

**NOTE: PURSUANT TO S 139 OF THE CARE OF CHILDREN ACT 2004,  
ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO  
11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER  
INFORMATION PLEASE SEE  
WWW.JUSTICE.GOV.T.NZ/FAMILY/LEGISLATION/RESTRICTIONS.**

**IN THE FAMILY COURT  
AT WHANGAREI**

**FAM-2010-088-000805**

IN THE MATTER OF      THE CARE OF CHILDREN ACT 2004

BETWEEN                      N R T  
Applicant

AND                              D L  
Respondent

Hearing:      23 August 2011

Appearances: M Miles for the Applicant  
S H for the Respondent  
T Belz for the Child  
L Postlewaight Counsel to Assist

Judgment:      16 September 2011

---

**RESERVED JUDGMENT OF JUDGE SMR LINDSAY  
[As to application for wardship order]**

---

[1] The nature of the application before the court requires the Court to make a difficult decision and this is all the more so given the age and views of the young person who is subject to these proceedings. Counsel to Assist has made application that A-L S T, born 9 August 1996 and aged 15 years of age, be placed under the guardianship of the Family Court. A-L has expressed her views through her counsel but also she met with me prior the hearing with her Counsel in attendance. A-L told me that she is opposed to the application, she does not consider it necessary and in particular she does not want to move from her home. A-L's final plea to the parties and the Court is that her wishes be respected. There is a real tension between the application that serves to protect A-L's welfare, against the views of this 15 year old adolescent.

[2] The application proceeded on the submission of counsel that the Court make a determination on the basis to the evidence of the specialist report writer, with provision for cross examination, and submissions from all Counsel.

[3] A-L is described to the Court as an intelligent young woman, but one who has experienced a sad family history which has involved a difficult separation between her parents and their re-partnering, her mother being diagnosed in 2004 with cancer, a period of remission, and then a return of the illness which resulted in her very sad and early death. A-L's mother is Ms S J M and she passed away on 3 October 2010. A-L had, during her mother's illness, assumed a role caring for her younger siblings, C A T, born 31 January 2000 and D D T, born 8 May 2004, but the younger children transitioned into the care of their father, Mr N T before Ms M's untimely death. A-L played a major role supporting her mother during her illness. I believe it is accepted that up until her mother's death A-L hoped and believed she could find a cure for her mother.

[4] On the day of Ms M's funeral a deep rift developed between A-L's father, Mr N R T, and her stepfather, D L. A-L has been estranged from her father and there is a resistance from her about any form of contact, at this time, with her father. A-L has remained, since the funeral, in the day to day care of her stepfather, Mr D L with

little, and now no, contact with her father. There was some contact with her siblings however Mr N suspended sibling contact on 24 July 2011.

### **Background to the proceedings**

[5] On 15 October 2010 N T made application without notice for interim and final parenting orders in respect of his three children; A-L S T then aged 14 years, C A T then aged nine years and D D T then aged six years.

[6] C and D have remained continuously in the care of their father, N T, since prior to their mother's funeral and during the course of these proceedings.

[7] A-L's mother is also the mother of J A L, born 12 December 2008. J L remains in Mr L's care, so A-L lives with her baby brother. Mr L filed a notice of defence to Mr N's applications and essentially at the outset of the proceedings he relied on Ms M's wish that he be viewed as a testamentary guardian and, additionally, her wish that the three children remain in his day to day care.

[8] Since the day of Ms M's funeral there has been limited contact between C and D and their stepfather. There has been some contact between the three siblings.

[9] Earlier this year the Court directed a s 133 report which was duly compiled by Ms Jude Clough. In her report dated 24 February 2011 she confirmed her concerns about the children's psychological wellbeing and made recommendations. Ms Clough's concerns were particularly about A-L's wellbeing and her assessment was that the young person suffered from a significant level of depression. Understandably, all the children had been significantly affected by their mother's death and there were psychological issues arising for the three children. The children were hurt and confused about the loss of their mother. A-L's presentation during the course of the first assessment gave the report writer serious concerns about her emotional and psychological health. She was assessed as having a significant degree of depression and A-L reported feeling suicidal.

[10] A-L has been prescribed by her general practitioner with an anti-depressant, Loxamine, at 20mg daily. At the time of the first psychological assessment reported to Ms Clough that she denied A-L having a plan to accomplish suicide, but reported she would not make any attempt to save herself if she was in danger. Additionally, the report writer confirmed that A-L reported fantasising about “knives floating to her and stabbing her”. There were very serious concerns recorded by the report writer about A-L’s health. These concerns perhaps all the more concerning for a young woman who had experienced the loss of her mother.

[11] The report writer confirmed that an immediate concern was A-L’s presentation, but in addition to serious grief issues there were additional concerns including:

1. A-L being parentified, having played some role in the care of her younger siblings.
2. Whether A-L felt responsible for caretaking of both her stepfather and younger brother, J.
3. That there was an enmeshed relationship with her stepfather and an intense alignment with him.
4. That A-L had been exposed to adult conflict and inappropriate information about adult issues from the time as a young child with her parent’s separation right through until the time of the report.
5. The stepfather’s ability to provide safe care given his own grief issues.
6. A-L’s poor school attendance.
7. A-L had been prescribed medication and also at that time taken sleeping pills.
8. That A-L had been exposed to a lifestyle of alcohol and drug use.

Ultimately, the report writer's recommendation to the Court was it consider the appointment of lawyer to assist to ensure that A-L's optimum needs were met.

[12] With respect to all three children, the report writer also recommended that they were in need of skilled therapeutic intervention. A-L was recommended to attend a counsellor of her own. The report writer assessed that all the children would benefit from having regular and normalised contact with each other.

[13] The Court appointed counsel to assist to convene a mediation with a view to discussing contact between the children. An agreement was reached as to the terms of contact by consent memorandum dated 17 May 2011.

[14] In light of Ms Clough's report dated 24 February 2011, the Court appointed lawyer to assist. By application dated 23 May 2011, counsel made application for leave to apply for guardianship of the Court and an application for A-L T to be placed under the guardianship of the Court.

[15] Mr T supported the application. Mr L filed a notice of defence but conceded he would accept any order the Court would make and support the implementation of such terms. Both the parties filed affidavit evidence in response to the application and also to address matters raised by the psychologist. A-L has opposed the making of an order placing her under the guardianship of the Court.

[16] On 27 May 2011 the Court directed an updated psychological assessment as to the degree of urgency for A-L and the need for Court intervention as to her living arrangements, therapy, and the existence of a Court-directed safety net given the risk of suicide is of real concern.

[17] The updated report of Ms Clough is dated 18 August 2011. It provides an update as to recent and ongoing contact between A-L's family members. The conflict between A-L and her father may have in fact only exacerbated in the period since her first report. Mr N had reached the decision that he did not trust A-L or Mr L to be alone with the children and, as a result, suspended contact until such time there was agreement contact proceed on a supervised basis.

[18] Were there other concerns arising over the period of Ms Clough's February 2011 assessment? The evidence of Mr T and Ms Clough is that, although A-L was not articulating a risk of suicide that other concerns may have worsened and some new concerns arisen. A-L's presentation still raises concerns for Ms Clough and she described A-L wearing grubby clothes and she had "a flat affect with a paucity of emotional congruency with her comments." The school reported to Ms Clough that A-L was emotionally labile and sometimes distressed. That A-L has had ongoing illness. A-L's attendance at school has deteriorated and her explanation of illness does not adequately explain her absences (an absentee rate at about fifty percent). That A-L continues to have access to alcohol while she lives in Mr L's home, that over the period she had consumed cannabis and engaged in sexual activity.

[19] Ms Clough reported that A-L has an insatiable appetite and still suffers from disturbed sleep. A-L continues to take anti-depressant medication which Ms Clough did not believe is suited for persons under 18 years of age and further she would require medical assistance to change medication. The level of family conflict around A-L remains high.

[20] Mr N was very concerned that A-L had been seen by his partner and others from their community driving her mother's vehicle, on occasion by herself and badly, but certainly without having obtained a driver's licence. That there had been a recent reactive and angry exchange directed by A-L at her father in front of her siblings.

[21] Mr N's evidence is:

"I am adamant about the follow-up measures because I am more and more concerned at the rapidly developing anti authoritarian attitude being displayed by A-L. This includes her non-attendance at school, her free access to alcohol, her driving on the open road without a licence, and her undermining behaviour at contact."

(Paragraph 5, affidavit affirmed 11 August 2011)

[22] The submission of lawyer for child who has expressed her client's views that wardship is not supported by A-L is that some of the behaviours complained about

maybe considered within the range of behaviours indulged by young people. It has to be said that the driving on the open road without a licence is refuted.

[23] The evidence of Ms Clough supports A-L suffers from serious psychological ill health and she is at physical risk. The updated psychological assessment dated 18 August 2011 confirmed that A-L's presentation reveal a distressed adolescent who, while not currently suicidal, could accidentally come to harm as a result of her behaviour (paragraph 21 Ms Clough's report dated 18 August 2011).

[24] Ms Clough also gave evidence at hearing about A-L's presentation and the risk of suicide. I refer to lines 14-17 of the notes of evidence, whereas her evidence at line 30 on page 4 is that, on balance, there is no risk to A-L's wellbeing by being placed in her maternal grandmother's care.

[25] Ms Clough's evidence is that A-L's "intense identification with her mother in every way" is tied in with her mother's home and places her at risk. The home is described as "unhealthy" and while A-L is living there that she sees herself as her mother and "has taken over that role as the mother in that house in lots of ways" (refer lines 8-10, page 3). The evidential picture is one of A-L being enmeshed with her mother in such a way that she is at real risk of self harm, possibly through accidental injury. The submission made by lawyer for the child that A-L's behaviours are within range of an adolescent pushing the boundaries must be treated with caution because A-L's life experiences have been beyond the range of other adolescents.

[26] Ms Clough's evidence that A-L strongly identifies with her mother and the home has become a representation of her mother. While A-L remains living in that home she is affected in her ability to resolve her grief issues and the relationship between her stepfather reinforces that she is stuck in her grief.

[27] At hearing Ms Clough's evidence was that, although the risk of suicide may have lessened, there is an underlying danger to A-L because of her "acting out" behaviour. That A-L's views she wishes to remain in the home that her mother shared with her stepfather is reflective of A-L sublimely seeing herself as her mother.

Ms Clough was clear in her evidence that it would be psychologically unhealthy for A-L to remain living in her mother's home and she cited physical impediments about the home which prevented A-L from emotionally moving on and healing from her mother's death.

[28] The psychologist did not view the home during the course of her second assessment. There is a tension between A-L who presented to Ms Clough as not actively suicidal with the assessment that her presentation and comments continue to raise concerns. Those concerns are high end. Ms Clough's assessment about the risk of suicide for A-L, if she remains in her home and current care arrangement, is that it is high. Ms Clough identified the following concerns impacting on that risk for A-L being her isolation from family, her poor school attendance, the adult information she has taken onboard emotionally, her cannabis use, her risky sexual activity, and driving a motor vehicle without a licence on the open road, all supporting her assessment that A-L is at risk in her current care regime and the Court must countenance the application for wardship. Ms Clough believes there is a very real risk for A-L coming to harm accidentally if she remained in her current residence.

### **The need for a wardship order**

[29] The guiding principle behind this decision is the welfare and best interests of A-L.

[30] The circumstances in which the Court will invoke wardship must be exceptional: *Hawthorne v Cox*<sup>1</sup>.

[31] In this case, I must first determine whether A-L's circumstances are exceptional and this high threshold has been met.

[32] The best interests of A-L require that her physical needs are met and that she be psychologically well and secure. A-L needs to be supported so she can develop to her full potential. A-L's psychological and physical health is at the forefront of the welfare and best interest considerations for A-L.

---

<sup>1</sup> [2008] NZFLR 1



[33] At this stage, A-L does not consider her psychological and physical needs can be met by her father. She considers this can be best met by Mr L, but there is a real concern that, despite his very best interest to support A-L, Mr L's care and household is not able to best meet A-L's needs.

[34] There is an acknowledgement by Mr L to the specialist report writer that he has struggled to meet A-L's needs.

[35] It is in A-L's best interests that she be supported in maintaining her relationship with C and D, and her other young sibling's son. The psychological evidence is that A-L has a strong attachment with her stepfather and her baby brother, J.

[36] A-L's views have, through lawyer for the child, been put before the Court. I also had the real benefit of meeting with A-L and hearing her views. I have very carefully considered A-L's views and the clear way she expressed herself. A-L was polite, but firm that she wishes living in Mr L's home and with her brother J. A-L also said at this time she does not want to have contact with her father. Child Youth and Family report they have not substantiated the notifications of concern about the relationship between A-L and Mr L. The gossip surround the family may have abated. A-L and Mr L report there have been improvements in their relationship and they are both working through their grief in their own way. A-L now attends counselling which she reports is beneficial.

[37] A-L expresses a commitment to attending school, to obeying the house rules which is to; limit alcohol, and more closely monitor her social relationships. The difficulty however is that in February 2011 A-L also expressed an intention to improve her attendance at school and comply with a safe care plan. Given the hiatus in contact between A-L and her siblings, but also disputes with other members of her family there remains, if not intensified, a high level of family conflict. The reality is A-L's attendance at school has worsened, her risky social behaviours have remained present, she still takes prescribed anti-depressant medication, and her psychological presentation in August 2011 gives Ms Clough real concern.

[38] I am very concerned that A-L may be taking prescribed medication for depression which is ordinarily for adults. The fact that A-L requires medication for depression is of itself a red flag. The fact it may not be correctly prescribed is a significant concern, particularly given the evidence that A-L also consumes alcohol, and has taken marijuana. The evidence of an adult well known to A-L is that she has been seen to drive her mother's vehicle despite no licence or adequate driving experience. The psychological evidence is clear that A-L is at risk of accidental self harm (in a variety of ways) and there remains a real risk of suicide.

[39] Ms Clough in her first report commented that A-L is an intelligent and mature 14 year old:

"A-L presents as being a mature and capable young person. It is also clear that she has not had an opportunity to fully experience being a child and that she has consistently assumed a care-taking role with her younger siblings. Currently there are serious concerns about this young woman's safety and her emotional and psychological well being. A-L is considered to be in need of appropriate nurturing and care; without the pressure to sublimate her own grief in order to deal with an adult's grief."

(Paragraph 39, Ms Clough's report dated 24 February 2011)

[40] By August 2011 Ms Clough reported:

"It is respectfully suggested to the Court that serious consideration needs to be given to making A-L a Ward of the Court; in order to provide her with the structure and protection she requires .... The plan also needs to include alerts and appropriate responses for increasing depression, risk taking behaviours and poor school attendance. A-L could also be part of this discussion; but with a clear understanding that the adults involved have authority over final decisions."

(Paragraph 19, Ms Clough's report dated 18 August 2011)

[41] Ms Clough, at hearing, gave evidence that wardship was crucial around A-L and structure is needed to be imposed which was responsive to her needs. Ms Clough commented that children need adults in control. Essentially that A-L who, although resistant to a change in her care arrangements, would adjust and that there was, in her mind, no risk to A-L to transition into the care of her maternal grandmother, J M.

[42] The paramount consideration for the Court is A-L's welfare and best interests. I must weigh the facts of the case in order to determine what is in A-L's best interests and welfare. I have undertaken that assessment but I wish to address the guiding principles set out in section 5 of the Act. For the purposes of this hearing, the most important principles of those listed in s 5 are:

- (a) The need for continuity and stability in A-L's care, development, upbringing and relationships (s5(b))
- (b) Ongoing consultation and co-operation (s 5(c))
- (c) Preserving and strengthening relationships (to participate in A-L's care, development, and upbringing) (s5(d))
- (d) Preserving A-L's safety against all forms of violence (s5(e))

[43] On one hand the application for wardship may seem contrary to the continuity and stability in A-L's care but also ongoing consultation and cooperation. Although placement may initially be disrupted, the order sought will enhance A-L's overall care, development, and relationships. The level of conflict around A-L is high and I believe it poses a risk to A-L because it means she is estranged from valuable and significant relationships that otherwise serve to provide a protective force.

[44] Ms Clough's evidence is clear that a primary risk is A-L's ongoing placement in Mr L's home because of her identification with her mother and psychological issues that arise for A-L. There is a need for a regular and properly crafted therapeutic intervention that best supports A-L, not only designed to address grief but to support her during a depressive episode. This has not occurred to date and it needs to be managed in a way to ensure A-L's psychological and physical safety. There is a very real need for the administering of the correct medication for A-L and an environment that will best support her.

[45] Mr L's recorded statement to Ms Clough is to the effect that he has not coped, that he cannot adequately supervise her, that he had let A-L down and failed her. This is not a relationship or environment that, at this time, provides A-L with the

robust care plan that she needs to remain psychologically and physically safe. A-L's immediate needs require her to be safe from harm and I am not satisfied that a continuation of the status quo is in her welfare. A-L's relationship with her stepfather is described as secure and it will sustain a period of separation. A-L is said to have a strong attachment with J. Ms Clough reports that it will endure a period of living apart. Contact can readily occur with J and it can also continue with Mr L. Continuity of relationships will continue but with some disruption intended to preserve A-L's development and safety.

[46] Again, co-operation may seem contrary to the terms of a wardship order however I believe that ongoing consultation will be integral to the effectiveness of the wardship order. It will ultimately require all parties to work together for A-L's best interests. I believe that, given A-L's age, consultation with her is essential and must be achieved under the terms of the order.

[47] I have also considered sections 5(a) and (f) but do not consider them as relevant to my predictive assessment in this case.

[48] A real issue for the Court is what weight should be placed on A-L's wishes? A-L has been described to the Court by the psychologist as intelligent. However, the view of the psychologist is that A-L in the context of her experiences cannot see what the reality is and in fact she presents as emotionally immature. Ms Clough conceded that normally she would attach a significant amount of weight to the views of a young person, even of 12 or 13 years of age. However, the proviso being dependent on the child or young person's circumstances. In A-L's case, the fact she has been through a major grief event which had its beginnings with a difficult and unexpected divorce between her parents, a relatively early re-partnering by her parents, adjusting to a blended family and her mother's unwellness, remission, but the return of the cancer and her untimely death. All these significant loss events, combined with the stress of the Family Court proceedings, a lack of contact with her siblings, coupled with extreme antagonism between family members has, I believe, resulted in A-L has experiencing serious trauma.

[49] I wish it to be clear to A-L her plea to the Court that her wishes be respected was heard by the Court. However, I am so concerned about the evidence I have heard as to the psychological risks for A-L that I am persuaded that a responsible decision about her care arrangements needs to be undertaken by adults, including a social worker, to maintain her health and wellbeing. The evidence supports that A-L's best interests and welfare require the Court to support her by making the order and, as such, this must over ride her views.

[50] A-L and her siblings have lost their mother and their significant relationships are under extreme pressure to such an extent that A-L is estranged from her father and there is no contact occurring with her siblings C and D. The lack of contact with A-L's siblings clearly causes her distress and the protection of A-L's relationships and, in turn, her psychological health has been an overriding consideration in my decision. The result is that A-L's placement must, for now, change in the hope that this will create a healthy change for A-L. On the evidence I have heard from Ms Clough I do not consider her evidence about A-L's enmeshment with her mother being associated with Mr L's home environment as merely "colourful language". I cannot ignore the psychological evidence that A-L's presentation is such that she has been assessed at high risk of harm.

[51] It is the psychological evidence and A-L's presentation which gives rise to the Court's concern that A-L is at risk. That this young woman's safety and best interests will be served by being placed under the guardianship of the Court. The evidence of misconduct serves to reinforce risk issues and a risk of accidental physical harm to A-L.

[52] I trust that A-L understands that the Court's decision, at this time, is one that will be subject to monitoring and regular review by the Court. A-L shall be key to that review process. I anticipate that although adults shall assume responsibility for the structure of A-L's care, that she and her counsel shall be invited to be involved in discussions about the structure of care, although the responsibility for it rests with Court-directed adults.

[53] Ms Clough gave evidence that A-L is a polite and well-mannered young woman. This was entirely my experience of A-L and I also take into account her expressed view that she has a positive relationship with her maternal grandmother and grandfather. They are persons that A-L loves and trusts, and their home is known to her. A-L does not resist the relationship with J M and her husband. Ms Clough was sure in her evidence that A-L would adjust with the transition into her grandmother's home and, having met A-L, I am likewise confident that this will occur. There may well be a time in the future that A-L returns to her mother's last home and is able to live with J. The focus at this time must be A-L's welfare and best interests, and I am satisfied this requires the making of the order.

### **Orders**

[54] I make the following orders:

1. The Court will take guardianship of A-L S T.
2. The guardianship rights of Mr N and the testamentary guardianship rights of Mr L are suspended to the extent necessary to give effect to these orders.
3. The Chief Executive of the Child, Youth and Family Service is appointed as agent of the Court.
4. The Chief Executive of Child, Youth and Family, through an appointed social worker, is to formulate a plan in accordance with these orders and file that plan with the Court by 30 September 2011.
5. I direct the social worker will:
  - (a) Meet with A-L, her father, and stepfather.
  - (b) The social worker shall continue to meet with A-L on a weekly basis.
  - (c) The social worker shall arrange for A-L to have an appointment with a paediatric psychiatrist to address her health and her presently prescribed medication of Loxamine.

- (d) The social worker shall ensure structured weekly counselling/therapy is to be offered for A-L and she is to have practical assistance to ensure attendance at weekly counselling session. Such counselling may continue with A-L's existing counsellor at Family Works.
- (e) The social worker will meet with A-L, Mr T, and Mr L to confirm weekly contact arrangements between A-L and her siblings. Contact to occur on a supervised basis for a three month period. The Court recommends the social worker meets with B and S H to confirm their availability to supervise weekly contact between the siblings and the social worker is to consider this as an option (with input from lawyer for child and counsel to assist) or, failing suitability, contact to occur at Barnardos. In addition, A-L and C shall be permitted supervised contact time between themselves.
- (f) The social worker will ensure contact shall not occur in the home of Mr D L for at least a period of three months. It is acceptable that there be liberal contact between A-L and her brother J in the home of J M. Contact could include Mr D L provided this is properly monitored by Mrs M. The social worker, lawyer for child, and counsel to assist to confirm the terms of monitored contact.
- (g) By 2 December 2011 Child Youth and Family is to file a report with the Court setting out what has occurred. The social worker is to meet with J M, A-L, lawyer for child, and counsel to assist as part of the review and address ongoing care arrangements in the home of J M, and also the contact plan.
- (h) The social worker shall implement a plan for A-L to attend school and an alert system should A-L fail to attend daily. The social worker should include a regular report system between the school and his/herself as to attendance records. This information to be distributed to lawyer for child and counsel to assist.

6. From 2 December 2011 until 4 February 2012 the social worker may contemplate a more relaxed contact arrangement between A-L and her

siblings provided this is in consultation with Ms M, A-L, lawyer for child, Mr N, Mr L and counsel to assist. The review should consider Christmas and school holiday contact.

7. The proceedings shall be judicially reviewed in December 2011 prior to contact varying from a supervised regime. Any variation from supervised contact to be confirmed by the Court.
8. The social worker shall file a further report by 4 February 2012 which shall consider ongoing contact, A-L's living arrangements and A-L's schooling in 2012. This further review shall include A-L, Ms M, Mr N, Mr L, lawyer for child, and counsel to assist.
9. If at any stage in this process A-L's therapist or the social worker considers that any appointment is not in the best interests of A-L then the social worker or the therapist may decide that the appointment shall not go ahead.
10. As from today Mr N is to be provided with copies of school reports, notices, and the like. If required, he may have telephone contact with A-L's teachers and the school principal, but it would be preferable A-L is told the information has been shared. Mr L and Mr N are to be informed as to any serious health issues that arise for A-L.
11. I direct that A-L's counsellor and/or therapist has available to her a copy of Ms Clough's report. The release of these reports are on the basis that the reports are not to be copied for distribution. They are for discussion only with A-L and Ms Clough's condition that the report not be disclosed to A-L.
12. The brief of counsel for the children is extended so she can liaise between Child, Youth and Family Service and the Court if necessary.
13. The registrar is directed to schedule a judicial conference before myself (30 minutes duration) shortly after 2 December 2011.
14. Leave is granted to counsel for the children to bring the matter back before the Court on three stage notice if she deems it so necessary.



15. A further judicial conference shall be scheduled before me at a date after the social worker's second report in February 2012.

SMR Lindsay  
Family Court Judge

Solicitors: M Miles, Whangarei  
H Reeves Connell Rishworth, Whangarei  
Family Law Centre, Whangarei