

THE DISTRICT COURT
OF NEW SOUTH WALES
CIVIL JURISDICTION

CONFIDENTIAL

5 JUDGE J B PHELAN

FIFTH DAY: FRIDAY 27 SEPTEMBER 2002

10 263/02 - IN THE MATTER OF THE APPEAL OF
v DEPARTMENT OF COMMUNITY SERVICES

CLOSED COURT

15

HIS HONOUR: My associated contacted the person who provided the reference she was called and her surname was called . Now Miss do you have any further evidence?

20

APPELLANT: Yes your Honour. One of the ladies who wrote yesterday asked if today she could come in when I told her I really wasn't sure whether or not you'd accepted what she'd handwritten--

25

HIS HONOUR: Well I did but it was unsworn that was the problem.

30

APPELLANT: I'm aware of that and she said she was more than happy to come before you because we see each other maybe four or five times a day and have done every since I've lived at this place but we've also known each other--

35

HIS HONOUR: Well that was Mrs was it?

APPELLANT: Mrs yep.

HIS HONOUR: If you wish to call Mrs you may, yes.

40

APPELLANT: You don't mind?

HIS HONOUR: Yes.

45

< (10.40AM)
SWORN AND EXAMINED

HIS HONOUR: Q. What is your full name?

A.

50

Q. Your address?

A.

Q. And you're a pensioner I understand?

A. Yes, yes aged pensioner.

55

Q. Now you've supplied this reference to the Court?

A. Mm.

Q. Have a look at that please. That's true and correct is it?

A. Yes.

5 HIS HONOUR: Is there any further questions you want to put to Mrs , Miss ?

10 APPELLANT: Q. Yes could you let the know how often we see each other, do you regular my home, in what - do you find my home clean?

A. Yeah.

15 HIS HONOUR: Q. How often do you go and visit Miss ?
A. Two or three times a day actually.

Q. How far away do you live?

A. Well lives at number and I live at number just a few doors.

20 Q. And how long have you been doing that for?

A. Maybe the last three years something like that.

Q. Since she moved there?

A. Yes, yes.

25 Q. So you've been good friends?
A. Yes.

30 APPELLANT: Q. When you've visited my home you obviously have been to the home when was there as well?

A. Yes.

Q. Can you tell the Court how you found and what your personal opinion was?

35 A. I always found her happy and well cared for and the house is always clean. I couldn't fault as a mother.

40 Q. Can you explain to the Court, you're aware you have seen me angry and I have not denied that to the Court but in your personal opinion I mean we've grown to be very good friends and I've been probably more honest with you than anybody, can you explain to the Court what you see makes me angry, am I generally an angry person in your opinion or am I - how do you usually find me?

45 A. I always find her very pleasant, I have seen her angry.

HIS HONOUR: Q. What made her angry do you know?

50 A. When the baby was taken away from her of course she was very angry and upset and if she's been to Court and it hasn't turned out good, just things like that, nothing else.

55 APPELLANT: Q. Is my anger directed at you in any way or like do you feel threatened by me?

A. No, no.

Q. So it's obvious that it's not directed at you, it's just me sounding off, is that how you see that?

A. Yes, yes.

5 HIS HONOUR: Q. Mrs have you had children yourself?

A. Yeah three, yeah I've got three children and eight grandchildren.

Q. They've turned out all right?

10 A. Yes, yes.

APPELLANT: I think that's all the questions I'd like to ask if would like to ask some.

15 HIS HONOUR: Miss P.

<CROSS EXAMINATION

20 P : Q. Mrs have you see Miss and interacting with each other?

A. Yes.

Q. What sort of things did you see them do?

25 A. She plays with books with her and gets her to pick, she use to get her to pick the animals out, she was quite good actually picking out which things were which.

Q. Did you see taking a particular interest in books?

30 A. Yes, yes I was amazed with her being so young, she was quite good with them.

Q. Did she appear to be reading them to you?

35 A. Not, you couldn't say reading but picking out any animal said which is, like the cat for instance she would point to them, things like that.

Q. And words?

40 A. I don't think words, no, not while I've been there but picking out the animals definitely.

Q. Did you ever see Miss get angry with the child?

A. No, no.

45 Q. How did you see Miss reprimand the child?

A. I never saw her, I never saw have to do it at all.

Q. From your observations was a good child?

50 A. Yes, yes.

Q. Did you go on outings with Miss and the child?

A. Yeah only down to the shops, down to the shopping centre.

55 Q. Have you seen Miss interacting with other people perhaps of need, have you seen her help other people?

A. Yes I have actually, I've seen her give furniture and

bedding to a young lady who needed some.

Q. What about food?

A. No, no.

5

Q. Did you see Miss do anything to her house when she moved in?

A. I beg your pardon.

10

Q. Did you see Miss do anything to her home when she first moved in?

A. Yes, she actually made a dining room setting, table and chairs. She took the carpets up and sanded and polished all the floors in the house.

15

Q. Did she have any help to do that?

A. No, all on her own.

20

Q. How would you consider your relationship with Miss ?

A. Like another daughter actually.

Q. So you would said she's bared her sole to you?

A. Yes, definitely.

25

Q. Would you say that you've ever seen anything that would make you concerned about her mental ability or stability?

A. No, no.

30

O : Q. Miss have you seen Miss with any of the older children?

A. One of the little girls I saw her with a few weeks ago.

35

Q. When I say with her I mean living with her in a domestic situation?

A. No, no, no, no.

40

Q. You said you've never seen her get angry with ?

A. Mm.

Q. Have you ever seen her angry when been there when she's been angry about something else?

45

A. No, no.

Q. You say that you've seen her with books showing the books and things like that, didn't ever appear to be reading the books to you though, you didn't her saying words as she read the book or anything?

50

A. No, no, no.

Q. When was the last time you saw ?

A. Probably the day before she was taken away.

55

Q. You haven't seen her since?

A. No.

Q. But you've seen Miss with one of the other children, one of the other girls since?

A. Yes, yes.

5 Q. That is what you say a few weeks ago was it?

A. Yes.

Q. Do you know which child that was?

10 A. I've forgotten her name.

Q. Does Miss talk to you about the other girls, and you've heard those names?

A. Yes, yes she does actually.

15 Q. She talks to you about those children?

A. Yes.

Q. And what about , have you heard her speak about ?

20 A. Yes I've met he's been to my house actually.

Q. But he's quite a big boy isn't he?

25 A. Yes he is, he goes to the same high school as my grandsons.

<NO RE-EXAMINATION

<WITNESS RETIRED

30

HIS HONOUR: Do you have any other witnesses Miss ?

APPELLANT: No your Honour.

35 HIS HONOUR: You don't have any witnesses I think. Now Mr O you were contemplating calling Mr .

O : Yes I do propose calling Mr your Honour. Could I just ask Miss something your Honour.

40

HIS HONOUR: Yes by all means.

APPELLANT: Yes your Honour there is somebody here who can be also called to the witness box his name is he and I have become SIDS parent contacts which means--

45

HIS HONOUR: You have told the Court about him.

APPELLANT: Yes I did mention that.

50

HIS HONOUR: So you want to call him now?

APPELLANT: Yes we were going to call him a couple of weeks ago but I believe that the Court ran out of time on that particular occasion. He waited outside the building most of the time.

55

HIS HONOUR: If you wish to call him you may.

< (10.52AM)
SWORN AND EXAMINED

5 HIS HONOUR: Q. Could you state your full name and your address?

A.

Q. Are you working?

10 A. No, unemployed.

Q. I think you have a child is that right?

A. Yeah.

15 Q. How old is your child?

A. Four.

Q. Is that child living with you?

20 A. The mother.

Q. And do you have access to that child?

A. Yes.

Q. How often do you see her?

25 A. Practically every day, second day, maybe for a few hours.

Q. You're living with your mother I think?

30 A. Yeah.

Q. How far away is that from where Miss lives?

A. Five houses.

Q. What's your date of birth by the way?

35 A:

APPELLANT: Q. Do you have any idea or can you tell the Court how long we've known each other?

40 A. I met roughly six or seven years ago but we didn't know each other too well but the last two years, three years we've got to know each other well as friends.

Q. Can you tell the court I've been a guest in your home and likewise your family in my home can you tell the Court what do we do when we go to your place when there?

45 A. We have coffee, play out the front. read books to my son a number of times. She's very polite. My parents like her, yeah and I've seen with happy all the time I've seen them together they were
50 happy.

Q. Did use to like going to your place?

A. Yeah she loved it.

55 Q. So there's a lot of children there regularly are at your place?

A. Yes my two niece and nephew, they're there on a regular basis and they've played with on a number of

occasions.

Q. So a lot of the time there is children there?

A. Yep.

5

Q. And , certainly you would think that fitted in well with those children and certainly felt like one of the rest of the--

A. Yes she's always happy.

10

Q. Did you ever see upset or sad or did she seem in your opinion in any way - not, did she seem like an unhappy child or how would you describe her?

A. I seen her she was happy all the time when I saw her, she was always clean and when you'd walk up the street she was always happy.

15

APPELLANT: I don't think I've got any more questions.

20

HIS HONOUR: Do you have any questions Miss P ?

<CROSS EXAMINATION

P : Q. Had you seen Miss get angry?

25

A. The only time I've seen angry is practically after her court days and sometimes when she's had problems with the Department or something that's the only time I've seen her angry at all.

30

Q. Had you seen her angry when was with her?

A. No.

Q. So this anger can you recall when the anger really started?

35

A. No it's only from the Court after she comes home from Court, she's depressed and sad.

Q. Have you ever seen Miss abuse any neighbours or anybody around?

40

A. No.

P : I don't think I have anything further your Honour.

45

O : Q. Can I just ask you this your relationship with Miss is one of simply of friendship is it?

A. Yeah.

Q. Nothing stronger than that?

50

A. The last two or three weeks we've started to grow a relationship yes.

Q. When you say grow in your relationship you've developed for instance a sexual relationship and I don't mean to be impolite when I ask that?

55

A. Yes we do.

Q. You have?

A. Yes.

Q. And do you see your relationship as developing with Miss [redacted] in the future?

5 A. Yes I'd like to, yes.

Q. Have you spoken to each other about getting together and living together?

10 A. Not at this stage, no.

Q. When did you last see [redacted] ?

A. I went for a visit, would have been two months I think.

15 Q. About two months was it?

A. Yeah.

Q. You went to--

20 A. I visited

Q. You went to the DOCS office did you?

A. Yeah.

25 Q. Do you recall being at the DOCS office when you've seen Miss [redacted] become angry?

A. The day we were there she wasn't angry, no.

Q. She wasn't angry?

30 A. No, not the time I visited with her, no.

Q. No wasn't angry, didn't yell at anyone?

A. No.

Q. Or storm out of the office or swear?

35 A. When I was with her, no.

Q. Have you ever heard Miss [redacted] swear while been near her?

40 A. No I haven't.

Q. Did you know whether she normally swears?

A. No not in general, no.

45 Q. How often would be seeing Miss [redacted] at the moment, on a daily basis I take it?

A. Yep.

<NO RE-EXAMINATION

50 <WITNESS RETIRED

HIS HONOUR: Now about Mr [redacted] does--

55 O [redacted] : Yes I have an affidavit, I seek leave to file it in Court if I may your Honour.

HIS HONOUR: Yes Miss P [redacted] pointed out Mr [redacted] has given considerable evidence in this case in various forms.

Is this to update the situation or what?

5 O : Well it's to some extent to tie the matter together, he was in court yesterday and he wants to comment upon a number of things that were raised yesterday.

HIS HONOUR: Is it covered in his statement?

10 O : Yes it is your Honour.

HIS HONOUR: Well you'd better let me have a look at it.

15 O : I'll hand up the original and I'll hand up a copy as well for you.

HIS HONOUR: Have the parties got copies?

20 O : I already have your Honour I gave a copy this morning.

P : At 10 to 10 your Honour.

25 O : Yes at 10 to 10 your Honour it was a difficulty in having the document put together.

HIS HONOUR: Yes I've read that.

30 < (11.05AM)
AFFIRMED AND EXAMINED

O : Q. Your name is ?
A. Yes.

35 Q. And you are the with the Department of Community Services, your office is

A. Yes.

40 Q. You've sworn and affidavit which was sworn today that is 27 September 2002?

A. Yes.

45 Q. And the contents of that affidavit are true and correct?

A. Yes.

50 Q. Anything you wish to add to or retract from the affidavit?

A. No.

55 Q. Can I ask you this, in the affidavit you speak about restoration if the court were to decide to make an order for restoration that it take place in a structured sort of way, is that the case?

A. Yes.

Q. So what would you see as being required in relation to

restoration or a restoration program?

A. It's difficult to be prescriptive about an exact time frame but typically it would have to be over six to eight weeks depending on the nature of the relationship between the carers and the quality of the care by both the carers and you need to build up over time so Miss is feeling safe and she can build a relationship up again with Miss but also maintaining the current relationship with the carer because this can be quite traumatic breaking attachments with children. They go through a grieving process and they need to have someone who can help them contain their emotions. So it needs to be over a graduated period of time. To start with eight weeks but you'd monitoring as you go and then starting with - see for a child to form an attachment they have to spend, not just an hour a day with the carer, they need to be nurtured and made to feel safe, that is, feeling safe is the key issue about an attachment with the parent. So to do that they need to spend significant periods of time with Miss in this particular case but whilst the current carer is also there, so then you don't get these feelings of abandonment that children can experience.

Q. You've certainly observed as you say in your affidavit, you've observed the interaction between and her current carer?

A. Yes.

Q. At least the mother, the female, Mummy I think she refers to and you've observed that as what appears to be a close bond between the two?

A. Yes.

Q. And I take it that you're suggesting are you that that bond should not simply be broken in one fell swoop?

A. No absolutely not.

HIS HONOUR: Q. Whilst I readily understand that at the same time it will be a very difficult if the court should make the order for those carers and there may be deep feelings of resentment which the longer it goes on the more destructive it might become. I'm not saying it will but could, do you agree with that?

A. No I agree absolutely. In restoration plans, typically are very difficult to implement for that reason and you need co-operation between all parties and obviously it's difficult in this circumstance and the carer has a strong bond to the child, so they're going through their own grieving process and that's protracted for them but I guess theoretically that's how it should be done but in practice it is always very difficult to do that.

Q. On the other hand one can assume there's quite a close bond in all the descriptions between and her mother existing?

A. I haven't seen Miss --

Q. No but put aside the fights or the problems that seem to be connected with contact with the Department, often it's the case that she demonstrates a good relationship with her mother, reading books, listening to music, cuddling and all that sort of thing?

5 A. Yes and certainly in one of my previous reports I commented that there appeared to be--

Q. So there's already a strong foundation for the sort of security that you're--

10 A. Whether that's been maintained over the 12 month period for because--

Q. I appreciate that it's been very artificial in terms of the access visiting, but it still exists that's what I'm saying. Looking at the various reports the recent reports, forgetting about the upheaval, there's substantially still a good relationship there?

15 A. I can't - because I haven't actually observed with her so I can't really comment.

Q. I'm only going from descriptions from your own officers saying that she cuddles her and she responds well to her?

20 A. That would indicate that there's still that relationship, yeah so the foundations are there, yep, yes.

Q. You do touch upon it in your affidavit but if an order for restoration be made by this Court and that restoration ultimately failed would you expect that those - you may not be able to answer this but would you expect that the carers, who are the current carers would be able to take over the care again of if necessary?

30 A. They were previous carers and then was moved to a family member and then they put their hands up to be carers again. I mean I don't know the foster carer that well but I certainly - what I have seen I suspect she might, so I guess that's always at risk but I suspect she might.

Q. Do you know when they were the carers originally they were seen as being long term carers or was it a temporary measure?

35 A. I don't know the answer to that.

Q. There are the two different types of carers though aren't there that the Department engages, there are the long term and these carers certainly and are seen as long term carers aren't they?

40 A. They are now, yes.

Q. They've agreed to take it on a long term basis?

45 A. Yes.

Q. And I think you've also touched upon the permanency planning provisions of the legislation, these are the new provisions that have come into the legislation?

50 A. Yes.

Q. And you understand it they're designed aren't they to ensure that restoration, one of the things they're designed to do is to ensure as best as possible that restoration problems, breakdown of restorations, those sorts of things don't occur?

A. That's right yeah and historically there's been a problem with children. They drift in care they call it and whilst protracted court cases and it's always difficult to get good carers or numbers of carers so often children go from multiple placements whilst we wait and see if the parents can be rehabilitated. So that was the reason and often as practitioners it's hard to make that final decision that you recommend to the court that you believe that the parents cannot adequately care for their children and that this piece of legislation is sort of upping the anti for all of us that somewhere along the line in some cases there are untreatable parents and the decision just has to be made in the best interest of the child.

Q. You've heard evidence from persons in court today, you've said, that have seen in the care of her mother and it's been a great relationship and she's very caring and that sort of thing and you don't, you've not seen anything which would cause you any concerns as far as that evidence is concerned have you?

A. Not directly as far as that evidence goes. To me the concern is because even in my previous report I commented that Miss appeared to be providing adequate care to when she was an infant. The question is, what in fact is Miss untreated parenting problems going to be when gets older and when I was reviewing my previous reports Miss mother also told me that Miss typically use to parent all her children really well when they were infants, it's when they become older that the problems happen and what happens when she is stressed. A lot of the parents we deal with can parent their children a lot of the time, it's when they're stressed and their coping or their lack of coping strategies that the problems happen. So all the evidence is there that Miss has been able to parent all the children when they're infants it's when they become older.

Q. And we've heard evidence about borderline personality disorder, the various effects of it ameliorating over it over time, particularly as the person suffering from that disorder ages that maturity tends to ameliorate and the symptoms abate, you'd agree with that proposition of course?

A. They were generally and that's actually--

HIS HONOUR: Q. And I suppose if the person who suffers the disorder is not subject to some of the stresses such as drug ingestion or failed relationships as those problems tend to fade that would suggest more stability, hopefully?

A. Yes particularly if there's drug usage, yeah and if

there's no significant stressors in your life.

0 : Q. And of course you see it don't you as a
 5 problem arising as the children get older their
 relationship with Miss , in this case, there's likely
 to be more friction?

A. Yes definitely.

Q. Why would that be?

10 A. Because children, once they're three or four they
 start challenging you and that's always, I mean I'm a
 parent myself and raising three and four year olds - I
 know it becomes much more stressful at that time. The
 15 children have started going to school so Miss will
 have to deal with other authority figures. I don't
 believe Miss condition has ameliorated over time
 and so I believe she has a perception that the world is a
 dangerous place and there's lots of paedophiles out there.
 20 It's when her children are exposed to other people in
 society such a what will happen at school I would predict
 that that's when we will have a lot more problems.

Q. Do you think that Miss would benefit from having
 therapy then, some sort?

25 A. Definitely.

Q. What sort of therapy would you see as being an
 advantage?

30 A. I'm not an expert on the different types of therapy.
 I certainly do know, I mean I deferred to Dr
 assessment and he repeatedly said that Miss would
 benefit from therapy and without it would be at
 risk.

35 HIS HONOUR: Q. On the other hand he doesn't seem to have
 pursued therapy with her?

A. No.

40 Q. And that's one of the critical problems, that is he's
 urged it but didn't really do anything about it?

A. I agree that is a significant problem.

45 Q. Do you have any idea why he might have done that, why
 he might not have pursued it any further, you've not
 spoken to him?

A. No, no.

50 Q. Anyway so far as you're concerned you've already said
 that you believe that she really does need some ongoing
 therapy?

A. Yes definitely.

55 Q. And the indications are that and I think you heard her
 giving evidence yesterday that she seems to think she
 doesn't need that ongoing therapy?

A. No not at all. It says "never demonstrated any
 insight into any parenting difficulties at all or any of
 her own psychological problems".

HIS HONOUR: Q. There were two psychologists names, one
was whom I know very well and I was
unfamiliar with the - who was the other one, can anyone
5 remember. In any event if that sort of counselling was
available and she was prepared to go who would pay for
that?

A. Well with funding questions we put submissions up and
they go to people such as our area director about funding.

10 O : I'm instructed in the short term the Department
could fund it but it could not in the long term because it
doesn't have the - it's got budgetary constraints your
Honour and in relation to Dr he was--

15 HIS HONOUR: I can understand that.

O : In relation to Dr he was selected, one of
the reasons he was selected was because he bulk billed.

20 HIS HONOUR: On the other hand his therapy mostly consists
of medication rather than counselling.

O : Yes.

25 HIS HONOUR: I've had exposure to Dr over many
years.

O : I'm not sure of that your Honour.

30 HIS HONOUR: That's been my impression. I'm not saying he
doesn't always counsel but he doesn't get involved in the
way that some psychiatrists do. But if what you're saying
means that the Department would fund the bill for awhile
35 how long might that be, I mean.

O : Three to six months your Honour.

HIS HONOUR: What sort of visits, fortnightly or?

40 O : Weekly your Honour. Yes they're my instructions
at this stage your Honour. That would obviously would
need a concession from Miss that she needed that.

45 HIS HONOUR: I think you heard me say that very thing, if
she consented.

O : Your Honour--

50 HIS HONOUR: The Court can require undertakings in any
event.

O : Yes, that's right absolutely. Well that's the
evidence of this witness I think your Honour.

55 HIS HONOUR: Do you have any questions?

<CROSS-EXAMINATION

APPELLANT: Q. Yeah, I do. I notice that you state here
that Dr [redacted] said certain things about borderline
5 personality disorder and actually when we go back through
the paperwork when Dr [redacted] gave his submissions and his
medical report to the courts he actually stated that it
does not affect my parenting ability so I'm just sort of
curious as to, is there something in particular as far as
10 my parenting ability which is just not up to your
standards?

HIS HONOUR: Q. I think there are a couple of questions
there. One is did Dr [redacted] say that to your knowledge?
15 A. What I've got in my affidavit are direct quotes from
his report of July 2000.

Q. But it's been suggested that, he said that it didn't,
I thought what he said was it didn't necessarily affect
20 her parenting ability?
A. No, the diagnosis of itself aren't grounds for refusal
of custody but and then he qualifies the statement, sorry
I just have to, "The Court will have to base it's decision
on the proven history of actual events". No diagnosis of
25 itself can, is a reason to, for us to make a judgment
about their parenting ability. It's the nature of the
disorder, does it respond to medication for example, what
sort of support systems do they have.

Q. The Act itself specifically says that disability of
30 itself is not a criteria?
A. Yeah, that's right.

APPELLANT: Q. Section 8 of your affidavit states that
Dr [redacted] also noted Miss [redacted] was admitted to a
35 psychiatric hospital with a diagnosis of a schizophrenian
form psychosis. Do you know who was that treating doctor
that diagnosed that?
A. I don't know.
40

Q. You don't know, you just--
A. But it's a direct quote out of his report.

Q. Because there is a reason that I asked and I have seen
45 a letter which states that and the letter was written, I
cannot recall the exact date but it was February '95 and
it was written by a Dr [redacted], do you know him?
A. I don't know him, I've heard of him.

Q. After I approached Dr [redacted] about that letter and I'm
50 just sort of wondering because he was threatened to write
that letter about me and I'd never even been a patient of
his, never ever seen him and he was quite concerned and
they wanted it on [redacted] Area Health Service paperhead
55 specifically for the courts and I was never even a patient
of his. Now if the Court requires--

HIS HONOUR: Were you a patient in the --

5 APPELLANT: There was no such schizophrenia disorder at all. A doctor wrote it in the first place because he was threatened by, we're still unsure who, but he is prepared to come before the Court.

HIS HONOUR: Who are you talking about?

10 APPELLANT: Dr . . . He was at the time on the board of directors for the Area Health Service. This is where this--

15 O : Your Honour, I object to this. This witness can't answer any of this. He is being cross-examined.

HIS HONOUR: That may well be the case.

20 Q. Are you able to assist in any way with the question that's been raised about the origin of this report?

A. No, I mean as I said it's a direct quote from Dr report. I'm assuming he has--

25 HIS HONOUR: He's only quoting from Dr so he doesn't know.

30 APPELLANT: Yes, but Dr is quoting from that specific file written by Dr . . . It is important because in actual fact I've had several phone calls with such sincere apology when he realised that the Department used that paper work--

O : I object to this, your Honour.

35 APPELLANT: has tapped in--

40 HIS HONOUR: Just wait a minute. It's been objected to and it's material which you have the right to respond to if it's untrue but this witness can't help you do that because he doesn't know.

45 APPELLANT: But what I'm saying is that he's used it as a part of his evidence and I'm just, I was just trying to clarify whether--

50 HIS HONOUR: He's only basing his knowledge on what Dr had told him. Now if there's a mistake about that that it might be very significant and the witness might change his view but at this stage we don't know whether it's a mistake or not unless you were to give further evidence explaining to the Court how it came about that this history appeared as against you.

55 APPELLANT: Yeah.

HIS HONOUR: So are you going to ask questions of this witness as to what he really knows himself or about his opinion based upon assumptions that he's made from others.

A. No, but I came to your place from memory in September last year to do another parenting capacity with so that's when my involvement started again. I've continually been involved with and

5

Q. So that was just before was taken?

A. Yeah, it was just before was taken, yeah.

Q. So did you see a problem with my home? I know it's probably coming down to a little less--

10

A. I wrote the report and submitted it to court.

Q. --reality than your living standards and I'm aware of that but I don't think--

15

A. No, in fact I think I commented very positively.

Q. --do you think that my living standards were of any problem?

20

HIS HONOUR: Miss , please don't worry about things that he hasn't criticised you about. He's not criticising your home at all.

APPELLANT: I just wanted it brought before the Court that the condition of my home and--

25

HIS HONOUR: Well everybody concedes that, there's no problem about tidiness or direct care for at all.

APPELLANT: Q. Had ever been abused that you'd seen?

30

A. Not that I'd seen, no.

HIS HONOUR: It's not been suggested except on one isolated occasion at a meeting at the Department when you had her on your hip and that was a very isolated incident.

35

APPELLANT: Q. Did you as a child psychologist whilst was in care after she was taken from me, obviously somebody has written here, are you aware of the head banging and the--

40

A. No.

Q. --child not sleeping and it didn't sleep or eat for nearly three weeks?

45

A. No.

Q. You're not aware of that?

A. No.

50

HIS HONOUR: There was some evidence of that.

APPELLANT: Q. Are you aware that sustained quite a lot of injuries whilst in care after being removed?

55

A. No.

Q. As a child psychologist and in the future events should the Court return back to the natural mother

is there anything that you can suggest because obviously
was showing, I don't know, I'm not a child
psychologist but maybe you could, that child was showing
signs of, what's the word I'm looking for, self-harm in a
way of protest, is that normal for a child of that age to
be--

5 A. After the separation?

Q. Yeah?

10 A. Part of the grieving process, anger, shock and
children will--

Q. So that's normal, so you've experienced that quite a
lot then?

15 A. I don't know if quite a lot but typically children
will experience a grieving process when they're removed
from their parents.

Q. Is there any advice or ways that could be dealt with
or because that's, when I read some of the paperwork it
reduced me to tears knowing that children and probably so
on a regular basis by the Department in between removals,
is there any way that sort of stuff can be prevented? I
mean why, I couldn't see to remove a child that was happy,
healthy and content to place a child in such a
self-destructive mode. I mean you're a child psychologist
and I give you credit for that. Isn't there a better way
of dealing with things or with children that they
shouldn't need to suffer that sort of pain?

20
25
30 A. This is an unfortunate part of child protection work
that somewhere along the line a decision is made what is
the least detrimental alternative for a child and at the
time the decision was made it was better for to be
removed then than to remain in your care on a long term
basis.

Q. So you stated borderline personality disorder, I'm
classed as a disabled person. Wouldn't you class that as
discrimination to take a child from a person because of
their disability and purely on their disability?

40 O : I object to that.

APPELLANT: No, no, your Honour.

45 HIS HONOUR: No, I allow it because the section
specifically refers to disability of itself not being a
sufficient--

50 O : That's not--

APPELLANT: Thank you.

55 O : --never been the Department's case, your Honour.
We've never said we took the child because of any
disability.

HIS HONOUR: It's fundamental to the Department's case

that the disability's so severe that in the long term it will affect her mothering capacity. That's what the case is about.

5 O : It's what the disability has done and--

HIS HONOUR: It hasn't done anything so far.

10 O : --it's what the disability has done and what the disability is likely to do to this child.

15 HIS HONOUR: There's no suggestion that the disability so far has done anything at all. The reverse. The Department's talking about what's the danger in the long term.

O : Yes, your Honour.

20 HIS HONOUR: Different issue and it may be enough to support the Department's attitude.

25 O : We're talking about today, your Honour what the disability had done to this child. Now at the moment we now have evidence, your Honour that this child has been in circumstances for instance where Miss and one would assume that the circumstances of for instance when she had the child on her hip were brought about because of her disability.

30 HIS HONOUR: Put that aside. That was isolated and it was ambiguous as Dr pointed out.

35 O : The issues that, where there's evidence of what occurred on the last few occasions when access--

40 HIS HONOUR: Yes, but this is against a background of extreme hostility possibly for partly justifiable reason as I've already indicated in my view. I think this matter's been very badly handled as I stressed before. Nevertheless that's not my problem at the moment, it's the long term that's the important issue.

O : Yes, very well your Honour.

45 HIS HONOUR: I allow the question. I've forgotten what it was.

APPELLANT: Q. You obviously work with disabled people as your role as a child psychologist within the Department?

50 A. I think we need clarification about what you mean by disability, I mean--

55 Q. Do you work with adults with children with disability? I know that you have a disability section in your Department. Do you have much contact with parents with disabilities?

A. We have contact with parents who have intellectual disabilities.

Q. With intellectual disabilities?

5 A. And parents who have psychiatric diagnosis such as schizophrenia and the decision is never made because they have this therefore they can't parent. We actually look at how they do parent and a diagnosis or a label is just a way to help practitioners understand what's going on and guide treatment, not--

10 Q. When I studied welfare we were taught to not label anybody. It's not our disability, it's our ability--

HIS HONOUR: The Department's not labelling--

15 APPELLANT: and, and--

HIS HONOUR: Miss , the legislation makes it clear that labelling of itself isn't a basis upon which children are removed from their parents. It specifically says that but the disability might become so bad in its potentiality for harm that the Department may be justified in taking a step. Two different matters.

20

APPELLANT: Q. The Department, its original grounds for taking , I don't know if you can recall back to when was seventeen days old there was a matter put before the Children's Court. I received a letter saying DOCS versus . Did she plead guilty or seek a further adjournment, and I turned up at court and I couldn't believe what could a seventeen day old baby plead guilty or even need an adjournment. It was thrown out of court.

25

30

HIS HONOUR: Miss , this partly reflects I suppose the ancient or inappropriate language of the statute at the time. It's not the same now I hope, is it?

35

O : No.

40 HIS HONOUR: Anyway ask questions that are relevant to what I have to decide.

APPELLANT: Q. Do you have many clients within your Department with borderline personality disorder?

45 A. Actually only know of one at the moment that I'm aware of but that's just in my office.

Q. I notice that was taken and the grounds were not for abuse or neglect or risk. I noticed that you used the word before that she would have been at risk. That's not the reasons. Are you aware of that? Can I jog your memory, it was her psychological or educational needs may or may not be met. "May or may not" leaves it very open, is that right? In other words it's damned if she does, it's damned if she doesn't and it didn't really matter, did it?

50

55

HIS HONOUR: This is more debate than questioning. Do you

have any other questions you want to put to the witness?

5 APPELLANT: I wouldn't have thought that a child could have been removed under psychological or educational needs not being met. I would have thought under our Child Protection Act that maybe there could have been many other children who certainly needed that sort of protection and I just think that what the Department's done is just a waste and that's just my personal opinion.

10 HIS HONOUR: These are matters to put to me later, not to this witness.

15 P : Q. Mr , do you recall when you first wrote to Dr in I think it was May 2000 that you said to him that "I am a psychologist in training"?

A. Yes.

20 Q. Are you still in training?

A. No.

Q. Your experience is fairly limited?

A. Depends what you mean by "fairly" but three years.

25 Q. When did your training finish?

A. Approximately 18 months ago.

Q. You've had about 18 months experience as a psychologist with children, working with children?

30 A. Three years all up but the first two years is in training under strict clinical supervision and meeting all the requirements of the New South Wales Registration Board.

35 HIS HONOUR: Q. What sort of work had you done before?

40 A. I was in the Department for two years before that as a case worker and then before that I was in totally unrelated fields to child protection. The preceding four years I was at university doing an Honours Degree in Psychology.

Q. Full time?

A. Yes.

45 P : Q. Also do you recall some evidence--

50 A. Can I just add, can I just comment about the psychologist training bit because in my initial report on and I clearly stated that Miss presentation was beyond my area of expertise and we are bound by that as psychologists to recognise when you don't know an area of knowledge and that's why we asked for an opinion from a psychiatrist and that's a perfectly valid thing to do.

55 Q. Yesterday there was some cross-examination of Miss and I think she gave some evidence about the difficulty with Dr and I think she said that she had gone to four doctors trying to get a referral to get

to Dr . In the last paragraph of your letter you say,

5 "I am unsure about who would be paying for your report. I understand it will be either the Department or Legal Aid. Unfortunately I do not have the delegation to make such decisions. The authority lies with Miss at Community Services".

10 Was there any difficulty at that stage about paying Dr ?

15 A. The bill was paid, it was \$610 but often when we, we deal with professionals all the time and payment of accounts is an ongoing issue so I just wanted to be totally up front that this is how the payment system works and gave Dr Miss phone number if he just wanted to contact her directly because I couldn't just say yes we'll definitely pay the bill. That's just a rule that we have within the area about payment of accounts.

20 Q. So in view of what Miss said yesterday you think that that would be something reasonable that she would believe as to why Dr wasn't being paid or would be paid?

25 A. And when Miss referred that Dr gave a diagnosis because we threatened not to pay I just find that totally unbelievable and I'd find, I'm sure Dr is bound by a code of conduct as a psychiatrist and I'd find it very unbelievable that he would do that.

30 Q. In clause 27 of your affidavit which was filed this morning you said,

35 "It is traumatic for a child to have their attachments broken abruptly. It would be necessary for to gradually spend greater periods of time with her mother whilst feeling safe and maintaining a relationship with her current carer".

40 You still stand by that?

A. Yes, and we addressed that earlier.

45 Q. Can you justify for example the child taken from the mother in circumstances where she was being breast fed and not well on the day with police and everybody present?

50 A. That's a case work decision which is separate from a psychologist's role within the Department but generally speaking that is the unfortunate nature of child protection work. The majority of children that are removed do have attachments to their parents and it is traumatic for the child but it's weighing it up what is the least detrimental alternative for that child. That is the unfortunate nature of this type of work.

55 Q. Would you agree that around this time that the child was taken you've prepared a report dated 2 November 2001 which indicates,

5 "The Department also acknowledges there are positives and strength in Miss parenting. There has been no evidence of drug or alcohol use by Miss in recent past. Miss has stable accommodation and support from her mother. It appears that is developing well and is forming an attachment relationship with her mother".

10 A. Do I agree with that, sorry?

HIS HONOUR: Q. Well that's what it said?

15 A. Yeah, that's what is said. I'm trying to find where I wrote it. If it's in the report in the Court yes, definitely that's what I said.

20 P : Q. What I'm saying is how can you justify saying this in clause 27 when at the same time the Department made those observations through yourself and yet they felt that it was so necessary to take the child in such a traumatic way?

25 A. I thought I, I mean they, that's was a casework decision and I'm not sure of the exact circumstances leading up to the time that was removed. I can't comment on that as a casework decision.

30 Q. In clause 15 you refer to Mrs senior and difficulties with her past husband and an AVO against Miss . Were you aware of any matters in the background of this ..(not transcribable)..

A. Sorry, I couldn't hear the question.

35 Q. In clause 15 where you gave evidence about her mother and problems with her father and an AVO, do you know how long ago that was?

A. That the actual AVO was taken out, no but it was at least before April 2000.

40 Q. What about 1994?

A. Yeah, I accept that and it actually goes to one of the points I was trying to make in, can I answer?

Q. So how do you say--

45 O : I'd ask that he be allowed to answer.

HIS HONOUR: Q. What was it that you wanted to add, Mr ?

50 A. That there's been ongoing conflict not just with the Department but within Miss own family for at least seven years. There's been mental health issues for at least seven years so it's just not the Department that Miss has problems with, it's within her own family. I realise it's old but I wanted to bring that out.

55 Q. It depends just how old, that's one of the difficulties I have in knowing just what the truth was?

A. Sure.

HIS HONOUR: There was no cross-examination yesterday
Mr O suggesting there was any recent problem save
5 for the observation that I made that she hadn't supported
her daughter, or wasn't asked to support her daughter in
the proceedings before the magistrate.

O : No, that's right your Honour.

10 HIS HONOUR: But that's the only, and she said that was a
mistake and I asked her about that.

P : Q. You also indicated in your letter to
15 Dr dated 22 March 2000 which is attached to this
document, you're saying,

20 "There are numerous entries on the file and other
examples of her paranoid thought processes. However
the overwhelming themes are sexual abuse,
paedophilia, persecution and conspiracies".

We've also heard evidence that during this time when she's
had these paranoid thought processes that she's following
an academic career and deeply involved in a lot of welfare
25 and volunteer and social work. Do you see that they fit
together?

A. If Miss has paranoia is that consistent with
somebody still being functional in society, is that--

30 HIS HONOUR: Q. She may be able to function in a social
work type job and still have paranoid ideas?

A. Definitely, it's in the nature of the delusion, it's
the nature of the delusions, how strongly they believe in
them and if they're going to act upon them.

35 P : Q. But these paranoid thoughts and these
processes that you talk about that is not something that
you have diagnosed but something that you've read
somewhere else?

40 A. No, no, my letter was pointing out to Dr what
I've experienced with Miss and to me there was
something wrong and then we ask him for a diagnosis.

Q. Can you pinpoint when you experienced these things?

45 A. My observations that Miss was experiencing
paranoia?

Q. Yes?

50 A. From the time my assessment started when I started
interviewing her in March 2000.

Q. That was after the involvement with DOCS with her
daughter?

55 A. That's right yeah, the children had been removed and
several months later a referral was made to myself.

HIS HONOUR: Q. Would you say that some of it was evident
yesterday when she was--

A. And today about Dr and Dr . You know, someone is forcing them to change their medical records. I mean I think that just leads to the conspiracies involving all government departments.

5

Q. Dr been under a cloud?

A. Right.

Q. And I myself saw him in the witness box in a way that didn't reflect particularly well on him recently just before he was removed from his position so--

10

A. But the claim was someone was coercing him.

15

Q. Yes I know that but what I'm trying to say is that whilst you may think that the ideas were from paranoia but they could have been, all I'm saying is in the light of what I learnt in that recent case, they might have been more substantial than just that?

20

A. And there is a differentiation between delusions, between bizarre and non-bizarre delusions and non-bizarre are believable. It could be true. I mean there are paedophilia rings. We know there have been so you know they're non-bizarre ones and bizarre delusions are ones that we just know just cannot physically or happen.

25

Q. We also get them here as well in some very bizarre ways?

A. Mm.

30

P : Q. In relation to this bizarre behaviour and delusional behaviour that you speak of one of the things that Miss has been saying is that she has been harassed to the point by a DOCS worker and in fact she took out an AVO on that person. Were you aware how many times that particular worker attended Miss home?

35

A. No.

Q. If I were to say to you virtually every second day would that seem excessive to you?

40

O : That's not for this witness--

HIS HONOUR: He's been asked why he's formed the conclusion that she has paranoia and I allow the question because it might tend to suggest that there was some reason for that paranoia.

45

O : Very well, your Honour.

50

WITNESS: Typically the Department would formulate a case plan about what direction we do when we work with a family and if it was in the case plan that ideally a case plan should be formulated with the co-operation of the family, and it was in the case plan that a visit occurs every second day well then it's quite reasonable and believable but if it actually happened, I mean you'd have to look at the file to see and check the contemporaneous notes.

55

P : Q. But you hadn't seen a case plan that said that?

A. No, no I was just talking in general terms. I mean I can't comment if that happened or not.

5

HIS HONOUR: Q. But if it did happen it might give--

A. Sure, yeah.

10

Q. --and if for example you assumed that a particular officer had formed a peculiar view it could lend weight to--

A. The claim of harassment.

15

Q. --or encourage paranoia?

A. If it did happen, yes.

20

P : Q. Aren't they supposed to come in pairs?

A. That's only if there are safety issues and that's a judgment call between that case worker and their supervising manager.

25

HIS HONOUR: Q. It seems to have gone out of fashion. Nuns and policemen used to come in pairs too but that doesn't seem to happen anymore.

<WITNESS STOOD DOWN

SHORT ADJOURNMENT

30

< (12.15PM)

<RE-EXAMINATION

35

O : Q. You were asked some questions, Mr about the child or having been reported that the child was seen to be banging its head against the wall and also I think there are periods of screaming. Have you read any reports concerning those two matters?

40

A. No.

Q. The report as I understand the question, the question came from a report I presume of , your Honour which was a report dated 1 May--

45

HIS HONOUR: I think it's referred to in Dr evidence as well. It's a while since I've read it.

50

O : Q. In the report of Miss she reports that , being the then carer, this is as at May 2000 and that reported previous difficult behaviours of head banging had stopped. Would you expect that that would be the normal course of events where a child is obviously in extremely difficult circumstances so far as a child is concerned is taken from the carer that it's known all its life. Would you expect that that would be the normal course if there were head banging that it would stop over a period of time?

55

A. Yes, definitely but I would explain the head banging

and the loss of sleep and the loss of diet too, the separation it's a part of the grieving process. Generally there's three stages in grieving and the first one is anger and it can be manifested in a variety of behaviours but if there's a high quality and sensitive carer can help the child manage that and you would expect them to ameliorate as they have over time.

Q. Of course you've said that it's just unfortunate that in cases like this that this sort of thing happens?

A. Definitely, yes.

Q. I take it that it happens on many occasions?

A. Absolutely, yes.

Q. The Department is charged is it not with the responsibility of taking the least intrusive, the least intrusive intervention in the life of the child?

A. Yes, that's the principle of the Act yes.

Q. It's the case is it not that at some times even though the Department is taking that least intrusive - making that least intrusive intervention that sometimes things like that head banging episodes, screaming and lack of sleep follow as a course?

A. Yes, absolutely, yes.

Q. You weren't involved in the actual removal of the child, were you?

A. No, no.

Q. You didn't see what happened?

A. No.

Q. You've been asked some questions and the questions have been framed that the police were there and I take it that you have, perhaps you can tell us have you ever been in a situation where you've seen a removal or been involved in a removal of a child where police intervention has been necessary?

A. Yes.

Q. Is it your understanding that where police intervention is usually asked for the Department simply asks that police be there and it's up to the police to determine how many police officers are going to be there?

A. Absolutely, that's their operational decision.

Q. Is it usually the case that police are asked to be at a removal where case workers or departmental workers have some sort of fear that there is going to be some violence--

HIS HONOUR: I don't think the Court has to be informed of this really, Mr O , it follows.

O : Your Honour, it only flows from something your Honour said early in the case which was of great concern

to me and that was in relation to a notion that your Honour seems to have taken on board, and I say so with the greatest respect to your Honour that this was like some SS operation.

5

HIS HONOUR: I still think that it might be and I query it but I mean I do understand that in those minds who were behind the move they were sincerely held. I mean I'm not critical that it was done in accordance with the Department's normal sort of practice. I rather queried the need for it that was all, the original decision.

10

O : I thought your Honour was also concerned with the way the actual operation occurred.

15

HIS HONOUR: I was too but I do acknowledge that sometimes it's got to be that way. I'm not really very interested in that at all.

20

<WITNESS RETIRED

CLOSE OF CASE FOR RESPONDENT

25

HIS HONOUR: There were some affidavits on the file to which I think some reference was made and I think you cross-examined on in part, the one of

O : Yes, your Honour.

30

HIS HONOUR: Another one of and I think--

O : , your Honour.

35

HIS HONOUR: Yes, there was one of which I don't seem to--

O : It may be attached by staple to the one of I think, your Honour.

40

HIS HONOUR: Yes, I have seen it, you're quite right, I'll separate them. You rely on those?

O : Yes, I do your Honour and also the affidavit that the officer Mr --

45

HIS HONOUR: I just want to formally set the record straight, that was all.

P : I missed that, your Honour.

50

HIS HONOUR: I'm just saying those affidavits have been received formally into evidence. Is there any other evidence?

55

P : Your Honour, in the interests of justice I think there's one thing I should bring to your Honour's attention and that is during the break Miss found a diary entry that indicated that the date of that letter

that she's talking about was dated 15 February 1996 and she has during the break contacted the Hospital and tried to locate Dr [redacted] and apparently he was in an emergency situation and a message has been sent to him. Would he fax a letter to this Court about what happened back then and it appears that the catalyst for these things happening with Dr [redacted] was that Miss [redacted] when she found out about the allegations that she had these mental illnesses, she made a complaint to [redacted] who was the Chairman of the [redacted] Area Health Service. It seems to me that because a lot of emphasis has been placed on her delusional health and still arising and coming up in affidavits even today about her schizophrenic state back in 1995 and I think Miss [redacted] feels that's where a lot of the problems have occurred, that somehow we maybe should try to get to the bottom of it. I don't know if it's too late at this stage.

O [redacted] : Your Honour, it's not part of our case that Miss [redacted] is schizophrenic, it's simply something that was raised some time historically.

HIS HONOUR: As I understood it that was so that if she'd had psychotic events in the past they seem to be drug induced and were ancient history although it's still, although obviously Mr [redacted] is incorporating it in his background reasons for being suspicious about the future.

P [redacted] : It seems to me on hearing the evidence over this period of time that there's nothing specific in recent times as to Miss [redacted] --

HIS HONOUR: There's no suggestion of hallucination or anything except for paranoid ideas.

P [redacted] : Bit it's been used by the Department of this probable risk factor.

HIS HONOUR: I understand it is significant from that point of view insofar as the Department relies upon the past as prediction for the future, it does have some influence and if the documentation is available I will certainly consider its reception into evidence but did the doctor give any indication that he would respond? You didn't talk to him directly I take it?

APPELLANT: No, I spoke to one of his workers and she said she will try and locate him. I explained. She asked me what it was about and I said about a document that he had wrongly written several years ago which he gave me a verbal apology for but he had no idea it was going to cause this much problem and I had spoken to him and said you know that this paperwork is being used inappropriately and is being made out that I'm all these crazy things in a courtroom. He said, "If it comes down to you losing your children, yes I will do something". He said as a last resort he said but otherwise because he also feared for

his safety.

HIS HONOUR: When do you say that took place?

5 APPELLANT: He rang me in 1996 when I was very concerned
about the paperwork and I said, "You can't write this
about me, I've never been a patient of yours or a client,
I don't even know you". He rang, I had come home from
10 TAFE one night and I didn't finish till about 9.30, I
lived at at the time. I drove home and
father answered the phone and his name's , he's
been named in other proceedings and said to me,
"Surprise, surprise, would you return this call", and I
said, " , what does he want now, hasn't he done
15 enough damage". He said, "Ring him I think you'll be very
surprised", and he went on. He was crying on the phone.
He explained to me he'd been a doctor in his area for
27 years. He had never done anything so silly as what
he'd done to me. He felt that he was threatened to write
20 that letter and he said, "I don't know what I can do to
change it". He said, "I believe the damage has already
been done".

25 She will approach him now and ask him and actually to put
in writing that no, I was never a client of his, that he
did never see me and that he did wrongly write paperwork
about me.

HIS HONOUR: Who wants to go first with submissions?

30 O : I don't mind, your Honour.

HIS HONOUR: Yes, Mr O . Many of your submissions
are incorporated in your submissions in respect of the
35 suggested interim order.

O : Yes, your Honour.

40 HIS HONOUR: I really don't need to hear you on most of it
but anything over and beyond what you've already put to me
in writing I'd like to hear.

45 O : Thank you, your Honour. Does your Honour have a
copy of the outline of my submissions? You have a copy of
my outline of submissions on the question of whether an
interim restoration order should be made?

HIS HONOUR: Yes.

50 O : Do you have a copy of the other outline of
submissions. I'm not sure if I already handed it up.

HIS HONOUR: I don't think I have them.

55 O : I also hand up to your Honour a chronology and
summary of evidence. I must say, your Honour the
submissions that I'm now handing up are submissions which
I drafted in the early part of these proceedings and some

of them, having heard what's fallen from your Honour's lips in relation to a couple of issues, particularly--

HIS HONOUR: I have the chronology by the way.

5

O : Particularly the issue relating to Miss failure to undertake ongoing therapy with Dr . I think that it's got to be conceded by the Department that so far as she was concerned Dr had indicated to her that he didn't particularly think that that was warranted, that that was necessary at that particular point.

10

HIS HONOUR: It was left ambiguous at the very least.

15

O : Absolutely yes, your Honour. So in relation to that part of my submissions those are the recent submissions that I've handed up, I don't seek to rely on any of the material in those submissions or seek to make those submissions I should say, your Honour.

20

Your Honour, if I can perhaps take your Honour back to how this all came about. If we go back to the court proceedings of December 2000 on that occasion the Court made an order that the child be made a temporary ward or be placed in the parental responsibility of the Minister as the new terminology phrases out.

25

HIS HONOUR: "Ward" is out, is it?

30

O : Yes, they're no longer wards, your Honour. The term is now "allocation of parental responsibility" and on this occasion the Court made an order that be placed into the care of the Minister for a period of 12 months but that the child remain with Miss . That was on the giving of undertakings by Miss . They weren't written undertakings, they were verbal undertakings as I understand it, but they were undertakings to the Department and the Department consented to the orders that were made by the Children's Court and obviously did so on the basis that it considered that if Miss were to comply with the undertakings there was a very good chance or there was a reasonable chance at least that things may change in her life and that ultimately the child could remain with her for the rest of its childhood.

35

40

45

The undertakings are summarised on page 2 of the new submissions that I've handed up, your Honour at the bottom of the page. One was to attend ongoing therapy with Dr at a frequency to be determined by him. That was an undertaking that she gave and obviously determination of frequency by him is one of those very clouded and unclear issues.

50

55

The second undertaking was that she accept the assistance of her mother, in relation to transportation to the appointments with Dr or alternatively the Department would provide taxi fares to enable her to attend Dr . It's clear from that that so far as the

Department was concerned and reiterated by Mr [redacted] in the witness box this morning, that the Department was concerned that Miss [redacted], and obviously looking at the matter from an historical viewpoint to a large extent--

5

HIS HONOUR: There would be some problem about it.

O [redacted]: Sorry, your Honour?

10

HIS HONOUR: That there would be a problem or could be a problem.

15

O [redacted]: There could be a problem, yes. Your Honour, the third undertaking was that [redacted] would be taken to the early childhood centre as deemed appropriate by the early childhood nurse and that Miss [redacted] would consent to the release of information from her doctors and from various services to enable the Department to determine the progress of both herself and of [redacted] as necessary and that she was to continue to accept ongoing support from her mother and that she was to accept regular visits of departmental supervising officers. As I said, your Honour the Department in my submission was doing everything it could to ensure that [redacted] remained in her mother's care.

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25

HIS HONOUR: Yes, I accept that, I think that's clear.

30

O [redacted]: Miss [redacted] of course had first come to the Department's notice in 1995 and over a period of time three of her children, that's [redacted] and [redacted], were all placed into the care of their respective fathers.

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The Department made an application for variation of the orders of the Children's Court, those being the orders of 11 December. That application for variation was made on 12 September 2001 and it was made in circumstances where persons had contacted the Department and had indicated to the Department that in their opinion Miss [redacted] was behaving somewhat erratically. The Department also based the application upon what it saw as Miss [redacted] refusal to allow supervision of [redacted] by departmental officers, and your Honour will recall that the evidence was leading up to September 2001 there was an increasing animosity between the Department and Miss [redacted], at least so far as in my submission it was unilateral, it was one way, it was really the animosity was from Miss [redacted] side, but obviously she'll say that it was the other way.

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There was an increasing difficulty though, your Honour so far as the departmental officers were concerned in their ability to have any meaningful discussions with Miss [redacted] and in essence that Miss [redacted] and the Department's case is in essence that she failed to demonstrate that there was any amelioration of any problems that she might have had or to demonstrate that there are any real changes in the circumstances which led to her previous children being taken from her care and the circumstances that were seen

as at December 2000 when the Children's Court made the original orders.

5 Those circumstances were as been gone over time and time again in these proceedings, that the Department was of the opinion that she needed some support and she needed some support in terms of some sort of therapy and what that therapy was likely to be was really a matter for the therapist. To some extent it's my submission that
 10 Dr has let everybody down in these proceedings in that he has indicated to Miss that he doesn't necessarily, and it's quite unclear whether in fact that was what he had in mind in my submission, but certainly in her mind she is of the opinion that he is saying to her,
 15 "I don't need to see you, there's nothing wrong".

Your Honour, the doctor in his evidence before the Children's Court Magistrate in my submission comes around to saying and I've set that in the other submissions what his evidence was but it comes around to you basically saying that he feels that she would benefit from having ongoing therapy. Dr you will recall in her evidence, your Honour said that she thought that there was some sort of ongoing therapy that had been put in place by Dr
 20 and notwithstanding her having spoken to Dr
 25 That's also set out in the outline of my submissions on the interim restoration where I set out the evidence of Dr

30 Your Honour, section 9 of the Act sets out the principles that are to be applied at the administration of the legislation and--

35 HIS HONOUR: This is the Children and Young Persons Care and Protection Act, is it?

O : Yes, 1998 your Honour.

40 HIS HONOUR: When did it come into force?

O : It came into force in the beginning of 2000, your Honour. I think it was January 2000.

45 SPEAKER: December 2000.

O : December 2000, I'm sorry and there have been some significant amendments to that legislation particularly in relation to permanency planning and I'll discuss those in a moment but if I can just go to
 50 section 9 of--

HIS HONOUR: I've got the Act as at 28 August.

55 O : This year?

HIS HONOUR: Yes, the amendments predate that I take it, do they?

O : Yes they do, your Honour. If your Honour has, does your Honour have a copy of the Act?

5 HIS HONOUR: I haven't got the whole Act but I've got from section 60 through to about 90 something. What does section 9 say by the way because I haven't got it?

10 O : Section 9 sets out the principles that are to be applied in administration of the Act and it says that the principles that are to be applied are as follows,

15 "(a) in all actions and decisions made under this Act whether by legal or administrative process concerning a particular child or young person, the safety, welfare and wellbeing of the child or young person must be a paramount consideration".

20 Then it goes on to say this and this is an insertion that was put into the Act under the new amendments. It says,

25 "In particular the safety, welfare and wellbeing of a child or young person who has been removed from his or her parents are paramount over the rights of the parents".

30 Obviously it will be my submission that welfare and wellbeing of in this particular case would be best served by her remaining in a long term care situation in the long term care of the Minister and obviously to remain where she is with the carers that she's with at the moment. But your Honour the insertion of that amendment is in my submission highly significant.

35 HIS HONOUR: When did that come into effect?

O : It came into effect on 1 February this year, your Honour.

40 HIS HONOUR: So it was applicable at the time the magistrate made his decision.

45 O : Yes, it was your Honour. There are some other sections, paragraphs I should say that were inserted into section 9 at the same time and one of those is paragraph (f) which says,

50 "If a child is placed in out of home care", which is what this child is being placed in, out of home care being out of its normal home, its natural home, "arrangements should be made in a timely manner to ensure the provisions of a safe, nurturing, stable and secure environment recognising the child or young person's circumstances and that the younger the age of the child the greater the need for early decisions to be made in relation to a permanent placement".

The new provisions as I said, your Honour all focus on

this issue of permanency and permanent placement and I'll come to those directly.

5 I don't think I need to cover the issue so far as there's some material your Honour can rely on. Your Honour can rely on basically--

10 HIS HONOUR: One matter that you might be able to give me some assistance on is section 73 as regards undertakings. First of all for very good reason they ought to be in writing because obviously psychologically there's a greater commitment to something that's in writing given to the Court. I think that's been the case recognised as the case for a long time but that wasn't done in this case
15 apparently.

20 O : It wasn't done for this reason, your Honour that when the orders were originally made by the magistrate the Department was seeking supervisory orders only. They wanted the child to remain in the care of the mother but--

25 HIS HONOUR: Yes, I understand that but it didn't happen and it should have happened apparently if this Act was then in force.

O : Yes.

30 HIS HONOUR: The other thing that I notice about it is if there's a breach of undertaking or an allegation of a breach the Court's to be notified and the Children's Court must give the parties an opportunity to be heard concerning the allegation. Did that take place?

35 O : No, your Honour because the undertakings weren't undertakings that were given to the Court. They didn't come within the--

HIS HONOUR: Who were they given to?

40 O : They were given to the Department, they were verbal undertakings given to the Department. The Court simply made an order that the child be placed into the care of the Minister. That meant that the Minister could determine where the child was to live and in whose care
45 the child was to be placed. The Minister would have had the right through the Department obviously.

HIS HONOUR: What order did the Court actually make?

50 O : It made an order that the child be placed into the care of the Minister for a period of 12 months.

HIS HONOUR: Did it not go beyond that?

55 O : It did not go beyond that.

HIS HONOUR: When were the undertakings given, before the order was made or after?

0 : They were actually included in the application
that was made to the Court. The magistrate was aware that
5 the Department was seeking the undertakings, however the
magistrate did not and in fact the magistrate was also
aware that the undertakings were being sought on the basis
of the Court making a supervisory order, not making an
order of wardship. The magistrate however, for his own
10 reasons apparently, decided that he wouldn't make a
supervisory order with undertakings being given. He would
simply make a wardship order. Obviously a wardship order
is a higher order than the sort of order that you would
normally be looking under under section 73.

15 HIS HONOUR: Was the appellant aware of, was she at court
when the order was made?

0 : She had the documentation, she'd been served
with all the documentation, she wasn't in court. I'm
20 instructed that she refused to attend court when the
orders were made.

HIS HONOUR: What do you say the position to be?

25 APPELLANT: I was at court, your Honour. One lot of the
paperwork arrived at my house, the Department had already
done it. arrived at my house and I have a
witness and that paperwork is within the Court
30 House from a woman. She stood there when he served me the
paperwork two days after the Department did it. No, I was
not given an opportunity to go to court in the first
place. They'd done it. I didn't even know.

35 HIS HONOUR: You were at court or not at court when the
order was made?

40 APPELLANT: I was at home, I was at home with the child.
I didn't know they'd been to court. They served me the
pages and said--

HIS HONOUR: Where are the original records?

45 APPELLANT: --"We went to court two days ago. Here is
your paperwork". I said, "You can't do that".

HIS HONOUR: They should be here before the Court.

50 0 : Yes, I would have thought that the original
records, the Local Court records would be with the
District Court papers.

APPELLANT: There should be a letter there actually from
the lady who witnessed the guy serving them.

55 HIS HONOUR: There's December 2000.

0 : December 2000.

HIS HONOUR: 2000, that's right.

APPELLANT: Had I have had the opportunity I would have been there.

5 HIS HONOUR: I'll take that up when I know what the score is. Do continue.

10 O : Thank you, your Honour. It's the Department's case that the issue which goes to the very heart of these proceedings, the real issue here is the possible emotional harm that may occur to should she be returned to Miss care and we say that the Court does need to, with the greatest respect, look at this matter, not only 15 look forward but also look back and the historical perspectives are important in cases of this type. Of course we're not going to go back into ancient history and if it can be demonstrated that there has been a significant change in a person's attitude well that would no doubt be a matter that the Court would want to take on 20 board. The evidence of Mr today was that he hasn't seen any change at all, certainly in Mrs attitudes and in my submission--

25 HIS HONOUR: But it's difficult for him to talk significantly about change because he's relying for some of his ideas as to what her condition is from the views of others, some of them hearsay and some of them may not be supportable so it makes his professional view subject to 30 that qualification.

O : Except your Honour that he has had he said a great deal to do with the children and and he has seen the interaction between Miss and those 35 two children.

HIS HONOUR: But he hasn't seen that for some time because there hasn't been any.

40 O : No, no.

HIS HONOUR: So his ideas as to what's been happening of more recent times must be qualified by that absence of observation subject to his seeing the appellant yesterday 45 in court.

O : Yes, I suppose your Honour and I haven't sought to attack either Dr or Dr and I don't propose doing that but-- 50

HIS HONOUR: You have I think quite justly criticised Dr .

C : In relation to one aspect, yes your Honour.

55 HIS HONOUR: I think that he's been a little polemical about his own role and it's not the first time that I've observed that I've seen him do that. I was in this Court

many years ago when he was severely castigated by
Judge for adopting sort of that kind of attitude.

5 O : The other point was of course that he had only
really, he had fairly limited access to both Miss
and to when he made his report.

HIS HONOUR: Well I think that's right.

10 O : He'd only seen them for a couple of hours.

HIS HONOUR: I think that's perfectly correct.

15 O : Your Honour, Dr does say in his report
that borderline personality disorder does not make
Miss incapable of caring for her child and that's
not the Department's case either.

HIS HONOUR: Dr agreed with that.

20 O : She agreed and Mr agrees with that,
everybody agrees that that's the case. If you have a
person with borderline personality disorder it doesn't
25 have a disability to care for its child. However, it's
equally clear in my submission there needs to be some
supervision of Miss , that if the child's best
interests are to be preserved this is the issue we're
looking at.

30 HIS HONOUR: I understand what the issue is.

O : As I said, your Honour viewed from the
historical perspective in my submission the Court would
35 have concerns for the emotional development that is
likely to encounter if she is returned to Miss
care. There's an abundance of evidence before the Court--

HIS HONOUR: That's the difficulty as to whether it's been
40 established on probabilities that that is the situation.

O : The difficulty is that we just don't know. We
don't know, your Honour. We know that siblings--

45 HIS HONOUR: If we don't know it gets down to the onus of
proof. If we can't say the balance is equal unless
there's some indicative factor that makes it more likely
than not and of course the Department's heavily relying
upon the past as a predictor of the future which
50 historically is a method of assessing the future but it's
not necessarily a valid one.

O : No, it's not necessarily a valid one but it's
one of the only things that we can determine.

55 HIS HONOUR: For sure, for sure. The magistrate I think
committed an error by referring to books on psychology,
one of which went so far as to say borderline personality
disorder was a rather more dangerous concept than

schizophrenia itself which I would have thought was a fairly bold statement, but he relied on that without apparently having referred his material to either of the parties.

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O : I think that there was some material that was actually presented to the Court during the course of the proceedings through one of the experts. I just seem to remember reading that but I didn't refer to it.

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HIS HONOUR: Perhaps you could check that for me because I didn't see any reference to it when I read the transcript.

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O : No, I was surprised when I read that in the magistrate's findings and thought well where did he get that from?

HIS HONOUR: What's your memory of it?

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P : There was no such material presented on that day. I think this is something--

HIS HONOUR: He's taken it upon himself to consult experts' text books and who knows who an expert is?

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O : Of course your Honour's in a position now where you have stepped into his shoes totally. We're not here to determine whether he's made an error.

30

HIS HONOUR: I don't need to hear you on that but I'm just saying that it seemed to me that the difficulty that the magistrate had was that he didn't really address himself as to the real issue as to what has been established on the balance of probabilities about the future and insofar as he might have, he relied upon materials that were not before the Court.

35

O : That's my reading of the, subject to what I said about having, obviously Miss P was here and she would remember if any material was presented to the Court in terms of text books.

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HIS HONOUR: If you can find it you let me know but I couldn't see it when I read the transcript.

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O : Yes, thank you your Honour. Looking at the aspect from the Department's point of view of course there's been an ongoing, as I said before, an ongoing difficulty, a recurring pattern over the period of time since the orders were originally made by the Court in December. A recurring pattern of animosity between the Department and Miss . In my respectful submission the intervention of the Department of its officers has simply been in accordance with their duties under the legislation but Miss has viewed their intervention with antagonism and your Honour that would possibly be as a result largely, not so much of the way the officers have gone about their job but largely as a result of the

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borderline personality disorder that Miss has.
 She's given evidence in court, your Honour's heard her
 give evidence about a number of matters where she
 indicates that she has fears about all sorts of things and
 a number of particularly related to the Department and
 what the Department does with children and that it sells
 children to people, that it gives children to people that
 can't otherwise have children and things of that nature.
 If she's saying that in court she must have developed in
 her own mind some sort of fear or idea that the Department
 doesn't go about its duties in accordance with the
 legislation and its responsibilities under the
 legislation, that it has some other function or other
 role, or it has some other agenda and this in my
 submission would lead very much to one of the reasons that
 we have seen, so much antagonism between her and the
 Department. Once again I say it's antagonism which is one
 way, that the Department has bent over backwards--

HIS HONOUR: Just test that. You have already conceded
 that Dr has let the side down and Dr has let
 the side down because it was thought that she was going to
 have ongoing counselling with him, something which he
 obviously discouraged and which the Department never
 really checked on. In other words in a prejudicial way
 formed the view that she was not co-operating with
 Dr when it now appears fairly clear that she was
 encouraged to think she didn't have to. The very fact
 that Dr planted that idea in somebody who was
 subject to paranoia was not a good way of getting things
 started from anybody's point of view.

O : No, that's right.

HIS HONOUR: And that's why I feel so critical about
 Dr but you can see what I'm getting at. The
 Department didn't bother to check. If they had checked
 they would have realised that things weren't going as
 planned. In order words it was far too quick in racing in
 and making a decision against her when it now seems as
 though she was justified in taking the view she did.

O : By the time it did actually do that in October
 of 2001, your Honour in my respectful submission it had
 developed to a point where there was so much antagonism
 flowing towards the Department from Miss that--

HIS HONOUR: It had grown up in the meantime and much of
 it might have been her problem.

O : You've heard Miss P cross-examining
 Mr about Mr coming, she didn't name the
 officer but we know it was Mr coming to the
 premises every second day and this would have increased
 Miss sense of paranoia.

HIS HONOUR: If it happened.

O : If it happened. Well there's no evidence that that was the case anyway but--

5 HIS HONOUR: It is noted that there was evidence from her and it's not been contradicted by the Department and I don't, I'm really pleased it hasn't been because we could be here for months deciding on it.

10 O : Indeed your Honour, but it also is indicative not of a departmental officer who is there to harass or to threaten in some way but simply--

HIS HONOUR: But it's not normal that people have such enthusiasm for the job even if they had the time.

15 O : That's right but in my submission it's indicative of this officer trying to get Miss to see the Department's side of the coin but her having such little insight into any of the issues that the Department sees as being important, that they were just banging their head against the wall and in the end the thing got to such, the friction was so great the only thing the Department could do was to step in and it did. It wasn't simply though, your Honour that the Department said look this is just too hard, she just won't listen to us or we're just sick of arguing with her or anything like that. They looked at a number of issues.

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30 First of all they looked at that issue that they couldn't, they weren't in a position where they were able to make proper assessments of the child or of Miss or of anything. They were in a situation where they assumed that she hadn't been seeing Dr in accordance with the undertaking. She didn't come to the Department and say, "I've spoken to Dr and he said I don't need to see him anymore" or "I'm okay". She could have said that to the Department but that wasn't said because she didn't see herself as ever having a problem anyway and the other matters are matters in relation to the child, early childhood care. They were issues but that--

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45 HIS HONOUR: That didn't seem to be a particular problem. She was going somewhere else and apparently getting equivalent service and I don't see that to be a problem.

O : Well she says that.

HIS HONOUR: The child was normal for it's--

50 O : But you put this into a melting pot, your Honour which includes the historical issues, the Department was in my submission, it had no option. It was the welfare of this child that it was looking at and it said if we leave this child in this situation, this child is going to suffer the same developmental problems that the other children have suffered - that we have seen the other children suffer, that is and and , and it wasn't prepared to do that and quite

5 rightly so in my submission. We will remove this child
 early. We will place this child into a permanent
 situation where it will be able to be nurtured and will be
 removed from the sort of influences which are likely to
 10 cause it to suffer the sort of emotional damage that we've
 seen with the other two children and if you read, with the
 greatest respect your Honour, Mr first report where
 he talks, which cover and . You'll see that
 15 would appear to be significantly damaged in relation
 to the relationship that she has with her mother to the
 point where she says she doesn't want to see her anymore.
 Your Honour, she's still a young child. I mean I
 think nine years old at this stage, I'm not sure of the
 exact date, your Honour.

15 LUNCHEON ADJOURNMENT

20 O : Your Honour, I think it's reasonable to at least
 draw an inference from the evidence that some form of
 supervision would be of great assistance to Miss and
 that that supervision would be in the form of certainly
 departmental supervision or of some other organisation,
 25 agency and that at the same time that some form of
 therapeutic supervision or intervention take place and
 that she accept both of those before any, and it would be
 my submission and I don't say that this is common ground,
 but my submission would be that that should be done before
 your Honour would make any decision towards the
 30 restoration of the child to the appellant.

35 I say that your Honour because without your Honour being
 totally satisfied that this child is going to be placed or
 be restored into circumstances where its future is in all
 probability going to be guaranteed, it simply is too
 40 dangerous at this stage for your Honour to make any sort
 of, with the greatest respect, make any sort of order
 towards restoration because in my submission the evidence
 is--

45 HIS HONOUR: The difficulty about that is this that
 there's a difference between getting an assessment of her
 present condition and on the other hand having ongoing and
 constructive counselling which after all should take place
 in a confidential setting. So there's a conflict there.

50 O : There is, there is your Honour, however it's a
 conflict which in my submission could be overcome were
 Miss certainly to consent first of all to an
 assessment to be made and to be made available to the
 Court and to the legal representatives at the end of a
 period, whatever the Court thought was an appropriate
 period.

55 The other thing is it really is a case in my submission
 where somebody needs to have made an assessment of
 Miss over a period of time and not to simply have
 seen her in one session and to have made--

HIS HONOUR: I guess that's valid too but I don't see what the danger is because the dangers seem to be not really in the short term but the long term. That's specifically what Mr [redacted] is saying. It's a problem that if it's going to develop will develop as the child gets older, so I don't see it to be the problem quite as imminent in this particular case as it might otherwise be.

O : No.

HIS HONOUR: Mr Registrar, I understand that Miss P has called for a file that may be relevant to the appeal that's before me, is that correct.

REGISTRAR: That's what I'm not clear of, your Honour.

HIS HONOUR: That's the position as I understand it to be. Do you produce that file?

REGISTRAR: I'm the Registrar of the Court and my name is [redacted]. I have the custody, care and control of all records of this Court including that of the Family Law Court. I'm asked to produce a document and I tender the document to the Court. Thank you, judge.

HIS HONOUR: I've also, Mr O [redacted] and Miss P [redacted] and Miss [redacted] called for the files relevant to the original orders in these matters because I think they should be before me so as I have an exact history of what's taken place.

HIS HONOUR: Yes Mr O

5 O : Your Honour, if I can move to the submissions that I made in relation to the question of whether interim restoration orders should be made and I don't propose to address the first few pages of that.

10 HIS HONOUR: I notice there's a typographical error, it says, " been with her present carer since April 2001", it should be 2002.

O : 2002, yes it should be your Honour, I apologise.

15 HIS HONOUR: Yes, I thought that was the case.

O : No I apologise for that, it was a typographic--

HIS HONOUR: Which part do you take me to?

20 O : Just to what I say is that it would be contrary to the evidence in my submission for any order of restoration to be made or for the order of the magistrate to be overturned and I was putting it on the basis that it would be contrary to the evidence for an interim order to be made, the same applies in my submission to any order which goes towards restoration. And I've set out and I don't think I really need to go through it your Honour but I've set out from page 4, the evidence as was before the magistrate in terms of evidence-in-chief and cross-examination, it's the evidence from the transcript and I've just paraphrased it all.

30 HIS HONOUR: Yes, I've looked at that and I accept that to be the case.

35 O : Thank you your Honour. I then your Honour on page 9--

HIS HONOUR: Permanency planning.

40 O : Take your Honour to the permanency planning and these are the new provisions that came into force on 1 February 2002. And the basis as I said before is that the legislature was concerned with the problems that were seen to be arising where children were placed into a number of different care situations, a number of different placements.

45 HIS HONOUR: I understand the philosophy behind it. Was there a permanency plan before the magistrate?

50 O : Yes there was your Honour, it was included in the care plan which is part of the material which was before the magistrate your Honour. There is a section within the care plan. I don't then need to take your Honour to any of the parts of the legislation that relate to permanency planning, nor indeed unless your Honour wishes me to, to reiterate what I've already

set out there on the bottom of page 10 and page 11, which are the experts from Hansard.

5 HIS HONOUR: If I should take the view that the present order should stand, what if anything was in the permanency plan about access to the appellant?

10 O : I'm instructed that it would be maintained for the purposes of family identity until such time as the child should make her own decision. It would be monthly your Honour I'm told, monthly access.

15 HIS HONOUR: You see one of the things that troubled me about this matter was that it had been weekly and then in a somewhat unilateral fashion it was suddenly changed to monthly despite the fact that an appeal was in the wings and known to be and I found the decision to do that at that time a rather amazing one to say the least.

20 O : The appeal wasn't on foot apparently when that decision was made I'm instructed your Honour. I'll have to check though.

25 HIS HONOUR: I think it was known it was going to be an appeal in the way I read the documents.

C : The issue of permanency your Honour is addressed in the care plan, the copy of which I'm looking at is--

30 HIS HONOUR: Where is that to be found?

35 O : It should be one of the documents that was with the material that was before the learned magistrate. It's a document - and I'll hand this up to your Honour, it might assist so your Honour can more readily find it.

HIS HONOUR: It might be here but I don't think I remember seeing it. That's a copy is it?

40 O : That's my copy your Honour, it's been highlighted, I don't think I've written on it but certain parts have been highlighted and I've just opened the parts which deal with permanency planning. The whole document itself is the care plan.

45 HIS HONOUR: Yes it is here. I'll return your copy. Now that I've looked at it, I have seen it before but I had forgotten.

50 O : Yes there's a huge amount of material here your Honour, it's not easy to take it all on board.

55 HIS HONOUR: Yes, anyway all right well I note the provision there. What other matters if any have you got to put before me?

O : That's the material that I wanted to place before your Honour. I think I've covered everything.

Your Honour knows our position.

HIS HONOUR: Miss P

5 P : Your Honour, I wish to rely on submissions that
I made previously, except I wish to amend what I said
about Dr . For some reason I've put in that he
tested 70 per cent of the people. I was wrong there.
10 Apparently he found a third of the people that he tested
for borderline or some illness.

HIS HONOUR: A third did what?

15 F : Apparently Dr in his evidence at
Children's Court indicated to the Court that
he conducted a survey as to the mental state of women in
that area and he found that 30 per cent of them suffered
with a borderline personality disorder or some sort of
20 disorder and on a scale out of ten, many of them were
rated seven and over.

HIS HONOUR: Yes, I remember. So you'd put it too high,
is that what you're saying?

25 P : Yes, I think I put in there that he said
70 per cent, well I was wrong there.

HIS HONOUR: It's 30 per cent.

30 P : So it was a third.

HIS HONOUR: Yes. How could you do a survey and come up
with those results?

35 P : That was just something that was done. I don't
know how it was done.

HIS HONOUR: By him?

40 P : Or why it was done, it may have been--

HIS HONOUR: Had he done it himself?

45 P : I'm not sure if he actually did it himself or
whether he organised it but he was certainly involved in
it and he was able to give that evidence in any event.

HIS HONOUR: I see.

50 P : Your Honour, just in relation to the submission
by Mr O , he indicated in his submission that
had been in the care of the present carer since I think
February 2000 or, yes, since April 2001.

55 HIS HONOUR: That was 2002, we just corrected that while
you were out I think.

F : Okay. In relation to--

HIS HONOUR: She had actually been in the care of those people before she went to Miss relatives.

5 P : Yes, that's true. Now in respect to the child
the identity and family relationships standards
that the Department has put out, that's standard 2.2, the
Department there at 2.2.5, "Contacts between child and
10 person and their family held in places which assist the
parties to be comfortable and make the experience
positive". Now that is something that they can do and it
will be noted just about all the way through this matter
that all the allegations, all the abuse, all the
aggressiveness, has come about after or when Miss
15 has been required to attend--

HIS HONOUR: Yes well I'm very mindful of that situation,
it seems to me to be quite unacceptable.

20 : And also standard 3.2 indicates, "Active
support and encouragement is provided to maintain
relationship with important people". It is my submission
that if the child is kept in care, it would be
extremely difficult for her to maintain contact with
25 and because they're all in
different homes and one could imagine that young
will grow up quite isolated from her biological family.

HIS HONOUR: I think that's probably likely to happen up
30 to a point in any event unless things change
significantly, putting role aside.

P : The other thing in the DOCS standard is and
that's at 2.2, that "Over the last 50 years research has
35 shown where the pendulum has swung between the need to
rescue children from unfit parents, to the need to help
them to grow up in their birth families". And again the
more recent legislation is aimed at keeping the child with
their birth family wherever possible and working in
40 partnership with parents with the aim of contact being
restoration.

HIS HONOUR: That's subject to what the Act says about the
45 paramount interest being in the welfare of the child.

P : What is of concern is that Mr in his
evidence indicated that they would do everything possible
to and ensure that contact happens. Shortly after saying
that and giving that evidence, on 12 July 2002 Miss
50 receives a letter indicating, "It is not possible for the
Department to continue to facilitate contact on a weekly
basis but the Department does acknowledge that contact
with you is important in supporting to maintain her
individual identity and to support her attachment". And
55 that contact has now been reduced to--

HIS HONOUR: I didn't hear any evidence in the case did I
till 28 August?

O : That's right your Honour.

P : This is a letter--

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HIS HONOUR: This before Mr gave his evidence.

P : That was in the Local Court that he gave that evidence.

10

O : Children's Court.

HIS HONOUR: I see, I thought you meant before this Court.

15

P : No, that was in the Children's Court. So rather than facilitate the spirit of the Act, it seems to me that Miss is being further alienated from her daughter, the child only being two and a half that just one hour or so a month is just simply not enough. And the other very worrying thing about this is that the Department has made a big thing of the fact that her other children have been taken from her and that therefore it will follow that this child will be harmed, that there's a high risk or a high probability that this child will be harmed, yet having called on the Court papers, there's a document here on the file which indicates final orders were made on 21 January 2000 indicating that the child was to be given to the mother and granting access of four hours on a Sunday via Police to the father.

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HIS HONOUR: Where do you take that from, the file that the Registrar produced?

35

P : Yes, the file that--

HIS HONOUR: It's not in evidence before me.

40

P : No but it seems that the Court has been misled in saying that the child and were taken from her. In fact she had a Court order in the Family Court and then I'm told that she was asked to voluntarily sign the children over and hopefully that that will be on the Court records at . The other big difficulty is that Miss is supposed to have this paranoia. Now it's evident from her evidence and the things that's come out, Mr for example says that he has observed her paranoia. However there seems to be an explanation for all of that. The saying that her children are extremely bright for example, yet I notice in one of the documents that was filed today where when aged ten years had an IQ with some skills of 130 and that being six years and six months over and above his age. Now that is just one thing that has been found. It's also indicated that Miss is not--

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O : Your Honour, this is not in evidence. I've never seen any evidence of this.

F : My friend filed the document.

HIS HONOUR: Which document are you talking about?

5

P : The documents that were filed this morning, it was an attachment.

O : I apologise, I didn't look at the attachment. I apologise to my friend for interrupting her submissions. I take it she's referring to where it says is currently in an IM class at School is it?

F : And down at the bottom of the page where you'll see it's 130 and that he's well over.

15

O : You see an IM class as I understand it, is a class for children who are intellectually challenged.

HIS HONOUR: He's hardly likely to have an IQ of 130 if he's in such a class.

20

APPELLANT: Some things he's actually quite phenomenal at and just some things he's quite the opposite. The rest of my children were very bright but I believe that not to be the case now, they've all had to repeat and have really suffered, only in the last, since they've been removed.

25

HIS HONOUR: Who's that statement annexed to, whose affidavit Mr O ?

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O : It's annexed to the affidavit of and it's part of annexure B which is a psychological report addressed to the Magistrate at the Children's Court in relation to and it doesn't appear to have a date.

35

P : In relation to his--

O : As I say, it's annexure B your Honour. Perhaps Miss P could take us to the part she's referring to.

40

HIS HONOUR: I just wanted to identify--

45

P : Under the heading "Cognitive", " results on the WISCR yielded an overall IQ score of 112 with verbal IQ of 96 and a performance IQ of 130". Now down at the bottom it indicated, "Which equates to an age of eight years, six months" for one, "Whilst his raw scores on both block design and object assembly equate to an age level of 16 years and six months", and at the time he was ten.

50

As regards her alleged ideas of persecution or things of that nature, she has been saying all along that she has been sexually assaulted herself, the father of I think has assaulted her and the father of I think

55

is the subject of police inquiries at the moment. And that would be her reference to paedophilia because at the time when she alleged that that happened to her that she was thirteen years old.

5

Also she has been accused of having paranoia about what doctors say. Now she's indicated that Dr [redacted] had made a mistake in assessing her and I think this is tremendously important because it seems that things have stemmed from the time that Dr [redacted] is alleged to have said that she has all these schizophrenic illnesses and things of that nature. And I think we would all know in this room that when an assessment is made of a client, like a medical assessment, often prior reports are given to the current maker of a report so that they have some background into what is happening. So what I am saying is that it's possible that all of her problems that she is alleged to have had have been stated but nobody's actually checked whether in fact she does have these problems. And for someone like Miss [redacted] who appears to have acted alone on most occasions, we have one person up against the might of the Department and she's probably felt very powerless. Now how does she deal with that powerlessness? She abuses people or maybe she gets angry with them or aggressive with them and I would say, "What else can she do?"

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As to the threats that she's made that would tend to enforce the ideas of her instability, once again maybe this is through her powerlessness, not being able to do anything about what is happening in her situation. And the Department would have every means to check her police record or her background to see if she's a violent person. She's given evidence to say that she's not a violence person and she's never been charged with assault.

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HIS HONOUR: I don't think anyone's ever suggested that she was violent, have they? Maybe emotionally violent but not physically violent.

45

P : And it seems a little bit overacting when a child is removed from her and the police arrive and I even see in these documents where security guards were on hand when she was having contact visits.

50

As regards the allegation that nothing has changed, that Miss [redacted] is still making allegations of conspiracy, one of those things seem to have arisen from the fact of payment of Dr [redacted] account. Now for somebody who's not familiar with the system as to who pays, if they are aware of that or see that written, maybe in their mind they assume that there is something going on, which Mr [redacted] explained, that it's not always clear who's going to pay the account.

55

[redacted] has given evidence to say that she's not afraid or never has been scared of her daughter, yet that is another incident that's coming through in these documents.

I think what is important, especially in the last three years, that Miss [redacted] has had a stable place to live, she hasn't attempted to move around. There was ample evidence given today that she's a capable person, she fixed her own home, sanding floors, making furniture. When Mr [redacted] first visited her home, he arrived there unannounced, Miss [redacted] had no idea he was coming, yet he found the place clean and tidy and everything in order. And I don't think that can be indicative of somebody who's not coping or anything of that nature.

HIS HONOUR: The Department is not saying that she's not coping in her personal life, but she's not coping in her personal life. They're not suggesting that the house is untidy or that she's been a bad mother. It's the future that has them concerned.

P : We have heard from Mrs [redacted] today, who sees Miss [redacted] almost everyday and in my respectful submission, Mrs [redacted] comes across as a very down to earth and honest lady and didn't give me any indication that she was here to colour the truth on behalf of Miss [redacted] and she said she had never seen her having any of these episodes. She had seen her very angry and that anger was only after she had had some contact with DOCS or something had happened at court that had upset her.

HIS HONOUR: What's her name again?

P : --

APPELLANT:

P : , sorry.

HIS HONOUR: I thought it was [redacted].

P : Yes, sorry.

HIS HONOUR: It's all right, I thought it was me.

P : And she has given evidence where she has seen the child and the mother interacting, that she was always very responsive with the child and I would go so far as to say that [redacted] was a very lucky child to have a mother like [redacted] because she spent time with her, she read to her, they did things together. There was never any suggestion that she raised her voice at her or pushed her away, anything of that nature. And one only has to walk around a shopping centre and one will see children getting pushed, shouted at, sworn at, on a regular basis and there's been no allegation of that sort against Miss [redacted] and this child.

Mr [redacted] for example has never observed Miss [redacted] in her own environment. He's only observed her when there's been an incident and at DOCS or when he's been told about it.

Dr , and that's at page 45, line 25, says that when there's proper supports children often turn out okay and they're not necessarily affected by a parent's borderline personality. And I think also it's been indicated in other areas of reports that environment is not necessarily an indicator as to how a child will turn out because there are many parents who do absolutely everything right but it's felt that the child has these genes or these tendencies and it's outside their control that things go wrong in a child's life. And I think is also at page 51, page 52, lines 50 to 55, where the Department is talking of a chance or probability that will be affected.

15 HIS HONOUR: Whereabouts are you referring?

P : That's in the transcript, in the Local Court transcript at page 51 and page 52.

20 HIS HONOUR: Is that a submission?

P : That was I think from Dr , where it was put to her that the chances or probability that would be affected and Dr said that that is not necessarily so. The other thing is, Mr , at page 53 in the transcript, he observed or he gave evidence at that stage that he observed Miss and her child on four occasions and that was over a period of three years.

30 HIS HONOUR: She's still only two and a half, isn't she?

P : Yes. Also in relation to the Department and Miss , Mr was asked in the Local Court what he had done about trying to look for another alternative, other than have DOCS be the support person and his words were, "Upon Miss willingness to accept that support and enter a structured agreement with them about what they could do and for various reasons, were going to come back to me with a proposal in regard to that and they have not come back to me with that proposal, indicating..."--

45 HIS HONOUR: Miss P , I have already I think been critical of responses in that area and I don't need to be persuaded about that particular matter.

P : So contact has now been made with and have given Miss an appointment at 4pm on 16 October and they indicate that that will cover counselling for sexual assault, counselling for grief for the loss of her child, counselling for ways and means to cope with stresses when confronted, and in particular it would be very beneficial to her if she could deal with DOCS officers in another way other than a confrontational way. Because it seems that if she is rude to the officers, that has probably got them offside and perhaps they haven't tried as hard as what they should have done to find other avenues.

Unfortunately do not write reports because they just don't have the facilities or the staff to do so but by the same token they've indicated that they would work very closely with the Department and they would speak to a Departmental officer at any time about this matter. So DOCS can keep in contact or appraise themselves of what's going on if that's what they wish to do.

10 It seems your Honour that on the whole that there has been a parity of mistakes or errors or things that have happened, allegations haven't been checked out correctly and it seems to me especially in regards to Miss qualifications and the things that she has done, that that has been dismissed as like, "Well she told me about it but it's not my job to check it out". However--

HIS HONOUR: What matters are you referring to?

20 P : I'm talking about her qualifications that she's got and the studies that she's done in welfare, the work that she's done, voluntary work with the and other area health services where she worked with who--

25 HIS HONOUR: She was going to tender some documents about her qualifications, were they handed up?

30 APPELLANT: Yeah I have it, the file is not in great shape but it's about 20 years old but it's the, all my studies and certificates.

35 HIS HONOUR: There was an endeavour, a commencement to tender it and it got lost, I don't know how. Have you seen it?

O : No, your Honour.

40 HIS HONOUR: Show it to Mr O and Miss P .

APPELLANT: I've also done child protection myself, I've also actually studied child protection which is what some of these guys in the Department doesn't even have.

45 O : There's no objection.

HIS HONOUR: Have you seen it Miss P ?

50 P : Yes.

HIS HONOUR: That will be an exhibit in the appellant's case.

55 EXHIBIT #1 APPELLANT'S ACHIEVEMENTS TENDERED, ADMITTED WITHOUT OBJECTION

P : Your Honour, could I official tender the Court papers for 16 December in the Family Law Matter of

and --

O : What year?

5 P : '99. And it may be of use here also where Mr who is now deceased apparently said, "I believe the complainant gave my wife's name to the magistrate as a mischievous act to cause further trouble".

10 O : Your Honour, I object to the tender on the grounds of relevance. It's a document, I don't mind your Honour looking at it but I can't see that it's going to help your Honour in any way, apart from some sort of claim that the child who is the subject of those
15 proceedings was not the child who is the subject of the care order and it seems to be--

HIS HONOUR: No, it was raised on the basis that the Family Law Court had made an order in the appellant's
20 favour in relation to that child before.

O : Yes but that's before your Honour.

25 APPELLANT: Only two days prior to your department threatening me to sign them over, I feared that you were going to hurt them.

O : Please Miss , please can I just finish my submission. And in any case your Honour what happened
30 after those orders were made, would obviously if they were orders that are made under the Children Care and Protection Act, as it then was, would subsume any orders of the Family Court anyway because of the nature of--

35 HIS HONOUR: I propose to admit it for the limited purpose of showing that there had been that prior history. I don't think it's going to particularly help me one way or the other but I will admit it. I'll make that exhibit A1 in your case Miss P

40 EXHIBIT #A1 COURT PAPERS OF 16/12/99 IN THE MATTER OF AND , ADMITTED FOLLOWING OBJECTION

45 O : Could I just qualify. Is that an exhibit which is tendered by Miss P or Miss ?

HIS HONOUR: No Miss P is tendering it.

O : As the child representative.

50 HIS HONOUR: Yes.

P : Because part of the Department's case, they are relying on the risk factor for because all these
55 other children were removed from her. Now if she got a Family Court order in her favour and the father of one of those children was only to pick up the child via Police Station, surely that must add weight to

the fact that--

HIS HONOUR: It's very difficult to know Miss P without knowing a lot more about it. Maybe the file will
5 reveal it and maybe it won't. Often orders are made in the Family Law Court that have little actual reflection of what's going in between the parties. Do you have further submissions?

10 P : Only that it seems to me that having heard all the evidence, read the reports, not having the benefit of being able to get instructions from this child because of her age, it seems to me that Miss does have a lot to
15 offer that child, especially the one to one attention that she'd given to her, the fact that there was nothing really at the time that she was removed where the child was at risk.

HIS HONOUR: In relation to any undertakings, do you make
20 any submissions as to whether there should be undertakings and the form that they might take. Mr O has addressed his mind to that issue.

P : Yes. In relation to undertakings, if the
25 Department had wanted to they could have had an undertaking given by carers of the child. Now that is a form that's readily available and it just indicates I will abide by the voluntary undertakings given by me. It's only a short document, can be written out by hand at court
30 and at least that would have given Miss something to go on. With the undertakings that they say is verbal, one of them was to see Dr , now we all know about the confusion there.

HIS HONOUR: Miss F , I know what went wrong with
35 the undertakings in the past. What I'm asking you is, do you make any submission as to whether there ought to be undertakings given now.

40 P : I would ask that an undertaking--

HIS HONOUR: If I should take the course that you're urging upon the Court.

45 P : Yes, to sign an undertaking that Miss will continue or follow up or go to this counselling at , address the problems that she herself has said that she's had. For example, she speaks to - I'm
50 sorry, I've forgotten his second name.

APPELLANT:

P : in relation to the death of
55 her child. I think she needs to explore that and talk about that. Also the sexual assault in her life, she needs to talk about that. And she also needs to find mechanisms to control her anger when she gets upset with DOCS because obviously that gets them offside, it gets her

stressed and upset and of course that may get the child upset. I think that's the only undertaking.

5 HIS HONOUR: Thank you Miss P . Do you have some submissions?

APPELLANT: Yeah I, as you already know that I would like to be returned. I want to also point out--

10 HIS HONOUR: You wouldn't have appealed if you hadn't wanted to do that, I know that.

15 APPELLANT: No well I just thought I better, in case I'm not specific enough. That prior to removal she was really a happy baby. I did abide by the undertakings. I don't believe that the, I think that the Department whether to deceive you in some way or the previous magistrate but I went to every appointment that was ever made. Sometimes it was difficult but I got there. I, the Department also stated that I think maybe you probably got that far too but the Department stated that and were removed by the Department. That in actual fact is, couldn't be further from the truth. The Family Law here made an order, three days later I was at a hotel. There was a business card under the door and I was told to contact this lady who then threatened me, if I didn't sign the children over I would never see them again. She didn't produce ID, I just assumed she was because of the business card. She said she was a Department worker--

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O : I object to this your Honour.

APPELLANT: At the time the threat was made.

35 HIS HONOUR: Could you just wait a minute. She's appearing for herself.

O : I appreciate that.

40 HIS HONOUR: I want to see what she has to say because I might give her leave to call further evidence.

45 APPELLANT: At the time the threat was made I didn't know whether the threat meant harm would come to me or harm would come to the children. At the time I was standing at the counter of Courthouse. The woman who worked at the courthouse witnessed the conversation and she was, she had quite a surprised look on her face, as I did. I tried many times, I produced the Family Law order to DOCS and I said to them, "Please, can you make sure that this gets to so that they're aware that there are family law orders in place". When I asked said, "We don't know what you're talking about". I said, "I have family law orders", they continued on and then the Department represented the fathers in those, in the following proceedings after that.

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I had a lot of assistance by my mum, which was obvious on the stand yesterday. My mum spent a lot of time and although she's got ten grandchildren no-one means more or less than the other, being one of them.

I would only be too happy to go to for counselling to deal with the assaults. I've done nothing but try and reach out to places to get help, to help me deal with the assaults and nobody does. And when I read through the paperwork of DOCS, they are the ones who are blaming me for those things and that's how I feel now. I went through that years ago, through counselling, saw, made me see it wasn't my fault. And then I'm back to here, all right, I don't have my kids and they're making it, "Yeah, yeah it is your fault". No it's not my fault what happened to me. Some of the assaults occurred on me from four years of age. No four year old child asks for what happened to me.

I protect my children, I don't work full time. I spend my time, 24-hours a day, dedicated to my children. My family worked and I thought I'm going to change the future, history is not going to repeat because I'm going to be there, I'm not going to give them the opportunity, anybody to ever hurt my children the way I have been.

I'm an artist, I express a lot of, what I do in my art. My children help me a lot with that, they love painting, they love making. Sometimes it's really messy and is like that too. I miss her not being there doing paper mache or whatever we happen to be building.

The Department has no history as far as any abuse on or . Yes, I did smack once. He used such a derogative word, which I don't like anybody ever using and certainly not a child and certainly no son of mine. And he got smacked on his arm and he knows and only back a few weeks ago he said he was sorry for that, he said, "I shouldn't have said that".

HIS HONOUR: How old was he when he did that?

APPELLANT: He was in third class at school, which would have made him about eight years old. I've done the best to bring up my children and I'm not saying that because their dads have done what they've done to me, whether I prove it or whether I don't, I'm not downing their parental responsibility. When it comes to their children, yes their children come first too. I doubt whether those men would hurt my children but I don't know really inside the mind of a perpetrator and I cannot honestly guarantee that.

Yes I do talk about my fears, about paedophiles because I've grown up and living next door to some of them for so bloody long and it's horrible. They no longer live next door to me, I choose what lives there now. I choose the

influences that are around my children and usually they're really happy people.

5 , when I had I didn't have postnatal depression
or anything, I actually, I thought she was a boy. When
she was a girl it was the most, it was one of the best
things that could have ever happen to me and I held her
and for days, like it was higher than cloud nine, she was,
10 she was something that I needed that was helping me see
through that tunnel, through, there's a light at the end
of the tunnel, I've got a reason to keep going. You know,
this child's going to grow up and be a better person than
I am.

15 You know I do bread deliveries to people each week because
my family are atheists, the Church does those sort of
things but even us atheists now find a way to do it and we
get bread out to the poor people, some people who
amazingly what a couple of loaves of bread does each week.
20 I'm not saying I'm a good person, I'm not saying I'm a bad
person but as a parent I wish I had me as my mum. If I
had me as my mum, I wouldn't be standing here by you today
and I wouldn't have to live with the scars that I've got
to heal with.

25 And I miss my little friend, I miss her footsteps coming
down that hallway at 1 o'clock in the morning, and she
goes, "Mum" and climbs in next to me. I miss waking up
and my arms around her. To all these people in this room,
30 this is paperwork after paperwork after paperwork, but
every one of them's forgotten that there's a little girl
out there that has got feelings, that's being denied her
hugs, her cuddles and her prayers at night and I think
that, I think she needs her mum. She doesn't need a
35 pretend mum or a make believe mum or anything else, I am
the best mum I could ever be for my kids, I go, I don't
know if I'd walk through fire but I probably, I'm sure I
would, I've never been put in that situation. I wouldn't
just do that for my kids, I've dived into cars, massive
40 wrecks of cars and pulled kids out of cars, in mangled
twisted messes. They weren't even mine but I wouldn't, I
would never hesitate to stop anybody's child from getting
hurt.

45 And I certainly as a human being and as a person who's
learnt child protection, nothing here in any of this
paperwork can justify the events of October 12 when I
walked in there and I saw five armed police officers, two
DOCS workers and two doctors tear a breastfed baby from
50 its mother's arms. I wasn't a drug addict. My bills were
all paid. I wasn't being evicted. I have a safe home
environment for a little girl and they say their
justification for that was that I didn't abide by my
undertakings. Well I really really disagree with that. I
55 think I did more than the undertakings. Okay, I didn't go
to a specific building, to a specific early childhood
nurse but they never said a nurses name. I found someone
who was equally as qualified and somebody who was our

family chemist where we'd been going since I was a little kid and I had faith in that person and that chemist.

I would just like to say that I do agree with
 5 one of the first statements that she wrote, her and I
 spent four hours together and she sat there with me and
 , she watched the tears pour from as
 clung on to me as if in disbelief, as if she wasn't going
 to see me again and she stated that the damage that the
 10 Department has done was just so profound, the
 psychological effects probably damaging for life. I hope
 that's not the case for sake because she really is
 a beautiful little kid. She's got the cutest little face,
 she's the brightest little girl. She deserves a fair
 15 chance and I think if anyone in this room cared, someone
 at least for five minutes, if it takes five minutes.
 Imagine if it was your child, imagine if you were in my
 shoes. I have nothing left to say.

20 HIS HONOUR: Thank you.

O : Your Honour just in reply, particularly to
 Miss P , she drew the Court's attention to the
 25 psychological report which is annexure B to the affidavit
 of , sworn today. Your Honour, that
 report in my submission needs to be read in full and is
 quite revealing. It was a report that was completed in or
 about 1998, although it doesn't appear to have been,
 although it's signed by the Clinical Psychologist,
 30 , it doesn't appear to be dated but
 there is a date of the Court, which I presume is the Court
 at , dated 4 May 1998, and that was a report
 that relates of course to when he was ten
 years old.

35 The report itself your Honour indicates that when the
 report was done, was then residing with his
 father following an incident where it was alleged that
 he'd been hit by his mother, that is Miss the
 40 appellant, and that he was refusing to return to her care.
 Miss has just told you that she only ever hit him
 once on the arm but the report itself your Honour raises a
 number of issues, particularly in relation to
 but which are matters which in my submission your Honour
 45 may wish to take into consideration. It's quite a long
 report, it's a complex report, it's an independent report
 I'm instructed. The Clinical Psychologist was not a DOCS
 worker, it's a report though your Honour which goes into a
 number of issues. And the issue that was raised by
 50 Miss P relative to the child's performance IQ is in
 itself something of great significance because on the one
 hand we have a child who clearly has a performance IQ of
 130, yet is in an IM class. At that stage your Honour,
 the child - he I should say, had been in Miss care
 55 since his birth and had only recently been taken out of
 her care. The report describes your Honour a number of
 matters which are in my submission, would be of concern to
 your Honour in these proceedings. For instance, it talks

Appeal has recently been very critical of the using of hearsay evidence in circumstances where it's untested and where it can be taken by the Court unless the Court decides otherwise to be evidence of the facts. It does
 5 create problems in cases of this nature.

O : Except in these proceedings your Honour, your Honour is in a somewhat better position than judges would be in any other sorts of proceedings because of the
 10 nature of these proceedings and the provisions of the legislation, allow you to look at any documents you want to.

HIS HONOUR: That's true but you've also got to be
 15 circumspect if the documents relate to what other people think who have not been called and whose evidence has not been tested in circumstances where there may be other explanations.

(20 O : Your Honour is obviously aware of section 93 of the legislation, I don't need to take your Honour to that.

HIS HONOUR: Yes.

25 O : If I can just say your Honour that the document that I'm referring to in my submission is a document is something that your Honour can look at.

HIS HONOUR: I'm not saying I can't look at it but I'm
 30 saying it has the problem, as the Court of Appeal has recently remarked of presenting evidence before the Court which is untested, unsworn and which may have another explanation. I mean if the thing was fully canvassed is what I'm talking about. In other words, whilst I can't
 35 ignore it, it may not in the end result particularly influence me as regards the decision I have to make in this case.

() O : I can appreciate that your Honour but your
 40 Honour has allowed matters to be raised from the bar table - and I understand the difficulties that Miss has.

HIS HONOUR: That's perfectly true and I'm not stopping
 45 you from making a submission.

O : The only other matters, I just wanted to point
 your Honour to some of the other parts of the report and particularly on the fourth page of the report where she
 50 refers to other possibilities account for an improvement in the child, she refers to there being an improvement in his cognitive behaviour. And I'm reading on from the part that Miss P referred to - you see there was a test done about two years earlier which indicated that the
 55 child was approximately three years behind in his chronological age and she's saying well it's very strange that now we test him and he has this above average ability. She says:-

5 "Other possibilities account for this improvement may be an improved emotional state, children who are depressed or otherwise
 10 experiencing stressful situations can exhibit poor concentration or lack of motivation to perform to their best ability which can produce a score that is significantly below their true level of ability. It may be that
 15 is presently feeling much calmer and more positive emotionally and therefore has greater motivation and ability to concentrate in testing situations because he has been taken out of the situation he was in when he was with his mother".

He is now with his father. And he says this on the next page:-

20 " showed only negative feelings towards his mother, e.g. she is rude, rough, complains too much, is sometimes bad tempered and cranky and she nags too much and he sometimes wishes she would go away. He did not feel he received
 25 any nurturance or affection from his mother and in turn he felt none towards her either. On the other hand he expressed positive feelings to his stepmother".

30 Then goes on:-

" wishes to remain in the care of his father, he is unequivocal about this".

35 And she then goes on to say, this is the Psychologist, he goes on to say how usually in situations like that where you've got parental conflict you get the child waxing and waning. But she says this:-

40 " did not demonstrate any feelings of ambivalence, he feels safe and happy with his father and he feels unhappy living with his mother".

45 Thank you your Honour, that's the only other submission.

HIS HONOUR: I'm still awaiting the files in relation to the original orders. If there's any problem about them, I would give you an opportunity to address the Court further
 50 and I'd let you know what, if anything, was bothering me. I'll reserve my decision, I don't want to reserve it too long but I will probably let you know on Monday whether I want to hear further about the history of the matter.

55 O : Thank you your Honour. My movements next week your Honour are that I'm in a coronial inquiry on Tuesday and I will be Tuesday, Wednesday and Thursday in that but I would be free next Friday.

5 HIS HONOUR: Perhaps we could keep that in mind because I
have a directions hearing at 10 o'clock but I could
perhaps hear submissions at 9 o'clock if need be. I will
at this stage stand it over for mention, Friday next at
9 o'clock.

10 O: If there's no submissions that are need, well
obviously somebody else can attend for the Department.

15 HIS HONOUR: For sure.

oOo