

**IN THE CHILDREN'S COURT
OF NEW SOUTH WALES
AT PORT KEMBLA**

CRAWFORD CM

28 April 2006

In the matters of Julian and Allan

Reasons for Decision

1. Before the court are care and protection applications in respect of the children –
 "Julian" born December 1996
 "Allan" born May 1999
2. The parents have three other children who are presently in the care of their mother.

 "Annabelle" born May 1995
 "Chloe" born March 2001
 "David" born September 2002.
3. The children have maternal grandparents Mr and Mrs M who reside at "W". Mr M was joined as a party to the proceedings on his application on 8 October 2004. Mrs M was certainly shown as a joint applicant in an interlocutory application. The proceedings seem to have proceeded on the basis that Mrs M applied and was joined as a party to the proceedings although the note on the bench papers of the 8 October 2004 only refers to Mr M. The children have a paternal grandmother Mrs C with whom the father resides.
4. I have not been able to ascertain precisely when the care applications were filed but it would have been just prior to 16 July 2004 when the matter first came before the court. It was alleged that the children were in need of care and protection on grounds (as amended) (b) (d) (e). (Without there being opposing submissions) the court presided over by another magistrate, found the children to be in need of care and protection on ground (d) on 12 November 2004.
5. By any standards the delay in finalising the case of some twenty-one months is completely unacceptable. Interlocutory applications, ongoing difficulties regarding contact, differences of views within the Department as to how to best respond, and an initial underestimation of the duration of the hearing, all have played some part. Putting aside the restoration of Annabelle and the ongoing concerns about Julian's health, it seems to me that really little has changed in the dynamics of the case from when the proceedings were instituted.
6. The proceeding as concerning the child, Annabelle was finalised on 8 July 2005 when the court made an order allocating parental responsibility for the child to the mother and placing the child under the supervision of an officer for twelve months.
7. The proceedings have been the subject of two Children's Court Clinic assessments and reports. The report dated 29 September 2004 related to all three children. The report dated 15 February 2006 related to the present two children only. Given the limited resources available to the Clinic for these specialised assessments, multiple assessment applications are not to be encouraged but there were factors in this case that justified a further assessment order.
8. I would make these preliminary comments;
 - i. The court in reaching a determination has to establish what are the facts and then apply those facts to the legal principles and requirements of the law.

- ii. Secondly, despite there being a massive amount of documentary evidence and days of testimony, issues concerning the credit of the witnesses are minimal. I would conclude that the witnesses have essentially been doing their best to tell the truth as they see it.
- iii. Thirdly, if one works from the common sense perspective of what do these children need in life, then it comes down to being the same as for other children – love, security, nurturing, guidance, encouragement, opportunities as best can be made available for them to develop physically, emotionally, educationally, socially and morally. Certainly David's health (and some intellectual delay) places additional challenges in the way of him achieving all these to the same extent as other children but the end goal for each child is the essentially the same.

9. These objectives have the greatest chance of being attained if all those involved in their lives are able to co-operate and play a positive role – to bring to the children's lives their love, experiences of life, strength of character, aptitudes and all their individual interests and qualities. No one person can offer to these children all that they need to achieve their goals in life.

10. The children's experience of their childhood, their memories of "family" will always be diminished (and for reasons beyond their control) and will continue to be so, while there is ongoing estrangement between their mother and her parents.

11. Finally, and related to the foresaid, a court determination can only go so far. At best it provides the framework and skeleton upon which others must put the flesh of co-operation, dedication, diligence, goodwill and common sense to make the court orders work for the benefit of the children.

Background

12. The background to this hearing is one of ongoing instability for these children.

13. The family seem to have first come under notice of the Department in 1996 (post Annabelle's birth) regarding drug/alcohol and neglect issues. There were related financial, accommodation and domestic violence issues. There was some involvement with agencies. Reports on these common themes of concerns continued through to mid 2000 and despite the family having been engaged with the Family Support Service since March 1999. The parents separated about 2000. The mother signed a 3 months temporary care arrangement, the three children Annabelle, Julian and Allan being principally looked by the paternal grandmother. An order of parental responsibility for 12 months was made on 24 November 2000 in favour of the paternal grandmother. Despite the limited duration of the order the children actually continued in the care of the parental grandmother and the father. The children were removed from their care because of concerns held about the father's alcohol consumption and the children placed, in July 2003, with the maternal grandparents. These concerns were at that time well founded and were still spoken about negatively by the children to the Children's Court Clinician. I gather that the change from the paternal grandmother to the maternal grandparents (who had a poor relationship with each parent) was rather hastily arranged. I suspect that with the benefit of hindsight further investigation of the family dynamics may have been helpful.

14. During the period after the removal of the three children, the mother then gave birth to a further two children. The abuse of drugs remained a significant issue. While conceding that I do not have the benefit of all relevant facts at that time, I still remain perplexed as to how the removal into care of each newborn child was considered not appropriate.

15. The behaviour of Annabelle proved to be especially challenging for the grandparents. The child seemed to identify particularly with her mother and seemed to project traits that resurrected, particularly in the mind of the maternal grandmother, her negative experiences of the mother's upbringing and their relationship. In March 2004 Annabelle was placed into foster care and ultimately restored to her mother's care.

16. An issue of concern in this case is the demands placed on any carer by reason of Julian's epilepsy. The cause and projected progress of the condition is not before the court comprehensively. There is a background of experienced medical oversight, trials of different medication regimes and periods of hospitalisation. An initial history is contained in a report 21 May 2003 when the father consulted

Dr. Goodhew. The child was then aged six and had been in his father's care about three years. The initial presentation was a febrile convulsion when aged two years. There was a history of "staring" episodes and of being unresponsive. Once he fell and on occasions was shaky in the arms. His dental care was poor and he had a speech disorder.

17. Julian was seen in January 2004 by Dr Johnston by which time he was in the care of the grandparents. The description and frequency of his seizures, suggested his condition to have deteriorated. His intellectual delay was noted.

18. The child continues to have seizures, requires close supervision of his daily needs such as eating and dressing. He is on a regime of medication that has to be strictly adhered to, he attends school only in the early half of the day and is accompanied at all times by a support person in order to monitor his health and prevent injury if he was to suddenly fall. He is transported to and from school. He has to return home during the day for a sleep. The best way of meeting his ongoing educational needs is still being reviewed by the school authorities. Anyone undertaking his sole care even for limited durations needs to be alert and responsive to any associated risks, to have received special training and be competent in the management of his seizures. Access to transport to hospital (or access to an ambulance service) is necessary if his seizure lasts beyond a fixed period.

19. Even just in terms of his physical development Julian's health will place increasing demands upon any carer unless there is a significant improvement in the control of his condition.

The Legal Test

20. Submissions concerning the applicable law have been largely confined to those made on behalf of the Director-General. The written submissions are detailed and helpful although I do not accept all of them.

21. A finding having been made that the children are in need of care and protection (s.72) the court must address a response by making orders and here the relevant options are found in s.73, 76, 79 and 86. Before making a final order for removal of a child from the care and protection of his parents or allocating parental responsibility (and each applies here) the court must consider a care plan presented by the Director-General. If an order is made allocating parental responsibility to the Minister, the court must determine how aspects of parental responsibility should be allocated (including as between the Minister and other persons).

22. In making a decision the court is required to apply the principles in s.9. Additionally the court's attention is directed towards the concept of "permanency" rather than short-term objectives. "Permanency planning" means "the making of a plan that aims to provide the child with a stable placement that offers long term security together with the additional requirements of s.78A(a)(b)(c). s.78A(2) provides that "permanency planning recognises that long-term security will be assisted by a permanent placement". Before the court makes a final order it must expressly find (inter alia) that "permanency planning for the child...has been appropriately and adequately addressed". The court must not make an order allocating parental responsibility unless it has given particular consideration to the principles in s.9(d) and "is satisfied that any other order would be insufficient to meet the needs of the child..." (s.79(3)).

23. It is submitted by the Director-General that the Act gives a "clear presumption in favour of natural parents (see s.83)". I disagree that s.83 has this effect. S.83(1)-(4) deals with obligations imposed on the Director-General not the court. Rather than creating a presumption, s.83(7)(b) creates a threshold to be met before restoration to a natural parent and restoration plan is approved by the court. This threshold test does not apply to restoration (or placement) with another person (e.g a person who has been, or is to be, a carer of the child but is not a natural parent of the child). s.79(3) establishes the requirements to be made before an order may be made allocating parental responsibility.

24. It is a matter of common human experience when considering the welfare and well-being of a child, that the interests of the child are better served by being raised by a parent (unless there are valid contrary reasons) than by another person. However, I would prefer not to categorise s.83 as creating a "presumption" if what is meant by this is a legal presumption. As I understand it, a "principle" (the term used in s.9) establishes the way by which the court goes about evaluating and applying the facts in each particular case whereas a legal presumption operates independently of the facts.

Views of Siblings (s.103)

25. I have no little information concerning the views of the siblings of these children other than the evidence of Allan's wish to remain with the grandparents and the inference that this extended to living there with Julian. I would infer from the contact reports that the other children would wish to maintain a relationship with Allan and Julian even if they are not living with the mother.

The submissions

26. The submission on behalf of the Director-General is that an order be made that Julian be placed under the parental responsibility of the Minister until the child turns 18 years of age. The Minister would locate a long-term placement for Julian while allowing liberal contact with siblings, parents and the maternal grandparents. The submission in respect of Allan is that he be restored to his mother.

27. The mother seeks parental responsibility for Allan be allocated to herself and the child restored. She does not seek at this stage restoration of Julian (and supports his placement in foster care).

28. The father supports the two boys remaining together and with the maternal grandparents. In essence he thinks they are better where they are and does not support restoration to the mother on the basis that he does not think that she could cope.

29. The maternal grandparents seek that the children be placed in their care with an order of parental responsibility. They are supportive of ongoing contact with the parents and siblings.

30. The children's separate legal representative supports Julian being placed in the parental responsibility of the Minister but does not press strongly a preference between the options of foster care or the grandparents. He stresses (with which I agree) that the question of contact should not be the factor driving the decision. He draws the attention of the court to a number of negative factors associated with Allan remaining in the care of the grandparents and supports restoration to the mother with appropriate supports for her.

31. The submissions regarding contact were not made in depth or detail. I suspect that contact has proven to be such a problematic field that most involved are sapped of inspiration to suggest to the court something new or innovative. The grandparents support contact for both children including extending its duration with the mother for Allan but limiting its duration for Julian to be comparable with the period he spends at school. I do not see the father at being at odds with this approach. There is greater possibility for flexibility here than in the case of contact with the mother. The mother seeks additional contact with Allan and seems content to work out details of contact with the Department if Julian is placed in foster care. If Julian remained with the grandparents then she would seek increased contact.

The Decisions

32. I have taken as a starting point the requirement of the Director-General to make an assessment of whether restoration is a realistic possibility having "regard to" certain matters (s.83).

33. After carefully considering all the evidence I accept the Director General's current decision that restoration of Julian is not a realistic possibility. I have considered the demands placed on any carer of ongoing responsibility for care -- vigilance, keeping medical appointments, hospital attendance, medication, challenges in meeting his developmental, educational, emotional and social needs. I have considered that these demands may well increase rather than abate into the future. I likewise conclude that there is presently not a realistic possibility of the child being restored to either natural parent having regard both to the circumstances of the child and evidence the parents are likely to be able to satisfactorily address the issues that led to the removal of the child (s.83(7)). The use of the word "and" in s.83(b)(i) requires all requirements of s.83(b)(i) and (ii) to be considered and satisfied for the possibility of restoration to be "realistic". Neither parent at this stage seeks the child's restoration.

34. The assessment of the Director-General that there is a realistic possibility of restoration to his mother's care in respect of Allan is contentious and more difficult.

35. I have some evidence of the child's preference for staying with his maternal grandparents. His wishes are relevant to his welfare and well-being. Given the child's age and the lengthy period he has been away from the mother's care, his wishes are not surprising and should be approached with some caution but still given weight. I consider that the preference of the father should also be given some weight in this regard. It is not as if Allan is not familiar with the functioning of the mother's household.

36. In another decision (**In the Matter of "Toby"** 16.10.2002 published in Children's Law News – formerly called Case Law News, vol 2 no.9, Nov.2002) I addressed the meaning of "accept" for the purposes of s.83 and determined that it meant "accepted for consideration" (applying the opinion of the Privy Council in **Becker v. Corporation of Marion and anor** (1976) 50 ALJR 432). I also concluded that because of the use of the term "having regard to" in s.83(1) and 83(7), the "circumstances of the child" and "the evidence, if any, that the child's parents are likely to be able to satisfactorily address the issues etc.", this did not exclude consideration of additional factors (see **Evans v. Marmont** (1997) 42 NSWLR 70).

37. Acceptance of the Director-General's assessment therefore does not mean that the court can only make an order that accords with the assessment. As I recall it, no party has submitted that the Director-General's assessment should not be accepted. Accordingly I accept the Director-General's decision. Even if I were not to do so, I would not require another care plan to be prepared because the competing options and how they would be given effect are clearly established by the evidence.

38. As I have outlined, the court when making an order has to address a number of principles and requirements of the legislation and it is not always clear how these requirements stand together. Whether Julian is placed under the parental responsibility of either the Minister or grandparents (and allocating aspects of parental responsibility), the requirement that other orders must be first discounted (s.79(3)) is clearly made out.

39. The submission of the Department seeks to resolve the conflict between the competing options by reference to the requirements of permanency planning and lists there a number of disqualifying factors against the children being placed with the grandparents. These are also referred to in the submissions of the children's legal representative. I do not agree with the approach submitted on behalf of the Director-General. In my view "permanency planning" is a requirement within the application of the broader principle of the "safety, welfare and well-being" being the paramount consideration rather, than being a principle (or requirement) that operates independently of that principle. To focus primarily on "permanency" (as important as it may be) is something akin to the tail wagging the dog.

40. If the facts are such that consideration must be given to protecting the child from "harm", the course required to be followed must be the least intrusive intervention in the life of the child and his family that is consistent with the paramount concern to protect the child from harm and promote the child's personal development (s.9(d)). The term "harm" is not defined but in this context it at least extends to matters putting at risk the child's sense of security and emotional well-being. The reference in the section to the word "*family*" is not without significance in deciding between the competing placement options.

41. Julian has been now with his grandparents for some years. I do not suggest the "status quo" operates in proceedings of this nature but the stability and quality of his relationships formed during this intervening period and any consequent emotional harm resulting from the breaking or diminishing of those relationships, is relevant. The child has come from an unstable upbringing with his parents. There were certainly negative aspects to his care when with his father and parental grandmother due to his father's excessive use of alcohol and its consequences. He is a child that has limitations intellectually. His opportunities for educational, sporting and other social advancement are diminished. As far as I can tell he has always lived together with Allan. Even assuming that the Minister would be able to locate for him a suitable foster placement I would entertain the gravest concerns for the child's emotional welfare, for him to be removed from the place and persons with whom he is familiar. This concern is the greater, as it is not an unreasonable inference to draw, that stability in his life (emotional and otherwise) contributes positively to maintaining his health.

42. I accept there are some risk factors associated with an order continuing his placement with the grandparents. There is a risk of the child being drawn into the estranged relationship between the mother and her parents. I remain unconvinced that foster care offers the child an automatic shield against this. It may simply add another focal point. I have some concern that the grandfather may be rather rigid in his personality and in common with all grandparents is an additional generation removed from the world in which these children will grow up in. He is willing so seek out advice and support and adapt. Age and health, while not being optimal, are not sufficient require the rejection of the grandparents as carers. The future risk of placement in their care has to be evaluated when set to against risk with other options and the competent and dedicated care they are and have provided to the children. There is no evidence (only supposition) that substantiates a risk of a repeat of what led to the placement breakdown with Annabelle.

43. S.78A(1), in connection with permanency planning, uses the phrase of a plan that "*aims to provide a child...with a stable placement*". This term itself underscores the reality that all future long term planning for children is attended by a degree of uncertainty. No placement is absolutely secure against future breakdown.

44. I find that an order of allocating parental responsibility for the care of the child Julian gives effect to the principles in s.9 and specifically (s.9(a)) that the safety, welfare, well-being in the paramount consideration and are paramount over the rights of his parents. The attention of the grandparent to the education, medical and other needs of Julian seem to be to have been faultless. The loss of opportunity of Julian being raised along with his other siblings is a major deficit. That is an inevitable consequence of adopting either option.

45. I find as a fact that there is a risk of harm to the child's emotional well-being if he is removed from the care of his grandparents and placed in foster care. Section 9(d) requires me to apply the principle of least intrusive intervention if the life of child and his family. I find that the least intrusive intervention is for the child to remain with a family member (being grandparents) and ensure that he has continuing contact with other family members. While the best endeavours may be made by the Minister to secure a placement with a foster carer locally, there is nothing that guarantees this. I am not convinced this option will resolve any difficulties with contact. On the face of it, contact would likely to be more complex having to embrace then the additional interests of the maternal grandparents and foster carers.

46. Such an order would conform with s.9(c) and take account of the child's disability. It would conform with s.9(f) by providing an arrangement that ensures provision of a safe, nurturing, stable and secure environment. In conformity with s.9(g) it retains his relationships with parents, siblings and extended family as best as one is able to do so having regard to the practicalities. It adequately and appropriately addresses permanency.

47. I therefore propose to make orders that have the effect of Julian remaining in the care of his grandparents.

48. I agree that the circumstances of Allan and Julian must be considered individually however the bond between them is a factor that is mutually relevant when considering the welfare and well-being of each.

49. I turn now to consider the case of the child Allan.

50. The approach to the law I have already outlined is equally applicable to Allan. There is a daunting volume of documentary and oral testimony that I do not proposed to even attempt to summarise.

51. It is to her credit the advances that the mother has made with the substantial opportunity (and assistance) offered to her to overcome the shortcomings in her parenting and the use of drugs. It is also encouraging that the care of the children with her has not led to further intervention by the Department. It is also to her credit the eagerness for her to take up the opportunities of contact in a positive way. The Director-General has made an assessment that restoration of Allan to her care is a realistic possibility. The evidence (and submissions) is split on this issue.

52. The evidence which I find to be the most compelling (and accept) is that of the Children's Court clinician Dianne Starkey in her testimony and in her report of the 15 February 2006. Submissions on behalf of the Director-General have sought to challenge the weight to be given to the report by reasons of perceived failings in the underlying methodology and a failure to set out sufficiently the factual basis for any opinion and that the conclusions should be rejected. I do not accept the strength of these submissions. One central criticism is the stated failure of the Clinician to take into account the evidence properly, including the very many contact reports that were in evidence and provided to her in court. Yet the greater part of the first six pages of the most recent report lists the various documents and summarises the information from the document. It seems to me unsustainable to infer that these matters were overlooked when the conclusions were reached.

53. Reports prepared in a social science context and based in part on observation and clinical experience will necessarily lack the precision of linking evidence to conclusion of say an engineering structural report. Far from being open to criticism I consider the assessments and reports to be examples of excellence. I find the criticism of the reports to be unfounded both factually and legally.

54. There have been two assessments and reports. They comprise some 80 closely typed pages. Virtually all documentary material introduced in the hearing is listed and has been referred to. The assessment has extended beyond this and includes additional information obtained from Julian's school and Dr. Goodhew. She has interviewed the most significant persons seeing the children individually and in the care of the mother. On the day of the most recent assessment the mother had a health issue but that was known and taken into account. The purpose of the assessment is clearly and comprehensively addressed. The Clinician is very experienced and an impressive witness.

55. The fact that there are two assessments adds a perspective (and added weight) to the conclusions. She does not recommend restoration of either child and I agree with that conclusion. While the overall picture drawn from the contact reports is very positive there are observations therein that accord with the Clinician's conclusions regarding the mother's capacity to manage all children.

56. Insofar as it went I also found Mr Parker's evidence to be impressive. His involvement with the mother extends from the latter part of 2003 through to mid 2005. His opinions on restoration of Allan were somewhat tentative "I think she probably could, at this stage, manage another child" (3.3.06 p.5 at 25) and at p.6 "I think she could handle one but there is a concern there". Clearly the background material he received was limited (p.10), he had not seen the mother for close on a year. He has never seen either Julian or Allan. He had seen the other children when they accompanied their mother in a consultation setting. Additionally his evaluation must be based on the information provided by the mother that may be more optimistic than the reality. To the extent that opinions may conflict I prefer the evidence of the Clinician.

57. I note that including Julian (and to a lesser extent with Allan) all the children have some special needs. There is no submission that Allan be placed in foster care. With restoration (to either parent) rejected the only viable consistent with the recommendations of the Clinician is an order for care in favour of the maternal grandparents. Such an order is in conformity s.9 in treating the child's safety, welfare and well-being as the paramount consideration. In common with Julian it has regard to any level of disability. It is the least intrusive intervention consistent with his safety, welfare and well-being. It meets the child's need for permanency and aims to provide a stable placement.

58. I find that permanency planning has been appropriately and adequately addressed by placement with the maternal grandparents.

Should an order of parental responsibility include the maternal grandmother?

59. The Director-General's submission is that the court should not make an order allocating parental responsibility that extends to the maternal grandmother. The submission is expressed in uncharacteristically emotive terms such as an "unprecedented situation" and "dangerous precedent". The issue as to her actual status in the proceedings comes into play. While the court may draw readily draw an adverse inference against a party who declines to submit himself/herself to cross-examination, I am not sure that the same inference can be drawn against a potential witness. In any event it was sought to call her as witness (though not on affidavit) at an advanced stage of the proceedings and I rejected this course. It is certainly not "unprecedented" for orders to be made in

favour of a person who is not a party and has not given evidence. In fact most care plans for kinship placements would fall into this situation.

60. I agree with the Director-General to this extent not having heard from the maternal grandmother diminished the strength of the maternal grandfather's case but only in limited respects. However, it is not as if the court is without information. There is the assessment by the Children's Court Clinic; the evidence of the maternal grandfather and the objective evidence that the present care of the two boys is very good. The only reasonable inference open is that the maternal grandmother makes a positive contribution to this. Finally, it seems to border on the absurd that as the grandparents are engaged in the joint care of the child that an order for their care should be limited to the maternal grandfather alone.

61. I find that both maternal grandparents to be suitable persons for the purpose of s.79(i)(a)(iii).

Contact

62. Any orders for contact under the legislation are for "minimal" contact. There is no barrier to contact being extended beyond that ordered by agreement as the needs of the children develop. Contact with each parent and siblings is important for each child. The difficulty facing the court is how best to optimise the experience of contact for the boys and others.

63. I have some sympathy for the position of the Director-General that placed parental responsibility for contact in favour of the Minister in isolation could limit the effectiveness of the Minister's role. The proposals for contact are however rather discrete and of recent times while the children have been the subject of an interim order, in practice other than in respect of contact that has been managed by the grandparents. In a case with a more positive history of relationships, the court would consider leaving parental responsibility with the carer with a contact order in general terms. This would allow the greatest degree of flexibility. With the history of relationships in the present case that option seems to me to place hope above experience.

64. There is really no prospect of the grandparents and parents arranging contact and engaging (financially or otherwise) any necessary supervision of that contact as it relates to Julian. I always find it disappointing that so much focus is placed in these contested cases on the frequency and number of hours of contact rather than on the quality of the experience for the child.

65. At present Julian's health will be a determining factor in relation to contact. It is also important that Allan be able to pursue his regular sporting interests and have time with his own friends. It is a matter of getting the right mixture between Allan having the opportunity of maintaining a meaningful relationship with his broader family without feeling that he is engaged in a game of "pass the parcel" where he is handed around between others to meet their needs rather than his. The grandparents should also have some opportunity to foster their own relationships with the children and meet their own needs that is not constrained unreasonably by contact commitments every weekend. I agree that contact should be predictable but still open to regular review and as circumstances change.

66. I believe that supervision of contact continues to be necessary, however, any order requiring supervision should not be open ended. I would have preferred to have left that decision to the Director-General but legal authority is against this approach.

Costs

67. I have to consider two applications regarding costs. Firstly an application by the maternal grandparents against the Director-General for professional costs of the first two days hearing. This is opposed by the Director-General. s88 provides that I cannot make an order for costs unless there are exceptional circumstances that justifies the making of the order. A considerable part of the first two days hearing, directly or indirectly, was concerned with deficiencies in the preparation and contents of the care and restoration plans. These criticisms were largely well founded. I doubt that a plan that was satisfactory and met these criticisms (but led to the same ultimate recommendations) would have shortened the hearing. Ultimately the court has accepted those assessments. I am also mindful that the grandparent's representation was privately funded (and this can be an impediment to participation in the proceedings and with a result that the court sometimes does not hear evidence that would be

helpful). One would hope that future care/restoration plans would be of a higher quality and given greater attention to time-frames and performance indicators but on the whole I think the circumstances fall short of constituting exceptional circumstances justifying the making of an order for costs. Accordingly the application for costs is refused.

68. The second application concerns costs in a related interlocutory application by the grandparents made on behalf of the Director-General. I would not like to infer that this application was made only in response to the application made against the Director-General, although I do note the infrequency that the Director-General seeks a costs order before the Children's Court against another party. The application failed not on a consideration of its merits but because of a jurisdictional issue. There apparently was an earlier application that also failed but I have insufficient information to conclude that the subject application was instituted mischievously or vexatiously. The criticisms of the bringing and conduct of the application appear to have some force however overall I do not find that the circumstances amount to exceptional circumstances that justifies the making of an order for costs. Accordingly the application for costs is refused.

Orders

69. The orders are intended to give effect to the thrust of the recommendations of the Clinician. The 46 week qualification is intended to give some recognition that the grandparents and children will have needs to support their own relationship such as holidays. The difficulty with supervision of contact is that the court has little reliable evidence on the ability of either parent to manage emergency situations that may arise with Julian's epilepsy as that condition may or may not be controlled by medication. Yet, it is not realistic to require supervision by the Director-General on an open-ended time frame (and especially if supervision proves to be unnecessary). After a period of supervisions (which may or may not prove to be too conservative) the parent should be supported in their contact. There is also a recognition that if contact is taking place in the home of a parent that parent should be consulted and be agreeable to this course.

70. These orders can be subject to applications to vary them. A court dealing with such an application will no doubt be alert to the fact that these orders were prepared against a background of much uncertainty concern Julian's health and a difficulties in relationship between the grandparents and mother on the one hand and between the grandfather and Department on the other. The orders may well need adjustment as circumstances of the children develop but not just because one of the parties would rather have a different order.

71. Finally, I would recommend to the Director-General that the Director-General exercise any discretion to ensure that Julian is not disadvantaged financially in his health management by reason of parental responsibility being allocated to the grandparents rather than the Minister.

72. In respect of the child Julian and the child Allan I make an order placing each child under the parental responsibility of the Minister until the child attains the age of 18 years. I determine that aspects of parental responsibility be exercised solely between suitable persons being the maternal grandparents (jointly) being:

- (a) residence;
- (b) care;
- (c) medical and dental requirements;
- (d) education and social development;
- (e) religious upbringing.

73. I determine that aspects of parental responsibility be exercised between the Minister and the maternal grandparents in respect of

- (a) contact;
- (b) any residual aspects of parental responsibility not otherwise allocated.

74. I make a contact order in favour of the natural father for a minimum of four hours per fortnight (up to a total of 46 weeks per year). The other children may also be present at contact.

75. Contact is to take place during times and places agreed upon between the grandparents, the father and the Minister. Contact is to be supervised by a person approved of by the Minister when

contact with Julian is being exercised. In respect of the supervised contact for Julian, contact is to be supervised for a period of 2 years and thereafter the father at contact may be supported by another suitable person being present while exercising contact with Julian if this is proposed by either the grandparents or Minister and agreed upon by the father as desirable so as to reduce the risk of seizures or injury or otherwise necessary for Julian's welfare. Contact should be arranged in such a way to not impede Allan's sporting, training and other interests. Allan is to be consulted also concerning these arrangements.

76. It is a condition of contact that the father is not to consume intoxicating liquor during and before exercising contact.

77. Any support person should be competent to address any emergency situations concerning Julian. A grandparent may act as such support person. After Allan attains the age of 10 years contact is subject to his wishes.

78. I make a contact order in favour of the natural mother respecting the child Julian for a minimum of four hours per fortnight (up to a total of 46 weeks per year). Contact is to be supervised by a person approved of by the Minister. Contact is to be supervised for a period of 2 years and thereafter the mother may be supported by another suitable person being present while exercising contact with Julian if this is proposed by either the grandparents or Minister and agreed upon by the mother as desirable to reduce the risk of seizures or injury to the child or otherwise necessary for his welfare.

79. I make a contact order in favour of the natural mother respecting the child Allan for a minimum of four hours per fortnight (up to a total of 48 weeks per year). Additionally the natural mother is to have overnight contact on six occasions during a 12 month period and unless otherwise agreed upon between the mother, grandparents and Minister is to take place during school holidays. Contact is to be arranged in such a way to not impede Allan's sporting, training and other interests. Allan is to be consulted also in these arrangements and when he attains the age of 10 years contact is subject to his wishes.

80. It is a condition of the mother's contact with Julian that Julian is sufficiently well enough to attend and actively participate in contact. Contact is suspended during any period that Julian is hospitalised (but the mother may visit the child in hospital subject to the concurrence of the hospital authorities).

81. The support person for the mother should be competent to address any emergency situations concerning Julian's seizures.

82. It is recommended that contact arrangements be reviewed initially in three months and thereafter each 6 months.