

IN THE CHILDREN'S COURT OF VICTORIA
FAMILY DIVISION

APPLICANT: Department of Health and Human Services (DHHS)
CHILDREN: C siblings*

MAGISTRATE: GAIL HUBBLE

DATES OF HEARING: 25 March 2019 – 10 April 2019

DATE OF JUDGEMENT: 10 April 2019

CASE MAY BE CITED AS: DHHS and C siblings [2019] VChC 6

REASONS FOR DECISION

Catchwords: Children in need of protection – three siblings subject to Interim Accommodation Orders in the care of their stepfather – two of the children with special needs – submissions on the placement of the children pursuant to Family Preservation Orders – consideration of matters including parenting styles and mental health of both parents, and the children's express wishes – risks of forcing the children to move placement again – Family Preservation Orders made for each child for 12 months, placement with their mother and stepfather – fortnightly weekend contact with their father, subject to the children's wishes.

REPRESENTATION:

<u>PARTY</u>	<u>LEGAL REPRESENTATIVE</u>
<u>DHHS:</u>	Ms McDonald
<u>Mother:</u>	Mr Draper
<u>Father:</u>	Ms Brenton
<u>Stepfather:</u>	Ms Jefferson
<u>HC:</u>	Mr Dawlings
<u>BC:</u>	Ms Athanasopoulos

* This judgment has been de-identified and anonymised with the use of pseudonyms.

HER HONOUR:

1. HC (born in 2007), BC (born in 2008) and FC (born in 2012) are the children of JC (the father) and KD (the mother).

Current Applications

2. On 14 February 2018, the Department of Health and Human Services (**the Department**) filed an application for emergency care in respect of each of the children. Those applications state that the children are in need of the protection on the basis that they are at risk of both physical and emotional harm (pursuant to sections 162(1)(c) and 162(1)(e) of the *Children, Youth and Families Act 2005 (the Act)*).
3. The children are currently subject to Interim Accommodation Orders placing them in the care of their stepfather. The Department submits that the Court should make a Family Preservation Order for each child for a duration of 12 months, placing the children in the care of their father. The mother and stepfather oppose that order and submit that the Court should make a Family Preservation Order for each child, placing the children in their joint care.

Protective Concerns

4. The protective concerns primarily revolve around the parents' mental health, allegations of inappropriate physical discipline and abuse, and the history of family violence allegedly perpetrated by the father against the mother, much of which is historical, and which the father denies.
5. The children were removed from the care of their mother on 14 February 2018 following a phone call from the mother to the Department in which she stated that she needed help with the children and is alleged to have admitted hitting them. The children were placed on an Interim Accommodation Order to their father and his partner SF. On 17 October 2018, the children were removed from the father and SF's care and placed on an Interim Accommodation Order to their stepfather, due to a sudden and significant deterioration in the father's mental health.
6. The protective concerns outlined above arise against a backdrop of HC and BC both having special needs. Both children have been diagnosed with Autism Spectrum Disorder and ADHD, while HC has also been diagnosed with Oppositional Defiance Disorder (Exhibit 24, letters from paediatrician Dr G). Both boys are prescribed Ritalin and Catapres.
7. There is no doubt that the boys having special needs means that they are much more difficult to parent, and that poor parenting will impact upon them even more severely. The boys present with a range of extremely troubling and disturbing behaviours. HC's aggressive,

defiant, at times violent and controlling behaviour has been noted by numerous professionals, and appears to be getting worse. BC has a more vulnerable, emotional presentation, which also appears to be more severe at present.

8. The evidence indicates four possible causes of their behavioural difficulties:
 - a. the underlying conditions they have been diagnosed with
 - b. their exposure to family violence in the past
 - c. placement changes and instability
 - d. deficient parenting, including verbal and/or physical abuse.

9. It is not possible for me to determine which role these various factors have contributed to the children's current presentation. In evidence, the mother stated that the children (particularly HC) exhibited troubling behaviours at a young age, and professional assistance was sought by her for HC when he was in kindergarten. There is no doubt in my mind that, while deficient parenting and past trauma may have played a role in contributing to the children's difficult presentations, they are by no means the sole or even main cause.

The Mother's Mental Health

10. The evidence indicates that the mother suffers from some mental health concerns, which have been present for a considerable period of time. A forensic psychiatrist Dr O examined the mother and submitted a report expressing the view that her presentation is more consistent with Post Traumatic Stress Disorder than a personality disorder. Ms A, the mother's treating psychologist agrees with that diagnosis, and gave evidence that the mother is making good progress in her treatment. Conversely, the clinician from the Children's Court Clinic, Dr P, has completed two reports on the family (exhibits 17 and 18) and is of the view that the mother's history of interpersonal difficulties, aggression and impulsivity is more indicative of an enduring personality disorder, which may mean that it is more resistant to treatment.

11. I do not think I need to make a finding about the proper description or diagnosis of the mother's mental health difficulties. The question for me is how confident I can be about the prospects of her symptoms resolving sufficiently that they do not pose a risk to the children if they are placed in her care. In my view this requires me to consider the mother's mental health history as well as current evidence regarding the mother's behaviour.

12. The evidence indicates that the mother has suffered from some mental health symptoms for a considerable period of time. A Vic Psych Plus assessment from 2010 concluded that the mother has some concerning personality characteristics, including emotional lability and a tendency to overreact. The report stated that she can be erratic and abusive.

13. These observations are borne out by the observations of numerous professionals, who have noted the mother to be aggressive and difficult, and to overreact to perceived wrongdoings. Indeed, after hearing the mother give evidence, it was apparent to me that she still tends to focus on the wrongdoing of others to explain her distress and anger. For example, she explained some of her poor behaviour at contact visits by pointing to distressing things which some contact supervisors said to her. A similar approach was taken to the school, with the mother blaming the school's shortfalls for her anger and frustration. She was unable to see that even if her complaints about the school and the contact supervisors are valid, her level of anger and her behaviour was an overreaction. The mother clearly retains a tendency to freely express her anger and her frustration when she feels it is justified, although I do accept that she is endeavouring to address these issues through her work with Ms A. Ms A gave evidence that the mother attends regularly and is highly motivated to address her issues.
14. There is little doubt in my mind that the mother's traits do pose risks for the children, particularly when they are exposed to her anger towards them or towards others. It is also clear that these are long standing patterns of behaviour that are unlikely to ever be completely overcome, although I accept that they can improve.

The Mother's Parenting

15. The evidence painted a mixed picture of the mother's parenting. I have no doubt that she can be a loving, warm and engaging mother. She has been proactive in securing support for the children, and in completing parenting courses. While the Reports submitted by the Department focussed almost exclusively on her parenting shortfalls, I have no doubt that she deeply loves her children and is committed to caring for them to the best of her ability.
16. However, there is also little doubt in my mind that some of the mother's personal or mental health difficulties can lead to deficient parenting which fails to meet the children's needs and which exacerbates their complex difficulties. I accept the opinion of the clinician Dr P that the children's behaviour can be very triggering for the mother and can lead to anger, impatience and even aggression to be displayed towards the children. Having said that, I found it difficult to form a clear view of how often this occurs. Reading over the history of child protection intervention, there have been a number of crisis points where the mother either relinquished care of the children or needed assistance, such as respite care. But I also accept that numerous crisis points do not necessarily paint a clear picture of the parenting that goes on overall or between the crises. I also accept that the children are very challenging, and many parents would struggle to manage their behaviour.
17. When I consider the contacts between the mother and the children which were supervised by the Department this year, they reveal numerous examples of parenting that do not meet

these children's complex needs. The mother often exposed the children to inappropriate behaviour which would have had the likely effect of worsening their anxiety. When the mother gave evidence she disputed some of the descriptions contained in the reports about her behaviour at contact, but I have little doubt that some if not many of the examples are accurate. I accept the mother's evidence that she was struggling to manage contact in the Department offices, that she was offended at some of the things that contact supervisors said to her, and that she struggled to understand the rules that apply to parenting when it is supervised by the Department. But I still formed the view that she could have done more to put her children at ease during these contacts. I think the mother let her anger and irritation at the Department take priority over the importance of providing the children with the best contact possible. But, as I have already stated, I also have little doubt that the mother can often be loving, devoted and engaged.

18. In relation to the allegations that the mother has perpetrated physical abuse against the children, the evidence did not enable me to draw any clear conclusion that this has occurred or, if it has, how often or how serious it has been. In relation to the phone call to the Department on 13 February 2018 where the mother allegedly disclosed hitting the children, The mother gave evidence that she was unable to manage the children's behaviours, which included HC trying to choke BC, and that she called the Department to get help. She told the Court that she said "I bet if I said if I bashed my children that would get a worker on the phone." The Department maintains that the mother stated in the phone call that she had hit the children. In addition, the children disclosed physical abuse by their mother when interviewed by child protection workers on 13 February 2018 (Exhibit 1, Protection Report, page 12).
19. The evidence discloses that the children have at various times made disclosures of physical abuse by both parents. It is very difficult for me to form a clear view of the veracity of these allegations. On one occasion, HC threatened the father with fabricating abuse (Addendum Report 5 April 2018, exhibit 2), and on another HC disclosed that his father had held him up by the neck against a cupboard and threatened to send him to foster care (Addendum Report 17 April 2018, exhibit 3, page 5). I view these disclosures with some scepticism. The children are troubled and sometimes say things for effect or to achieve some desired outcome. The evidence also indicates that they sometimes influence each other to say things.
20. The Department essentially took the position that where the children disclose abuse by the mother it should be believed but when the children disclose abuse by the father it is either coached or fabricated by the mother to cause problems for the father. I think this approach was somewhat unfair.

21. In relation to the allegations of physical abuse of the children by the mother, I do not discount the possibility that the mother has responded to the children's behaviours in a physical manner, and at times she has been verbally abusive towards them. However, I also note that it was the mother who rang the Department on 13 February 2018 and self-disclosed her own distress and need for help. I do not doubt that the mother was in great need of assistance at this time.

The Father's Mental Health

22. The evidence around the father's mental health indicates that he experienced a serious mental health episode mid-October 2018, during which time he expressed some suicidal thoughts, but that his mental health is now stable. Nevertheless, the episode in October 2018 represented a significant decline in the father's mental health, and it left me with some concerns regarding the stability of his mental health, particularly in light of his comment to a Department worker on 14 January 19 that he was still not in a good place and not in a position to care for the children. The father's history of poor mental health is also relevant. Overall, I was left with an unclear picture of the risks around the father's mental health. This is of concern when considering the potential effects of another placement change on the children.

The Father's Parenting

23. While the father has been an inconsistent presence in his children's life, he has demonstrated some strong parenting skills. While the children were in his care during 2018, and after an initial settling period, they presented as more settled at school, and the behaviour of BC and HC improved. The Take 2 worker Ms H told the Court that the father demonstrated insight into HC's needs, and that he provided HC with verbal encouragement and support when HC was talking to Ms H. The father also engaged extensively with the ELMHS Core Team service. I accept that the father genuinely wants to provide his children with a loving home that meets their needs.
24. However, I also have to consider the fact that his relationship with the children has, to use his words, gone back to square one. I know the father is of the view that the children are being discouraged by their mother and their stepfather from seeing him, and I don't discount this possibility, but equally it may be that the children felt rejected and unsettled after the placement with their father failed in October 2018. It is clear that the children are quite conflicted, and that they have experienced considerable instability and change. It is difficult to say with any certainty what influences, internal or external, are currently driving their preferences.

Breaching of Orders by the Parents

25. The evidence established that the mother breached the Interim Accommodation Orders on more than one occasion by spending time with the children outside of the contact permitted by the orders. I also accept that the father breached the Interim Accommodation Orders late last year when he was struggling with the care of the children, and sought assistance from the mother.
26. I heard evidence from Ms F, a family friend who was assisting in the supervision of the mother's contact that, as far as she was aware, the rules around contact were being complied with by the mother. Ultimately, the allegation that the orders were being breached by the mother is probably true to some extent, but has not played a large role in my decision.

Current Placement with their Stepfather

27. The stepfather has provided the children with a significant measure of stability since the placement breakdown in October 2018. The children have instructed that they like living with their stepfather. While Ms N, the Student Wellbeing Officer at the children's school gave evidence that there has been a recent and significant deterioration in the children's behaviour, it is difficult for me to reach any firm view as to the causes for this. The recent reduction in contact with their mother and the stress of the Court proceedings may be playing a role.
28. I have taken into account the Department's view that the stepfather will prioritise his relationship with the mother over the children. There may be some risk of that, particularly given the mother's at times forceful personality, but I also accept that the stepfather has been a positive presence in the children's life, and in my view it is likely that he will continue to play such a role.

The Children's Views

29. BC and HC (who were both represented in the proceeding) instructed that they want to live with their mother. Failing that, they want to live with their stepfather. They both instructed that they do not currently want any contact with their father.

Clinic Assessment and Recommendations

30. The Children's Court Clinician, Dr P, recommends a change in placement back to the father, and is of the view that the children's stated preference to live with their mother and/or remain where they are should not be an impediment to the placement change. I note that Dr P demonstrated less confidence in her recommendation during cross-examination, particularly

when questioned about the risks around the father's mental health. She ultimately concluded that it's a balancing exercise for the Court.

31. Ms S the team manager from the Department supports the Clinic's assessment due to the repeated cycles of the mother not coping with the care of the children, the improved behaviour demonstrated by the children once they settled into their father's care, and the insight which the father has demonstrated into his children's needs.

Decision

32. I have had regard to all of the above matters, including the parenting styles and mental health of both parents, and the children's express wishes. I have considered the benefits and risks associated with another placement change for the children, and have had regard to the fact that the mother has always been the children's primary care giver. Ultimately, I am not persuaded that the mother poses an unacceptable risk to the children at the current time, particularly with the support of the stepfather who is now living in the house. In my view, the risks of forcing the children to move placement again, against their express wishes, are too great. I accept that there are likely to be future crises experienced by the mother, but in my view neither placement option eliminates this possibility.
33. I have decided to make a Family Preservation Order for 12 months for each child in favour of the mother and their stepfather, with fortnightly weekend contact between the children and their father, subject to the children's wishes (see attached conditions)
34. In relation to the proof of the protection application, ground C (physical injury) is not proven. Ground E (emotional/psychological harm) is proven, on the basis that HC and BC both suffered actual harm, while FC was in need of protection due to a likelihood of harm.

HC, BC AND FC

FAMILY PRESERVATION ORDER CONDITIONS

1. Mother and stepfather to accept visits and co-operate with DHHS.
2. Father to accept visits and co-operate with DHHS.
3. Mother and stepfather to accept support services, including parenting supports, as agreed with DHHS.
4. Father to accept support services, including parenting supports, as agreed with DHHS
5. Mother must continue to go to a psychologist and/or psychiatrist as agreed with DHHS, and allow reports to be given to DHHS. The issues to be addressed with the psychologist and/or psychiatrist should include emotional regulation, anger management and positive parenting.
6. Father must continue to go to a psychologist and/or psychiatrist as agreed with DHHS.
7. Mother and stepfather must ensure that the child receives treatment by a psychologist, psychiatrist or counsellor, as agreed with DHHS.
8. Mother and stepfather must not expose the child to physical or verbal violence.
9. Father must not expose the child to physical or verbal violence.
10. Father may have contact with the child for a minimum of every second weekend, from Friday night to Sunday 4pm. Contact is subject to the children's wishes. The mother and stepfather must not discourage the children from attending contact with the father.
11. Child may have respite as agreed between the parties.
12. Mother, stepfather and father must not make derogatory comments about any of the other parents, in the presence of the child.
13. Child must not be enrolled in a new school without the agreement of DHHS