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NZLR

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

M 67/91

LOW PRIORITY

IN THE MATTER OF Section 9 of the Guardianship Act 1968

BETWEEN

B

Applicant

229

AND

L

Respondent

Date of Hearing: 25 February 1991
Date of Decision: 25 February 1991

Counsel:

R A Berghan (Applicant) appears In Person
Francis Gush for Respondent

ORAL DECISION OF McGECHAN J

This is an application brought by the father of a child born 26 June 1989 for a Guardianship Order under s9 Guardianship Act. The principal concern of the applicant is that his son has been kept away from him, to use a neutral term, now for some seven weeks, and that situation looks as though it will continue. He is concerned generally that it is not in the interests of the child to be kept away from its father, and is concerned more specifically at the possibility of danger to the child's development, given concerns as to previous periods in relation to weight gain. The application is brought in person. It is backed by an extensive affidavit from B , including weight charts and associated medical

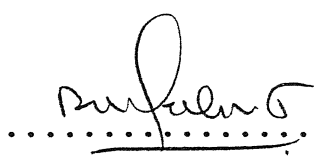
information which I have read before hearing the matter with some care. This morning I was offered a transcript of a telephone conversation between the applicant and the respondent mother which is said to have taken place on 18 November 1990. That was handed in at commencement of submissions, and has not been read, and nor has a communication from counsel for the child in Family Court proceedings which I will refer to in a moment been accepted or read from the other side.

The child is at present the subject of Family Court custody, interim custody and access proceedings initiated on both sides. A history of the steps taken within those proceedings can be gathered in part from the respondent's affidavit and in part from a copy of documentation handed in by the applicant at commencement of submission which I will receive, as he may well have been under a genuine misunderstanding as to whether that Court would or had sent a copy of its record to this as requested.

For the respondent mother, the only other interest represented this morning, a procedural point is taken which (while correct) would not in itself be allowed to form a barrier where a child's interests were concerned. More importantly, the submission is made that the matter is properly, and within the intent of relevant legislation, before the Family Court, and should be allowed to remain there without the intrusion of this Court's guardianship jurisdiction. The guardianship or so-called wardship jurisdiction is a matter of last resort, to be used with care, and only where the interests of the child and in that sense any aspects of wider public interest so require. As examples only, it may be invoked where a child is about to be removed from the jurisdiction, or is to be hidden, or a matter of considerable physical or mental health significance is involved.

In this case, I accept the father feels real concerns of the type outlined in relation to effects on the child of separation from him, and diminution of bonding which may result, and in relation to weight gain. However I do not view this as one of those situations where risk to a child is on such a scale, and so imminent, that use of the wardship jurisdiction would be warranted where the matter is properly before the Family court and under attention. Now the applicant has a conception, and I will accept it as a sincerely held one, that he is making no progress in the Family Court. I am not going to ajudicate upon that beyond the observation that there are steps open for the rapid disposition of matters where it can be shown a child's interests genuinely so require. He has been appearing for himself in the Family Court, which is a matter of constitutional right, but it may be present difficulties which are not to be solved by acting in a way which is not dictated in the child's interests. I can understand the application being brought, but in the circumstances it is misconceived. This is not the solution to the problem.

There was an application made for costs. I will reserve the question of costs. It may be brought on in due course if desired, if and when the proceedings involving this child in the Family Court have been resolved. That is not to be taken as encouraging such an application in relation to a proceeding which, while it must be dismissed, I will accept was brought out of a proper motivation. The formal order is that the application for wardship is dismissed.



R A McGechan J

Solicitors:

Gillespie Young Watson, Lower Hutt for Respondent