parents have presented evidence and of significance, the current nature of the relationship between them is unclear.
22. The mother has represented herself in Court on most occasions, though on one or two occasions was represented by a duty lawyer. She is clearly heavily pregnant and is currently homeless. It is also clear from a recent affidavit of the Case Manager, that on 17 April this year Police were called to the father's home to respond to a verbal domestic argument between the parents. The mother agreed to leave the home, but two hours later Police

returned due to further complaints of a verbal domestic argument and when Police attended, the father was found to be heavily intoxicated and became aggressive towards them. Jennifer and Wayne witnessed the verbal altercation and aggression towards Police. When the Police arrived, the mother again left the home.

23. Although this incident is said to be the first reported incident of violence between the parents since 2010, there is a long history of domestic violence between the parents over many years. There have also been previous occasions where despite the children having been returned to the care of their father and their father being aware of the child protection issues that arose from his relationship with the mother, he has permitted the mother to reside in the family home. There have been other occasions where the parents have indicated to the CEO that they were not in a relationship and had secured separate accommodation, when in fact the relationship has continued.
24. The father of the mother's unborn child is unknown and the Court only became aware recently that the mother regularly attends the house to clean and cook. It appears to me that in effect, the parents are co-parenting Jennifer and Wayne. In these circumstances, in light of the history of the relationship, there is a real risk in my view that if the children continue to reside with the father they will be exposed to conflict and violence between the parents.
25. There are also references in the affidavit supporting the extension of the protection order, to the mother's other violent behaviour resulting in her arrest and imprisonment for assaulting a Police Officer in early 2012 and in December 2012 in relation to an aggravated assault. No further details of the mother's criminal history have been provided to the Court.

## **Mother's Mental Health**

26. Another risk factor in relation to protecting the children from harm relates to the state of the mother's mental health, about which there has been concern for many years. In 2012 the Department made a decision to return Jennifer to her mother's care in June and for Caroline to be reunited with her mother in September. Within three days of Caroline being returned, the Police responded to an emergency call at the mother's home where she was found to be angry and threatening harm to a neighbour. Jennifer and Caroline witnessed the episode and Caroline in particular was described as visibly upset. As Police believed the mother was displaying behaviours indicative of paranoid delusions, she was taken to the hospital and later admitted to the psychiatric ward.
27. Upon her release from the psychiatric ward a few days later, the mother refused to sign a consent form to allow the OCF access to her medical records. The mother has not consented to being examined or to her medical records being provided to the Court. Although the OCF were able to gain access to the records, a report in relation to them has not ever been presented to the Court. Concerns about the mother's mental health have also been longstanding and in the absence of current information and in light of the episode late last year, I have concerns that the mother's mental condition is a risk factor for the protection of the children from harm.

## **Substance Misuse**

28. Another issue in relation to the need to protect the children from harm associated with their mother's care arises in relation to the impact of her substance misuse upon her parenting. There is a great deal of evidence that historically the mother has been a poly drug user and it appears that as recently as November last year, the physical presentation of the mother and her home indicated that she may have returned to substance misuse again. The mother also admitted to OCF officers in December 2012 that she had



started to drink alcohol again and this, combined with her ceasing medication contributed to the deterioration of her mental health.

29. In the course of the recent incident when Police were called to the father's house in April, according to the Department's affidavit, the father said that the mother was a drug addict and not able to care for Jennifer. According to the affidavit, Police also reported that there was a bong in the laundry sink at the entrance to the house when they attended which was later found to belong to the mother.

### **Children's relationship to family members and others**

30. The nature of the children's relationship with family members and other persons who are significant in their lives, another of the matters to be considered in determining the best interests of the children, must be considered for each child separately.
31. Jennifer has been under her father's care since December last year whilst Caroline has been under the care of her current carer for a number of years and her carer is significant in her life. The evidence appears to suggest that the children are quite resilient and have a strong relationship between each other and with their father, although there are some concerns that Jennifer is somewhat parentified.

### **Attachment relationships**

32. Caroline however, whilst identifying strongly with her family of origin, seems to be somewhat fearful of her mother in particular. She has also formed a secure attachment with her carer. According to the report of the clinical psychologist, attachment is a lifelong process that may be modified over the lifespan based on important attachment experiences with others or by experiences of loss and trauma. The psychologist reports that research indicates that secure attachment in early childhood with at least one adult,

not necessarily the mother or father, may protect the child from developing psychopathology later in life.

33. According to the psychologist, Caroline's behaviour in the foster home environment also demonstrates her perception of safety within that environment and the relationship and her well developed behaviour, verbal skills, motor skills and developmental abilities also indicate a consistent and safe environment. The psychologist concluded that Caroline's development would likely continue to be facilitated by this relationship with her carer and this environment. The psychologist said that given the secure attachment Caroline has with her carer, she would likely find a transition to her parent's care emotionally difficult.
34. The psychologist observed behaviours in Caroline which are indicative of a secure attachment relationship between her and her carer. The psychologist reported that whilst the carer displayed sensitivity to Caroline's needs and responded appropriately during observations and Caroline perceives that the carer has consistently met her needs, Caroline perceives that her mother has not been able to care for her.
35. According to the psychologist, Caroline indicated that she didn't mind living away from her siblings and enjoyed visiting her dad on Saturdays. Caroline expressed not wanting to see her mum and described the environment as boring, that her mum slept often, was "scary", "loud" and "didn't listen".

### **Wishes and views of the children**

36. The wishes and views of each of the children are both matters to which consideration should be given in determining each child's best interests and matters the Court must consider under section 130(1)(b)(i) in making a decision whether to make a protection order.
37. Although it was suggested by the legal representative for the CEO that Caroline had expressed a desire to live with her father, Caroline's lawyer

provided the children's wishes to the Court in February and June 2013 and said that they have consistently been that she wants to remain with her carer because it is safer and that she did not want to live with her mum and dad because she was not sure that they would look after her. Although Caroline is only seven and the Court must have regard to the maturity and understanding of the child, the psychologist describes her as appearing slightly older than her chronological age. Jennifer on the other hand wishes to continue living with her father.

### **Capacity and willingness of children's parents**

38. The next matter of particular relevance in determining the best interests of these children is the capacity and willingness of the children's parents to care for them. Essentially the OCF considers that the father is capable of caring for the children but needs some additional support for two years. However, it is of concern that throughout almost ten years of consecutive short-term orders, there have been repeated concerns about the father's capacity to protect his children and repeated attempts through short-term orders to enable him to demonstrate that he has this capacity. The question does arise as to whether the continuous making of short term orders to give a person an opportunity to demonstrate capacity is in the best interests of a child.
39. There is no doubt that the father has made improvement over the years, particularly in addressing his alcohol misuse. However, as recently as January this year in the affidavit supporting the extension of the protection order, the OCF Officer stated that although the father has made adequate progress in addressing the concerns that resulted in the children being removed from his care, there remain some concerns regarding his willingness to engage with the OCF.
40. The father has also stated that whilst he is capable of caring for one child and would care for Jennifer if he had to, this would affect his work and

social life, therefore affecting his parenting ability in the long run. If this is his view and he has not contradicted it, then very real concerns must arise about his capacity to care for three children.

41. It is not proposed under the short-term order to attempt reuniting either child with their mother during the currency of the order or when it ends. Although this appropriately recognises that the mother does not have the capacity to care for the children, the concerns I expressed in relation to the nature of the parents' relationship and the fact that it appears they are effectively co-parenting the children, also raises the question whether even reuniting them with their father under a short-term order is consistent with their best interests.

### **Permanency Planning**

42. Two other matters to which the Court must have regard in considering best interests are the need for permanency in the child's living arrangements, and the child's need for stable and nurturing relationships. There is also specific reference in section 130(1)(c)(iii) to the needs for long-term stability and security as a matter the Court must consider in making a decision whether to make a protection order. These sections appear to be a legislative expression of the notion of 'permanency planning'.
43. Permanency planning in the child protection field is the process of making long-term care arrangements for children with families to support their life time relationships and promote a sense of belonging<sup>1</sup>. The concept arose from research in the United States in the late 1950s that found that large numbers of children in care were languishing in out of home placements with no clear plans for the future. Later studies confirmed that 'drift in care' resulted in children being deprived of a sense of belonging and identity

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<sup>1</sup> See Claire Tilbury & J Osmond – Permanency Planning in Foster Care: A Research Review and Guidelines for Practitioners, Australian Social Worker (2006) 59, 3 265-280 available online @ <http://journalonline.tandf.co.uk>

forged from connections with family, community and culture and that negative consequences flowed into adulthood.

44. In English speaking jurisdictions, including Australia, permanency planning has been a guiding principle in child protection for a number of decades. Although there may have been some doubt whether permanency planning existed under the previous NT legislation, it appears that the inclusion of the reference to “permanency”, “stable and nurturing relationships” and the need for “long term stability and security” to which I have referred, do reflect this principle under current NT child protection law. Although in section 10(e), the reference to permanency relates to the child’s living arrangements, the references to stability, security and nurturing relationships, together with a consideration of the child’s physical, emotional and spiritual needs in section 10(2)(g) indicates that permanency planning is not only about placement, but about permanency in relationships.
45. Permanency may be met by reunification with a parent or parents, where effective intervention has improved their capacity to care for their children. It may also be met by permanent foster care or relative care. In this case, if reunification with the father could be effective as envisaged, then this would satisfy those sections of the Act dealing with permanency planning. If this is not possible, or risks of an unsatisfactory reunification are so great that it would not be in the child’s best interests, then a long-term order to 18 with the child placed in permanent foster care may also address these sections. In this case Caroline’s carer has indicated she is willing and available to care for Caroline under a long term order.
46. In this case, Jennifer has been returned to the care of her father, and whilst I have concerns about the relationship with the mother, and the impact she may have upon the children, the father appears to have satisfactorily

addressed a number of the issues leading to the children coming into care and Jennifer seems reasonably well settled.

47. On the other hand, there appear to be some additional risks involved in returning Caroline to the care of her father. As previously indicated, it is not clear that he would cope with three children in his care, and there are the very real risks that the mother will be present at his home.
48. There may also be risks associated with the return of Caroline to her current carer should the reunification fail. The Case Manager gave oral evidence concerning the return of Caroline to her carer when she attempted reunification with her mother previously failed, and said that at that point, the carer may have very easily taken other children into her care and not been in a position to care for Caroline. Very real risks in my view remain that the reunification of Caroline with her father may likewise fail and she could lose the opportunity to return to her carer to whom she is well attached.

### **Effect of Changes in Circumstances**

49. The likely effect on the child of changes in circumstance is another of the matters to which consideration should be given in determining best interests. The psychologist reports that Caroline would likely find a transition to her parents' care emotionally difficult and that she would likely require support regarding the transition and regarding the loss and change of a significant attachment relationship. This support may include psychological intervention on a regular basis and consistent monitoring of Caroline and her parents' progress by OCF staff.
50. The mother did not consent to the psychologist assessing her alone or with Caroline. However, the mother's attitude towards Caroline's needs have been revealed to some extent in her interchange with the Court when she represented herself. On one occasion (28 February 2013 Tp7) the mother

made statements such as “[Caroline] has issues that we don’t have swimming pools and two cars, this is what [Caroline’s] problem is”, which indicate in my view, a failure to understand the nature of the relationship Caroline has with her carer and the impact of separation from the carer. I am not confident that the mother would support Caroline receiving ongoing psychological intervention.

51. Caroline’s need for permanency, for stable and nurturing relationships and the likely effect on her of any change into her circumstances, would not be best met in my view by another short-term order.

### **Section 130 of the Act**

52. Under section 130 of the Act the Court must also have regard to the wishes of the parents, who have both indicated that they support the order proposed, that is a short-term parental responsibility direction. The mother also indicated that she specifically opposed any longer order.
53. Taking into account all of the matters referred to, I consider that as Jennifer is 13, has already been returned to the care of her father, has expressed her own view to remain with her father (who on the evidence before me, has the strongest relationship with Jennifer) and as her needs appear to be met, her wellbeing is safeguarded by the order proposed. For those reasons, I made a protection order specifying a short-term parental responsibility direction giving the CEO parental responsibility for Jennifer for two years.
54. In relation to Caroline, I am not satisfied that many of the aspects of best interests or safeguarding of her wellbeing will be met under a short-term order and have been invited by the child’s representative to make a longer order. In circumstances where the Act specifically requires the Court to consider the needs for long-term stability and security, together with the matters relating to best interests, in my view, only a protection order which specifies a long-term parental responsibility direction until the age of 18

will meet Caroline's best interests and will be the best means of safeguarding her wellbeing. Accordingly, I made a protection order specifying a direction giving parental responsibility for Caroline to the CEO until she reaches the age of 18.

Dated this 4<sup>th</sup> day of July 2013

A handwritten signature in cursive script, reading "Hilary Hannam", written over a horizontal line.

Hilary Hannam  
CHIEF MAGISTRATE