



MEDIA RELEASE

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judgments of Public Interest: www.courtsofnz.govt.nz.

Background

The child at the heart of this appeal, Moana, is one of five children of the appellant, Moana's mother who has whakapapa links to Ngāti Kahungunu. In 2017 Oranga Tamariki – the Ministry for Children – sought to address care and protection concerns for Moana and her older brother. In 2018, after unsuccessful placements and uplifts, and a failure to make adequate inquiries to find caregivers within the whānau, it placed Moana in the care of the Smiths, a non-Māori couple, with an indication that this placement would be long-term.

In 2019, the Oranga Tamariki Act 1989 underwent substantial amendment that brought tikanga and Te Tiriti o Waitangi considerations into the purposes and principles of the Act. On 1 January 2019, when Moana's younger brother was born, he was almost immediately removed from the care of his mother, and placed in the care of the Taipas, who have whakapapa links to Moana's mother and are based in Lower Hutt.

In 2019, Oranga Tamariki sought to transition Moana into the day-to-day care of the Taipas. The Smiths applied to the Family Court seeking parenting orders for care of Moana, which were opposed by the Chief Executive. In 2020 the Taipas also sought parenting orders for day-to-day care of Moana under s 48 of the Care of Children Act 2004, and an additional guardianship order under s 27 of that Act. Then on 12 January 2021, Oranga Tamariki applied on a without notice basis to discharge the placement condition of the Chief Executive's custody order, which was declined. Several substantive applications were then heard by Judge Callinicos in the Family Court.

The grounds of the appeal

Moana's mother, the appellant, supported by the Chief Executive for Oranga Tamariki and the Taipas, challenged the decision of the Family Court on several grounds. Most significantly the appeal raised whether the Judge failed to consider and/or misapplied the statutory cultural provisions of the Oranga Tamariki Act 1989, and if so, whether the Family Court decision was

non-compliant with Māori tikanga and Treaty obligations. There were four other grounds, which the judgment also addresses.

The further four grounds for appeal are addressed in the judgment. These were:

1. Whether the Judge mischaracterised evidence
2. Whether the Judge overlooked adverse evidence
3. Whether the Judge's decision was biased because he considered evidence of the social workers to be tainted
4. Whether the Judge erred in refusing to recuse himself.

High Court decision

The High Court dismissed the appeal on all grounds. Justice Cull traversed the relevant statutory framework of the Oranga Tamariki Act 1989 (the Act). In doing so her Honour had regard to the amendments to the Act which introduced statutory definitions of tikanga Māori, mana tamaiti (tamariki) and related concepts, and promoted the well-being of Māori children through a practical commitment to the Treaty of Waitangi. The Act's purposes and principles (ss 4, 5 and 13) incorporated such concepts and those provisions were of particular importance to the appeal.

Justice Cull emphasised that the over-arching and paramount consideration under s4A of the Act is the child's well-being and best interests. That consideration is guided by the principles under ss 5 and 13. Preference should be given to placements of children within their family group where they are able to meet the child's needs for a safe, stable and loving home from the earliest opportunity. Where such a placement cannot occur at the earliest opportunity, then the child's well-being and best interests will need to be met outside of the kinship matrix. This impresses upon Oranga Tamariki the responsibility of ensuring that appropriate inquiries about a child's kinship connections are made once the risk of serious harm to a child has been identified. Her Honour found that in this case, the early inquiry and planning was not done, so the preferred placement was not available.

Accordingly Justice Cull found that the Family Court Judge did not err or misdirect himself on the application of the statutory principles in this case. The Judge had undertaken an holistic assessment as required. The timing was significant. Moana's placement with the Smiths was necessary in the circumstances, given she had been subject to unsuccessful placements and unsuccessful periods of time in her mother's care. As a result, she suffered from neglect and likely abuse. Once in the care of the Smiths she improved significantly and has now formed significant attachments to them.

Adequate inquiries had not been made by Oranga Tamariki into whether Moana could have been placed with other members of her wider family or kin group. Moana required placement in a safe, stable and loving home from the *earliest opportunity* as required by the Act and this was provided by the Smiths.

Justice Cull upheld the Family Court's finding that Moana had formed attachments with the Smiths and the impacts of another placement at this stage risked further psychological trauma. Such a finding was available to the Judge on the psychological evidence. Her Honour approved of the plan for a partnership approach among the parties proposed by the Family Court Judge and emphasised that this plan could work provided all parties now co-operate.

In dismissing the appeal, Justice Cull reinforced that each case must be determined on its own facts. No one size fits all. The facts and circumstances surrounding Moana determined the outcome in this case.

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