IN THE CHILDRENS' COURT OF VICTORIA
AT MELBOURNE

FAMILY DIVISION

DFFH
Applicant

v

M & F

MAGISTRATE: MAGISTRATE LEVER-DAVIDSON

WHERE HELD: Melbourne Children's Court

DATE OF HEARING: 11-15 May 2026

DATE OF DECISION: 12 June 2026

CASE MAY BE CITED AS: DFFH v M & F [2026] VChC 2

REASONS FOR DECISION

Catchwords: Child protection – DFFH applications for Care by Secretary Orders – two children aged 9 and 10 at time of hearing – parents sought further Family Reunification Order for each child – commencement of the *Children, Youth and Families Amendment (Stability) Act 2026* (CYFASA) – whether it is in the best interests of the children to afford the parents further time to pursue reunification – father's mental health vulnerabilities – mother's limited capacity to mitigate those risks – children settled within a stable kinship network – significance of parent-child relationship – amended s 10(3)(f) *Children, Youth and Families Act 2005* emphasises stability – children remain at an unacceptable risk of harm in the care of either parent at this time – pathway to reunification – need for sufficient time for intensive services to undertake necessary work with each parent – further Family Reunification Order made for each child for 12 months.

APPEARANCES:	Counsel
For Applicant	Ms Armstrong
For Mother	Ms Foy
For Father	Ms Whitelaw
For Child 1	Ms Daly
For Child 2	Ms Weinberg

Evidence

Witnesses [anonymised]

Ms KM, DFFH Team Manager

Dr MR, Children's Court Clinic

Mr C, Registered Psychologist

Dr F, General Practitioner

Mr R, DFFH current allocated child protection worker

Sergeant PP, Victoria Police

Ms A, Family Preservation and Reunification Program

Ms T, Primary School Wellbeing Officer

Mr J, Neuropsychologist

Ms AT, Art of Wellbeing, Art Therapist

Ms PT, Art of Wellbeing, Play Therapist

Mr H, DFFH current Acting Team Manager

Documents:

A list of the 44 documents tendered into evidence as exhibits was annexed to the Reasons for Decision provided to the parties but has not been included in this anonymized judgment.

Exhibits D31 (Certificate of Completion – Tuning into Kids Program – 22/05/2024) and D32 (Letter from AOD Counsellor – 29/04/2026) were tendered into evidence by consent of all parties without the witness being required to attend and give oral evidence.

HER HONOUR:

The Applications

These proceedings concern two siblings, Child 1 and Child 2.

On 27 May 2024, the Department of Families, Fairness and Housing ("the Department" or "DFFH") applied for Care by Secretary Orders (CBSO) in respect of both children pursuant to s 289(1A) of the *Children, Youth and Families Act 2005* (CYFA). The matter was ultimately heard as a contested hearing before me, between 11 and 15 May 2026.

At the time of the hearing, Child 1 was 10 years of age and directly instructed his legal representative. Child 2 was 9 years old and was represented by an Independent Children's Lawyer, who advanced her best interests.

The current order for each child is a Family Reunification Order (FRO) made on 20 November 2023. Those orders have not been formally extended but have remained in force pending determination of the present applications.[1]

Parties' Positions

The Department submits that a Care by Secretary Order is the appropriate outcome for each child. That position was supported by the Independent Children's Lawyer for Child 2.

The parents submit that, in light of the commencement of the *Children, Youth and Families Amendment (Stability) Act 2026* (CYFASA), the Court should make a further Family Reunification Order.

Child 1 expressed a clear wish to return to the care of both parents.

The central issue in the proceeding is whether, having regard to the legislative changes introduced by the CYFASA and the children's time in out-of-home care, it is in their best interests to afford the parents further time to pursue reunification.

Procedural Background

The matter first came before the Children's Court on 10 May 2021 as an emergency care application for each child, alleging the grounds set out in ss 162(1)(c) & 162(1)(e) of the CYFA. The applications arose from events in early May 2021 involving threats by the father to harm himself and others using petrol.[2]

On 18 November 2021, each protection application was found proved on the basis of likelihood of emotional harm, and Family Preservation Orders were made to the mother.

Following a breach of each order and a subsequent forensic risk assessment of the father,[3] the Court made Family Reunification Orders on 20 November 2023, accompanied by a detailed contact progression plan for each parent.

On 27 May 2024, the Department applied for Care by Secretary Orders, asserting that the children had been in out-of-home care for more than 24 months and that insufficient progress towards reunification

[1] *Children, Youth and Families Act 2005* (CYFA), section 293(3).
[2] Exhibit D2, Protection Application Report authored by Ms VS dated 28 May 2021, p. 3.
[3] Exhibit D11, Psychological Report authored by Mr C dated 12 October 2023.

had been made by the parents.

On 11 November 2024, a further serious incident occurred involving a prolonged police response to threats of harm by the father.[4] This incident appears to have materially influenced the Department's position, including a shift toward case planning for reunification of the children with the mother alone.

The feasibility of reunification to the mother, in the context of her ongoing relationship with the father, has remained a central issue since that time.

The Initial Protective Concerns

Although the events giving rise to the 2021 intervention were not directly in issue, they were extensively canvassed during the hearing by both parents' legal representatives.

The parents strongly dispute the repeated assertion in Departmental material that the father doused his family in petrol.[5] They maintain that his conduct posed a risk to himself rather than to others and arose from mental health difficulties rather than in the context of family violence.

I note that the contemporaneous police material tendered before the Court does not record the presence of the children or the mother at the time of the relevant incidents, nor does it establish that any threats were carried out.[6]

While Child 2 made disclosures consistent with being exposed to such conduct, the protection application was ultimately proved on the basis of likelihood of emotional harm alone.

I infer from that outcome that at the time proof was established, the parties were ultimately agreed that there was insufficient evidence to establish actual harm, nor any likelihood of future substantial physical harm to either child. On that basis, the continued assertion that the father doused his family in petrol appears an unhelpful descriptor of the family's current risk profile.

This issue highlights the importance of ongoing, critical reassessment of historical material by the Department. The repetition of this claim across multiple reports suggests insufficient re-evaluation of earlier information and has exacerbated the Department's difficulties in working with both parents.

Indeed, I note that the parents' continued focus on these matters has had the unfortunate impact of limiting their capacity to engage with the broader risk issues affecting their children.

Current Risk

The assessment of current risk is informed primarily by two professional assessments:

- a forensic risk assessment prepared by Mr C[7]; and

[4] Exhibits D34, Disclosure copy of Police Brief dated 17 March 2025.

[5] Exhibit D4, Disposition Report authored by Ms M dated 24 June 2024, p4.

[6] Exhibit D35 includes the police L17 narrative for the incidents which occurred on 2 and 7 May 2021.
Sergeant PP also gave oral evidence in which he read from the complete police L17 history.
Exhibit D34 is the disclosure copy of the police brief detailing the incident which took place on 11 November 2024. According to the police summary, the father made threats of self-harm but also threats against attending police officers and the mother. The father's criminal history (tendered through Sergeant PP and marked exhibit D33) reflects a charge of threaten to assault a police officer but does not include any charges relating to threats made against the mother.

[7] Exhibit D11.

- a Children's Court Clinic report prepared by Dr MR[8].

Both reports identify the father's complex mental health presentation, together with his ongoing cannabis use, as the principal protective concern.[9]

The father has diagnoses including paranoid schizophrenia, antisocial personality and complex post-traumatic stress disorder.[10] Both experts emphasise the heightened risk associated with cannabis use in that context.[11]

The incidents in 2021 and 2024 illustrate the potential consequences of deterioration in the father's mental health. I accept that these risks remain current.[12]

The position in relation to the mother is more complex. While she provides appropriate physical care and has maintained significant contact with the children, she remains committed to her relationship with the father.

Both expert assessments conclude that, due to the dynamics of that relationship, the mother does not presently have the capacity to independently recognise and manage risks associated with the father's mental health or to prioritise the children's best interests within the family dynamic.

Combined Risk

In my view, it is the interaction between the father's mental health vulnerabilities and the mother's limited capacity to mitigate those risks that gives rise to the present unacceptable risk of harm.

The parents' own submission at the conclusion of the proceedings, acknowledging that Family Preservation Orders would be premature, necessarily accepts that immediate reunification would expose the children to an unacceptable level of risk.

I agree with that conclusion.

Family Arrangements and Contact

The children have been placed within the maternal family network, primarily in the care of their maternal grandmother.

The evidence demonstrates that the children have experienced a high level of contact with both parents, facilitated largely by extended family members.[13]

The mother has enjoyed liberal unsupervised contact and has been actively involved in the children's daily care for extended periods.[14] She has been permitted to reside with the children at the maternal

[8] Exhibit C1, Children's Court Clinic Assessment dated 5 March 2026.

[9] Exhibit C1 at pp. 44-46 and also Exhibit D11 at p. 25 where Mr C refers to the father as having a previous diagnosis of 'Cannabis Use Disorder'.

[10] Exhibit D11 at p. 26 Mr C also forms the view that the father potentially suffers from borderline personality disorder.

[11] Dr MR gave detailed oral evidence about the increased risk of psychotic symptoms linked to cannabis use and the resulting increased risk of use of violence.

[12] Exhibit C1 at pp. 45-46 para. 201.

[13] Exhibit D10 establishes that as of around February 2025 the Department approved overnight contact at the parents' home supervised by the maternal grandmother and another family member.

[14] Exhibit D43 outlines a discussion between the current acting Team Leader and the maternal grandmother about contact arrangements to date. The maternal grandmother confirmed that up until January 2026 (at which time the parents' car fell into disrepair) the mother was having almost daily contact and staying overnight at her home regularly

grandmother's home under the terms of the current order although the evidence suggests she has never permanently elected to do so.[15]

The father too has had regular contact, including three times weekly overnight stays in the family home, but always under supervision of family members.

In recent times, the Department's oversight of these arrangements appears to have been limited.

I endorse the view expressed by Dr MR that, in future, any supervisor of the father's contact must be able to demonstrate "a clear appreciation of the nature and seriousness of the identified risks and… not minimise potential harm on the basis of the passage of time"[16]. To date I agree that there has been insufficient clarity in safety planning and support for family contact supervisors.

Notwithstanding this, I consider that the family network has achieved a degree of stability that is notable.

I accept the recommendation of the Children's Court Clinic that the father's overnight contact should cease until strengthened safeguards are put in place. In particular, the following need to occur:

- comprehensive safety planning including a written plan developed in consultation with both parents, the maternal grandmother and any other family members proposed as supervisors of contact; and
- engagement by the father with a specialist forensic mental health service.[17]

I do not consider that the mother is an appropriate supervisor of the father's contact at the current time.[18]

At this stage, I prefer the second option proposed by Dr MR, that the maternal grandmother and other appropriate family members continue supervising his contact, provided that the proposed safeguards are established.[19]

The Legislative Framework

The *Children, Youth and Families Amendment (Stability) Act 2026* came into operation on 12 May 2026.[20]

The effect of this legislation is that the Court may make a Family Reunification Order beyond 24 months where satisfied that doing so is in the child's best interests, having regard to the matters set out in s 287B of the CYFA.

Those matters may be summarised as:

1. any previous FRO and the duration of each order; and
2. the extent to which a parent of the child has engaged with services and supports necessary for the safe reunification with the child; and

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before returning to the parental home on weekends. Since January 2026 the maternal grandmother advised that contact has occurred at the parental home only. That contact has occurred three nights per week.

[15] This option was recorded by way of a notation agreed at the time the original FROs were made on 20 November 2023.

[16] Exhibit C1, at p. 49, para. 210.

[17] Exhibit C1, p. 49, para. 212.

[18] Exhibit C1, p. 47, para. 205.

[19] Exhibit C1, p. 49, para. 211.

[20] This proceeding commenced on 27 May 2024 with the DFFH applications for Care by Secretary orders. Section 16 of CYFASA contains a transitional provision which provides that the CYFASA amendments will apply to any proceeding in the Children's Court which had been commenced but not determined before CYFASA's commencement day.

3. any circumstances that have impeded the progress of a parent's safe reunification with the child including circumstances preventing timely access to services and supports necessary for reunification.

Application of the Statutory Criteria

Duration of the FROs

Although neither FRO has ever formally been extended, they have remained in force for a substantial period due to the pending CBSO applications.[21]

The Department describe this as a "defacto extension"[22] of the current orders and argue that as a result, the parties have enjoyed "full opportunity to attend to all necessary engagements and progress to work towards reunification"[23].

I am unpersuaded about the reality of this in practice. There was limited evidence to suggest the availability of sustained, targeted and reunification-focused service involvement, particularly over the course of the past year.

Parental Engagement

The Department describes the parents' engagement as "superficial, reluctant… and sometimes hostile".[24]

With respect, I consider this an overly simplistic characterisation.

Both parents have participated in multiple assessments and programs.[25] The mother, in particular, has demonstrated an ongoing commitment to the daily care of her children and to reunification, even when reluctant to work with the specific services selected for her by the Department.[26]

The father's engagement has been inconsistent; however, there are some positive indicators, including his engagement with general medical care[27] and his presentation for treatment during periods of deterioration.[28]

In my view, the evidence suggests that services to date have not been sufficiently tailored to the family's needs, particularly in relation to the father's complex mental health presentation.[29] However, I am not satisfied that this is sufficient, in the circumstances of this complex case, to trigger the statutory prohibitions in s 276 of the CYFA.

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[21] CYFA s 293(3).

[22] Department's final written submissions dated 22 May 2026, p. 4.

[23] Ibid.

[24] Department's final written submissions dated 22 May 2026, pp. 4-5.

[25] This has included the assessments tendered as exhibits C1, D11 and D39. Evidence was led that the mother participated in art therapy, Tuning into Kids and the Family Preservation and Reunification Program as required by the Department.

[26] Ms AT commented during cross-examination by counsel appearing for the ICL that the mother was attending her service as it was an 'imperative' for her to do so. Ms A from the FPRR program noted similar concerns.

[27] In his oral evidence Dr F indicated that the father attends appointments at regular intervals recommended by him and engages well. Dr F expressed no concerns about misuse by the father of his prescription medication.

[28] Exhibit D12 describes a psychiatric review initiated by the father with [location deleted] on 8 November 2023.

[29] Compare *DFFH v JKL (a pseudonym) & Ors* [2025] VSCA 254 at [49]-[52] where the Court of Appeal discussed the lack of support both the mother and the father had received from DFFH in maintaining their relationship with the subject child [in that case] and noted in particular at [51]:
"The lack of support given to the parents would not have assumed the prominence that it did, if the magistrate was not proceeding on the basis that a parent and child is the fundamental group unit of society. What the magistrate did was go on to test the practical content of the relationship in that context."

Barriers to Reunification

The father's complex mental health challenges, including trauma and long-standing diagnoses, are significant barriers.

The services in place to date have not matched the intensity required to address those needs.

In her report, Dr MR has identified the need for a neuropsychological assessment of the mother to clarify her level of cognitive functioning.[30]

The mother has previously been assessed as experiencing her own mental health difficulties[31] and relational dependency on the father, which limit her capacity to independently consider her children's safety.

I agree with Dr MR's view that, while concerns exist regarding the parental relationship, it cannot readily be characterised as involving coercive control on the available evidence.[32]

I do, however, accept that co-dependency within the relationship remains an obstacle to safe reunification.[33]

Best Interests

Having regard to all the evidence, I am satisfied that it is in the children's best interests that further time be afforded to pursue reunification in circumstances where:

- they are settled within a stable kinship network;
- both parents maintain meaningful contact with them;
- there remains a pathway to reunification; and
- further targeted intervention may reduce risk.

I consider that the continuation of a reunification framework is more in accordance with the law than the making of Care by Secretary Orders. In making this finding I have had particular regard to the application of sections 10(3)(a), (b), (d), (f) and (i) of the CYFA to this case and to the purpose of the CYFASA in relation to the duration of a FRO.

The Parent-Child Relationship

Sections 10(3)(a) & 10(3)(b) of the CYFA provide that consideration must be given, where relevant, to:

- the need to give the widest possible protection and assistance to the parent and child as the fundamental group unit of society and to ensure that intervention into that relationship is limited to that necessary to secure the safety and wellbeing of the child; and
- the need to strengthen, preserve and promote positive relationships between the child and the child's parents.

[30] Exhibit C1, p. 50.
[31] Exhibit D11 at p. 26, Mr C expresses a view that the mother suffers from a Major Depressive Disorder.
[32] Exhibit C1, pp. 46-47.
[33] Exhibit C1, p. 47.

Although reinstating the Permanent Care Order made by the magistrate, the Court of Appeal in *DFFH v JKL (a pseudonym) & Ors*[34] highlighted the significance of "the need to give the widest possible protection and assistance to the parent and child as the fundamental group unit of society" in s 10(3)(a), stating: "Read fairly, the reasons disclose that the magistrate gave very anxious consideration to the position of the mother and the institutional importance of the relationship between a mother and her child."[35]

The factual position of the parents in the present case is significantly stronger than was the position of the mother in JKL's case.

The position of the Department in this case does not give adequate consideration to the provisions of ss 10(3)(a) & 10(3)(b) of the CYFA.

Stability and Reunification

Section 10(3)(f) of the CYFA, amended as and from 12 May 2026, emphasises stability, rather than permanency.[36] It requires the Court to give consideration to the desirability of:

- continuity and stability in the child's care, including stable and enduring arrangements for care and parental responsibility; and
- the child having physical stability, cultural stability and relational stability.

The emphasis on stability is important in this case where I consider that the children's current arrangements provide:

- physical stability within the maternal grandmother's care;
- relational stability through ongoing connection with both parents and extended family; and
- cultural and familial continuity as part of a broader family network.[37]

These arrangements are a significant strength.

With appropriate safeguards, they can continue to support the children while reunification is further pursued.

In this regard I note that s 10(3)(i) of the CYFA provides that in determining what decision to make in the best interests of the child, consideration must be given to the desirability, when a child is removed from parental care, to plan the reunification of the child with his or her parent.

The position of the Department in this case does not give adequate consideration to s 10(3)(i) when read in conjunction with the purpose of the CYFASA in relation to the duration of a FRO.[38]

Conclusion

The children remain at an unacceptable risk of harm in the care of either parent at this time.

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[34] [2025] VSCA 254.

[35] Ibid, [53].

[36] See in particular pp. 1-4 of the Explanatory Memorandum to the *Children, Youth and Families Amendment (Stability) Bill 2025*.

[37] I note that during a period he was in custody, the father self-identified as Aboriginal but in view of subsequent information which has come to light, the father and the children were formally de-identified on 18 September 2025 as per Exhibit D25. I do not regard this as an issue which is relevant to my decision.

[38] See in particular pp. 5-8 of the Explanatory Memorandum to the *Children, Youth and Families Amendment (Stability) Bill 2025*.

However, the evidence does not support the conclusion that reunification is no longer achievable or contrary to their best interests.

The legislative changes introduced by the CYFASA recognise that families with complex needs may require additional time.

This is such a case.

In the circumstances of this case, I am satisfied that the statutory pre-conditions in s 287B of the CYFA are made out.

I find that a further period of structured intervention, supported by appropriately tailored services and clear safety planning, is warranted.

Observations as to the Future

In my view, the pathway to reunification requires:

- the father's engagement with specialist forensic mental health services;[39]
- the father's reduction or cessation of his cannabis use;
- improved understanding by both parents of the risks posed by the father's mental health diagnoses; and
- enhanced capacity on the part of the mother to independently prioritise the children's safety.

Each of these measures requires the input of well-targeted supports and services.

In this respect the Children's Court Clinic assessment provides a clear blueprint for future service intervention. I adopt the recommendations made by Dr MR in relation to the services required for this family, importantly including further therapeutic support for both children.

I endorse the view that the mother should engage first in a neuropsychological assessment before any further referrals are made to mental health services on her behalf.

I do not consider that generic family violence counselling is a suitable service for the mother at this time. Indeed, to date, the focus on family violence has proved counterproductive to services seeking to engage her.

In my view the evidence which I have accepted strongly suggests that the Department should develop a case plan, in consultation with the parents, the maternal grandmother and the broader family network, to determine the process by which reunification can realistically be achieved.

At present, the most viable pathway remains for the mother to reside predominantly with the children at the maternal grandmother's home. Whether that course is adopted is a matter for both parents to weigh and consider.

The father should be assisted to make a referral to the NDIS as a matter of priority, to improve his level of self-sufficiency independent of the mother.

If the parents elect not to adopt this course, they should be aware that the steps required to progress reunification will be more onerous, and the long-term outcome more uncertain.

[39] I note that that a referral to the [location deleted] Forensic Mental Health Service is already under way as per exhibit D28.

While there is no longer a prescribed formula governing the timeframe within which a family can pursue reunification[40], regard must nevertheless continue to be had to the potential adverse impacts of prolonged uncertainty on Child 1 and Child 2.

Accordingly, this issue requires reconsideration if the matter returns to Court upon the expiry of the FRO. If that outcome ultimately transpires, a different view may be taken about the appropriate order.

Should that occur, and should reunification appear unrealistic but contact arrangements have been sufficiently safeguarded, the parties may wish to consider whether Permanent Care Orders would be more appropriate than CBSOs.

I note too, that if the matter returns to Court upon the expiry of the FRO, Child 2 will have turned ten and thus have, the ability to put her wishes directly to the Court.

Final Position

For these reasons, I am satisfied that the appropriate orders are to make a further Family Reunification Order for each child. I make those orders for a period of 12 months to ensure that there is sufficient time for intensive services to undertake the necessary work with each parent.

I will hear the parties on my proposed conditions on those Family Reunification Orders, which have been handed to the parties' legal representatives.

Final Orders for each child

The DFFH application for a Care by Secretary Order is refused. However, being satisfied that the child remains in need of protection, the Court makes a Family Reunification Order in respect of the child pursuant to s 289(1C)(c) of the CYFA.

This order remains in force until 11 June 2027.

The following 14 conditions apply to this Family Reunification Order:

1. The mother and father must accept visits and cooperate with DFFH.
2. The mother and father must accept support services as agreed with DFFH.
3. The father must engage with the [location deleted] Forensic Mental Health Service or other equivalent service nominated by DFFH, accept all recommendations for treatment made by the service and allow reports to be given to DFFH.
4. The mother must go to a neuropsychologist for an assessment, accept all recommendations made by the neuropsychologist and allow reports to be given to DFFH.
5. The mother and father must attend safety-planning meetings when requested by DFFH, to discuss the father's contact and engagement with mental health services. This will occur at times and places as agreed with DFFH. The maternal grandmother and other contact supervisors approved by DFFH may also attend.
6. If recommended by the neuropsychologist, the mother must go to a psychologist or psychiatrist for assessment and treatment and must allow reports to be given to DFFH.
7. The father must submit to testing for drug and alcohol dependence as directed by DFFH and must allow the results to be given to DFFH.
8. The father must not drink alcohol or use illegal drugs when with the child and must not be affected by alcohol or illegal drugs when with the child.

[40] See CYFA, s 287B/s 294.

9. The father must not live or have contact with the child outside court-ordered contact unless otherwise agreed with DFFH.
10. The mother and father must not expose the child to physical or verbal violence.
11. The mother may have unsupervised daily contact with the child as agreed with the maternal grandmother. The mother and maternal grandmother must keep DFFH informed of these arrangements.
12. The mother may reside in the home of the maternal grandparents if agreed by them. If the mother relocates to the home of the maternal grandparents for 4 nights or more per week, she must advise DFFH within 24 hours of that arrangement taking place.
13. The father may have supervised face to face contact with the child for a minimum of two times per week at times and places agreed with the maternal grandparents. DFFH or its nominee will supervise contact unless DFFH assesses that supervision is not necessary. The maternal grandmother is an appropriate supervisor of the father's contact unless assessed otherwise by DFFH.
14. The mother and father must allow the child to attend counselling as agreed with DFFH and must allow reports to be given to DFFH.

All other applications are struck out.