

IN THE CHILDREN'S COURT OF VICTORIA FAMILY DIVISION

DHHS v TH & CH

Application for a new Interim Accommodation Order

MAGISTRATE:	K. Parkinson
SUBMISSIONS DECISION:	2 April 2020
NEUTRAL CITATION:	[2020] VChC 1

1. This is an application for a new IAO in circumstances where the placement with an aunt is no longer available. It is proposed that the children be placed on an IAO to the paternal grandfather. There is no disagreement regarding this placement. However, the DHHS seek to alter the current parental contact conditions.
2. I have refused the DHHS' application to alter the parents contact from physical contact two times per week supervised by the grandparent/s, to contact only by video or audio arrangements for the following reasons.
3. The current contact condition is that the parents contact is twice per week at times and places as agreed with the parents, carers, supervisors and DHHS. I am satisfied that face-to-face contact with their parents is in the best interests of the children.
4. The DHHS propose that all contact be suspended in view of COVID 19 notwithstanding that the family are supervising contact.
5. DHHS initially submitted this was because the Grandparents were older and that there was a pregnant woman in the household where the children were to reside and therefore contact should not occur because of increased COVID 19 risk.
6. Apparently, the grandfather has no objection to contact continuing and is willing to supervise that contact. I asked Counsel for the DHHS to make inquiries of her instructor as to whether the Grandfather was still prepared to supervise contact and as to whether he had concerns in relation to health risk in doing so either for himself or others in the home.
7. I was advised by Counsel that DHHS management have prohibited the court officer from making inquiries of a family member who is the proposed carer of the children in circumstances where the current family member carer is unable to continue to provide care. Counsel for the mother assured the court that the grandfather remains prepared to supervise contact and does not hold those concerns as he is confident that he is able to manage the location and timing of the contact.
8. After this advice to the court, the DHHS altered their instructions to Counsel to instruct that any contact would be a breach of the emergency regulations relating to COVID-19.

9. It was submitted that because of the emergency regulations, contact would be breaking the law if supervised by the grandfather and if the parents and grandfather and children congregated either outside or inside.
10. The mother and father are parents, even if not providing direct care to the children, and by their contact they provide support. That is sufficient in my view to overcome the alleged legal difficulty.
11. Alternatively, the paternal grandfather being the person to whom the IAO is made is *in loco parentis* in relation to the children and is therefore able to facilitate their contact with parents. This status overcomes the legal difficulty alleged. The children are part of both the household of the paternal grandfather and the household of their parents (even though as to the latter they have not recently been residing, it is their usual parental residence). There is no final order in this case altering the guardianship status of the parents or transferring it to any other person. The orders in place are interim only.
12. In addition, the order of this court that the grandfather be authorised to supervise parent's contact and that the parents be authorised to have contact with their children is a lawful order of a court and appears to be an exception in the regulations. In this regard I refer to the Chief health officer's directions under Part 3 – Reasons to leave premises – paragraph 7, and in particular, paragraph 7 (1) (b).
13. The order I make today is an IAO to the paternal grandfather.
14. Mindful of the difficulties for the grandfather of caring full time for two young children and also supervising contact and noting that as this is a new and more onerous responsibility than merely supervising contact, it is necessary to ensure that the grandfather is not overburdened and that there is some discipline or structure imposed upon the process of contact, so that the grandfather is not in a position of having to negotiate.
15. I asked the DHHS for assistance in proposing how contact might proceed as to location and duration and asked Counsel for the mother the same question. I have asked for a structure and precise contact arrangements proposed as to time, duration and location. Counsel for the mother has proposed a draft contact condition. I have not received any assistance from the DHHS in this regard.
16. I have heard from Counsel for the mother that contact has already been taking place at the parent's home supervised by the paternal grandfather on weekends. He proposes that this continue. Contact has in fact been taking place at the parent's home last weekend and the weekend prior. This is confirmed by Counsel for the DHHS.
17. Having considered all of the above, I am satisfied that the contact condition ought to be as follows:

New Conditions 23 and 24 Contact – Mother and Father

Mother/Father may have supervised contact with the children twice per week at times and places as agreed between the parties and carer for a maximum of 6 hours on each occasion. The contact may occur at the parent's home. Both parents may be present for the contact. Department is to be kept informed. Paternal Grandfather, Maternal Grandfather and Maternal Grandmother are suitable supervisors. The supervisor of contact is entitled to end the contact if he/she considers it appropriate.

18. Otherwise the conditions remain the same as those on the previous IAO with the addition of a respite condition which has been added to the minutes.

Magistrate Parkinson

Children's Court of Victoria

2 April 2020.