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**IN THE FAMILY COURT
AT DUNEDIN**

**I TE KŌTI WHĀNAU
KI ŌTEPOTI**

**FAM-2012-012-000437
[2022] NZFC 805**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[ZARA HOLLOWAY] Applicant
AND	[NATHAN PARSONS] Respondent

Hearing:	31 January 2022
Appearances:	C C Lynch for the Applicant P B Williams for the Respondent L Jensen-McCloy as Lawyer for the Child
Judgment:	31 January 2022

ORAL JUDGMENT OF JUDGE D FLATLEY

[1] This is a proceeding between the applicant Ms [Zara Holloway], represented by Ms Lynch and respondent, Mr [Nathan Parsons], represented by Mr Williams in relation to their child, [Ivan], born [date deleted] 2010 so that he is 12 years of age in two weeks' time represented by Mr Jensen-McCloy.

[2] The proceeding is under the Care of Children Act 2004 and is a dispute between guardians as to whether [Ivan] receives the vaccination against the COVID-19 virus. Ms [Holloway] wants [Ivan] to be vaccinated. Mr [Parsons] does not.

[3] The proceeding was set down for determination in a submissions-only hearing. The Court has received affidavit evidence and written submissions. I have had regard to the evidence and the submissions filed and I have heard oral submissions today from counsel. I also met with [Ivan] and noted his views which I take into account.¹

[4] This matter has been dealt with swiftly because [Ivan] is due to start school tomorrow and whether he is vaccinated or not impacts on his schooling in terms of whether he can be in a classroom setting and what activities he can engage in. [Ivan] is well aware of that. The matter came before me last week and I made directions for the filing of submissions and provided time today to hear the matter.

[5] Ms [Holloway] wants [Ivan] to be vaccinated because she wants him to be as safe as possible against the COVID-19 virus and particularly at school and, because he starts school tomorrow, she wants him to be able to start the new year with his friends and cohort and to engage in all of the usual activities associated with the start of the new school year.

[6] She is of the view that it would be to his detriment in terms of class placement, social interactions, connections and activities if he was not able to start school “normally”. She is concerned that he might be ostracised.

[7] Also, [Ivan] has asthma and Ms [Holloway] is concerned about the impact of COVID-19 on [Ivan] should he contract it. She has discussed this with [Ivan]’s general practitioner who has strongly advised that [Ivan] be vaccinated.

[8] [Ivan] is engaged with mental health services and according to Ms [Holloway] there is some evidence that if [Ivan] is not vaccinated his involvement might be limited in some way.

¹ Care of Children Act 2004, s 6.

[9] Ms [Holloway] has also raised obvious concerns about the fact that she works as [employment details deleted] and, of course, [Ivan] has contact with his older grandparents and other family members.

[10] Mr [Parsons] is opposed to [Ivan] being vaccinated because he does not think that the vaccine is safe. He is not vaccinated, no doubt for that reason, and clearly opposes the idea of being vaccinated by direction. He would like [Ivan] to make his own decisions and is of the view that [Ivan] has indicated that he does not want to get vaccinated now but might decide to do so in the future, perhaps when he is around 13 years of age. Mr [Parsons] is keen for [Ivan] to obtain information and make his own decision about being vaccinated.

[11] The overarching consideration, of course, is what is in [Ivan]’s best interests and what best supports his welfare².

[12] As guardians, both parents are entitled to be consulted and express their views with regard to decisions of this type, as well as provide consent if required or pursue an order of the court where a dispute between guardians arises.³ They have done so. In the event that they cannot agree or make a decision, the Court must decide on the particular issue having regard to what is in a child’s best interests and best supports their welfare.

[13] A vaccine to protect against the COVID-19 virus and all of its variants has been developed by leading scientific and medical experts from around the world. It has been tested by independent drug testing agencies and has therefore been subject to rigorous and standardised testing regimes, albeit fast-tracked providing results as to efficacy and safety.

[14] This has been facilitated by Governments providing billions of dollars to the relevant medical agencies in order to develop a vaccine to prevent infection, transmission, serious illness and death. There are now a number of vaccines available.

² Care of Children Act, ss 4 and 5.

³ Care of Children Act, ss 5(c), 16, 36(3)(a), and 46R.

[15] This has impacted on the decision-making and directions of the World Health Organisation, independent health agencies and all governments around the world. Decisions and guidelines have been issued by all regarding vaccination regimes.

[16] In New Zealand, the government has advised that the adult population be vaccinated which includes two vaccinations and a booster and has now included in that protocol young people aged between five and 12 years of age. This is deemed to provide best protection against transmission, infection, serious illness, hospitalisation and death for all eligible recipients.

[17] The vaccine has been available in New Zealand now for a number of months and much longer across the world. In excess of 94 per cent of the eligible population in New Zealand has been vaccinated and now a very high percentage have received a booster shot.

[18] There has been ample time for assessment and research as to the impact of the vaccination in relation to side effects, risks and efficacy. There are a number of research articles now published in accredited medical journals which clearly establish that the available vaccines available are safe and effective.

[19] Mr [Parsons] has not presented any medical or scientific evidence in this proceeding to establish that there is any significant danger or negative aspect to receiving a vaccination against the COVID-19 virus and variants. In fact, I have been presented with relatively limited scientific evidence of any type.

[20] The best evidence available to me is the information from the Ministry of Health, New Zealand Government and World Health Organisation about the efficacy, protection and safety of vaccination, particularly in relation to percentage chances of becoming unwell, hospitalised or dying. Much of this information is available on the official websites of the Ministry of Health, New Zealand or the World Health Organisation.

[21] While this information is not in the form of research reported in accredited academic journals and publications and, to some extent, it might be deemed anecdotal, I see no reason for it to be discredited. Further, it is the best evidence that I have, and it is not challenged. The information available clearly indicates that the risks are significantly reduced for those who are vaccinated.

[22] Mr [Parsons], through Mr Williams, presented an article headed “Child Mortality and COVID-19” from January 2022 which appears to be a report of UNICEF data collated. However on closer reading, it appears that the article is somewhat “retrospective” in nature dealing with years 2020 and 2021 and specifically refers to the Delta variant of the COVID-19 virus. I cannot see any reference to the now prevalent Omicron variant.

[23] The Omicron variant is extremely transmissible and spreads rapidly through populations. Whilst it is a less virulent variant, with a lower percentage of the population in all age groups becoming severely unwell, by virtue of the sheer numbers of people who will be infected with the variant, the number of hospitalisations and associated deaths will not be insignificant. While it may be that younger people are less likely to be infected and become seriously unwell there will still be a high number who do become unwell and sadly a number will die. Youth alone does not provide sufficient protection.

[24] The article presented also refers to many other articles and resources considered and noted. They are not attached to the evidence or submissions and it is simply not possible for me to traverse all of that information in order to assess it and reach a decision. The article is of little value in my opinion. Beyond that I have no evidence in support of Mr [Parsons]’s position.

[25] As I have said I met with [Ivan] today. [Ivan] was able to discuss matters with me. He clearly has a good understanding of the situation, how the vaccination process works and why people are being vaccinated. He was able to tell me that the vaccination took approximately two weeks to become most effective and he is well aware of the impact of not being vaccinated in relation to what he is able to do at school and socially.

[26] I have taken [Ivan]'s views into account, but they are not determinative. I have identified no issues and have no concerns about his capacity, but I am not convinced that [Ivan] is able to make a fully informed decision here in his best interests. Having said that, and this is the salient aspect of my meeting with [Ivan], he is clearly not opposed to being vaccinated. That is the bottom line.

[27] What he told me is that he would prefer to be between 12 and 13 before receiving the vaccination. When I discussed that with [Ivan] he was not able to tell me why. He talked about being able to get some more information maybe by way of looking online and talking to other people who had had the vaccination.

[28] He referred to this as research. I am not wishing to be critical of [Ivan] in any way, but that does not amount to proper research and would not provide him with information that he could rely on in order to make the most informed decision in his best interests.

[29] I pointed out to [Ivan] that if we were to wait until he turned 13 that it might be that he received the vaccination in two weeks and one day. He did not challenge me and accepted that was a reasonable proposition.

[30] There has been some suggestion by Mr [Parsons] that [Ivan] is influenced by Ms [Holloway] who apparently has offered him a reward if he is vaccinated. [Ivan] told me that Ms [Holloway] had told him that he would receive a gift on vaccination, but he doubted that it would amount to much, however, he looks forward to receiving it. I did not detect that that was particularly influencing [Ivan] in any way.

[31] By the same token, [Ivan] acknowledges that his father is opposed to the vaccination and does not want him to be vaccinated and he said that he knew that his father would be unhappy if he was vaccinated. I concluded that [Ivan] might even be influenced by his father's position.

[32] In the end [Ivan] is caught between his two parents and I have no doubt that his response to me about being willing to be vaccinated but just not now is a reflection of that position – he is trying to please both. I asked [Ivan] how he would feel if I

determined that he should be vaccinated immediately. He did not react in any particular way.

[33] Having regard to all of the evidence and the submissions that have been presented I cannot see any reason why [Ivan] should not be vaccinated against COVID-19. In my view, it is very much in his best interests and best supports his welfare. This enables him to start school tomorrow vaccinated (if he can be vaccinated today) so that he can engage in all of the usual aspects of his first day of school with his friends and cohort and not be singled out.

[34] He will be able to engage in all of the school activities available. He will also be better protected as far as his health is concerned, particularly having regard to the fact that he has asthma and he will not put his mother or grandparents or any other family member at risk with all of the associated limitations and consequences.

[35] In short, vaccination provides the best protection from transmission, infection, illness, hospitalisation and death and that should be available to [Ivan]. That is what is in his best interests and best supports his welfare. This overrides any benefits or “interests” associated with the opportunity to consider information available or provided to him both for and against vaccination.

[36] I direct that [Ivan] is to receive the vaccination against COVID-19 immediately.

D Flatley
Family Court Judge