

**IN THE CHILDREN'S COURT OF VICTORIA
FAMILY DIVISION**

Re Lily (a child)

MAGISTRATE: MAGISTRATE S WHITTLE

DATE OF REASONS/ORDER: 3 November 2025

CASE MAY BE CITED AS: Re Lily (a child) [2025] VChC 4

Catchwords: CHILD PROTECTION – Application by maternal aunt for joinder in CBSO extension proceeding – Appointment of best interests lawyer for child

BACKGROUND

This is an application for joinder made by Ms MA, who is the maternal aunt and former kinship carer to Lily who is currently aged 3 years and 7 months.

Lily is the subject of an application to extend a CBSO.

Lily has a complex medical presentation.

She was diagnosed with a global developmental delay during her first year of life and was initially suspected to have cerebral palsy.

From around 16 months of age, she experienced repeated seizures that resulted in further testing and ultimately, a confirmed dx of TUB B4A-related leukodystrophy (a rare genetic condition).

Lily also has a confirmed diagnosis of hypotonia (or low muscle tone) which is a condition commonly associated with leukodystrophy.

Lily's mother, Ms SA, has a diagnosis of schizoaffective disorder and is the subject of a current Community Treatment Order. She resides in supported accommodation that is funded by the NDIS. The report prepared by the Department and dated 17.10.25 confirms there are lengthy periods during which Ms SA is uncontactable due to a combination of mental ill health and transience. Currently, she has no contact with Lily. Her finances are managed by the State Trustees. Ms SA is yet to participate in these proceedings.

Lily's father, Mr FD lives in Queensland. He has a confirmed diagnosis of cerebral palsy and quadriplegia. He lives in semi-independent accommodation that is funded by the NDIS. Currently, he only has virtual contact with Lily. He is not in a position to care for Lily and supports the joinder application made by Ms MA.

Neither parent participates in case planning or care team meetings. There are significant barriers to either parent being funded to participate in proceedings in any ongoing capacity.

Lily has one sibling, CA, who is currently aged 11 months. CA resides with a foster carer and has contact with Lily every three weeks.

Ms MA, the applicant, cared for Lily from the ages of 8 days until she was 2.5 years old.

On 5 September 2023, Lily was made subject to a CBSO.

When the order was made, Lily was residing with Ms MA who was described in Department reports at that time as having "a loving a caring relationship with [Lily]" and as able to provide "a loving stable home". Ms MA was further described as "very dedicated to the care of [Lily]", "advocates strongly for [Lily] to ensure she is getting the care that she requires" and that Lily is "safe and well cared for in her current placement".

In its written submissions, the Department submit that three months later, from December 2023, significant concerns arose in relation to the quality of care that Ms MA was providing to Lily as a result of her failure to implement professional recommendations and disengagement from services.

On 28 August 2024, the Department removed Lily from Ms MA's care and transitioned her to a short-term foster care. In September 2024, she was placed in a second foster care placement where she remains.

In November 2024, further testing confirmed that Lily had a diagnosis of leukodystrophy. It is unclear how this diagnosis impacted the direction of therapeutic intervention, if at all.

The Department submit that Lily is thriving and making significant progress in her current placement.

Following Lily's removal, Ms MA and Mr FD sought an internal review of the decision. The internal review was commenced six months later in March 2025 and concluded in April 2025. The internal review endorsed the decision of the Department.

In May 2025, Mr FD initiated proceedings in the Victorian Civil and Administrative Tribunal [VCAT]. Ms MA is joined as a party to these proceedings, which are tracking towards a contested hearing.

In its written submissions, the Department included various detailed documents prepared in respect of the current VCAT proceedings, including affidavits in support.

The submissions confirm that Ms MA continues to see Lily in a supervised setting, at Department offices every fortnight. During her contacts she facilitates Lily's virtual contact with Mr FD. Ms MA is invited to and according to the Department report dated 27.10.25, attends care team meetings.

For all intents and purposes, she is the only family member who is (and is also capable of being) actively involved in Lily's life.

JOINDER APPLICATION – PRINCIPLES & ORDER

Under s.522(1)(c)(ii) of the *Children, Youth and Families Act 2005* [CYFA], in determining the joinder application, I must consider three matters:

1. Whether Ms MA has a direct interest in the proceeding.
2. Whether joinder is practicable.
3. Whether it is in the best interests of Lily that joinder be granted.

I am satisfied – and note it is sensibly conceded in the Department's written submissions – that Ms MA has a direct interest in the proceeding.

With respect to practicability, I note that the Department rely on the following arguments against the practicability of any joinder:

- (i) It would introduce adversarial issues contrary to s215B of the CYFA which promotes child-focussed hearings → resulting in the joinder removing focus from Lily and towards a contested narrative.
- (ii) It risks duplication as a result of concurrent VCAT proceedings → the Department cautioned the Court against judicially reviewing an administrative decision in circumstances where the objective sought by Ms MA is reunification where she is neither a parent or "unlikely to be deemed a psychological parent".
- (iii) It contributes to delay in progressing permanency planning for Lily who requires stability and certainty given her complex medical needs.
- (iv) It requires unnecessary exploration of psychological parenthood, which is not determinative and does not justify joinder.

I am not persuaded by any of the submissions raised by the Department.

The application before this Court is separate and involves an application of the laws pursuant to Part 4.9 of the CYFA. It is not a judicial review. It does not involve a review of an administrative decision.

I accept that the outcome of the VCAT proceedings will be relevant, but not necessarily determinative.

I reject the arguments that granting the joinder application will delay progression of permanency planning to the detriment of Lily and her current stability. Respectfully, the current court proceedings are not a rubber-stamping exercise that ought to be expedited so that case planning processes may be progressed.

Lily remains subject to and protected by a CBSO for the duration of these proceedings, until a final determination is made. In my view, her circumstances are not prejudiced by the application, even if its trajectory is changed as a result of the joinder application being granted.

I reject the submission that:

- a) joinder would warrant an unnecessary exploration of psychological parenthood; and
- b) were such an assessment deemed necessary it could proceed without Ms MA being joined as a party.

In my view, a joinder application does not require me to foresee the precise trajectory of an application. It is sufficient for me to be satisfied that there is a direct interest, and the applicant's participation is practicable and in the best interests of the subject child.

On the issue of practicability, it is a fundamental misunderstanding of the purpose of s215B of the CYFA to conflate cooperative relationships with the absence of a contraindicator. This section – introduced in 2013 – is a procedural provision which commences 'Without limiting Part 1.2...'. Part 1.2 contains the 'best interests' provisions, which include not just s.10(3)(f): 'the desirability of continuity and permanency in the child's care' but also s.10(3)(b): 'the need to strengthen, preserve and promote positive relationships between the child...and family members' and s.10(3)(h): 'if the child is to be removed from the care of her parent, consideration is to be given first to the child being placed with an appropriate family member...before any other placement is considered'."

On the issue of best interests, I further note that the Department submits any joinder is anathema to the best interests of Lily based on the following:

- She is currently thriving in placement.
- The joinder risks destabilising Lily's care arrangements and delay decisions critical to her health and development.
- Potentially exposes Lily to cumulative harm as historical evidence shows that Ms MA is unable to meet her complex needs.

I do not accept that the joinder risks destabilising Lily's care arrangements and potentially exposes Lily to further cumulative harm. These submissions were poorly expressed and presupposed that the joinder application would result in the Court making a decision or taking an action that would go against Lily's best interests. I reject this argument in its entirety.

I am satisfied that the joinder sought by Ms MA is practicable – noting that she has competent legal representation – in addition to her joinder being in Lily's best interests. I therefore order pursuant to s.522(1)(c)(ii) CYFA that Ms MA be permitted to participate fully as a party in this proceeding.

APPOINTMENT OF BEST INTERESTS LAWYER FOR CHILD

I find that Lily's circumstances are exceptional within the meaning of s.524(4) of the CYFA. I am also satisfied that it is in Lily's best interests that she be legally represented by a best interests lawyer in this proceeding where there are likely to be issues disputed between the Department and Ms MA and where a best interests lawyer is likely to be able to assist the Court to make decisions in the best interests of Lily.