IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

AP76/97

BETWEEN **DANIELS**

Appellant

AND **THE NEW ZEALAND POLICE**

Respondent

Hearing: 12, 22 August 1997

Counsel: Mr H Roose (for appellant)
Mr CQM Almao (for respondent)

Judgment: 22 August 1997

ORAL JUDGMENT OF HAMMOND J

Solicitors: Boot & Roose, Hamilton (for appellant)
Crown Solicitor, Hamilton (for respondent)

The appellant was convicted on 24 June 1997 of wilfully neglecting a child, contrary to s10A of the Summary Offences Act 1981. She was sentenced to 200 hours community service. Name suppression was refused. The appellant now appeals against that refusal of name suppression.

The background to the conviction is that the appellant's 13 year old son was left in a Hamilton house, along with two of his older brothers, and an older sister. The children were left to fend for themselves, although an account was set up at a local dairy for them to obtain food. About once a week the appellant would call in and visit the children. The appellant had apparently been overwhelmed by her responsibilities, and had a desire to get on with her own life in a course of studies.

In May of 1996 the appellant's son was located lying on a sofa at the address, unable to move. He was very unwell, and showing signs of fever, dehydration, and in pain; the house was in a disgusting condition; there was no food. The boy had to be removed to Waikato Hospital for an operation to his right hip, apparently due to an infection caused by malnutrition.

Having convicted the appellant, the Judge indicated that he was not disposed to grant name suppression. He said, " I have absolutely no doubt at all that you are an arrogant woman, you are a selfish woman, and you have been consumed with self-interest

which ultimately, and regrettably, has been at the indirect expense of your son " (p5). And he said, "I see no merit in your son's situation being raised in support of this application. Your son now appears to be estranged from you and he is being cared for by others." The record has the appellant intervening at that stage, and saying to the Court, "I have him at the weekend. I don't call that estranged." That interjection notwithstanding, the Judge confirmed that there would be no order for name suppression of the appellant; but he allowed 48 hours for an appeal to be lodged in this Court; it is now before me.

The conviction and the sentence subsequently received widespread publicity in this City. There were handed up to me two articles, one entitled "City judge blasts mum over neglect"; the other, an article under the title "Dogs better off than abandoned boy, says finder".

When the appeal was first called on 12 August 1997 Mr Roose addressed me at some length as to why name suppression should be granted for this appellant. And, he addressed me on some matters which were purely factual and which were to some extent at variance with the caption sheet. I did not then have the sentencing notes; and, as I observed, in fairness to the Judge I could not do justice to his conclusions without having his findings of fact.

In the result, after hearing both counsel on 12 August, I said that, as a preliminary view, I had the greatest difficulty in seeing why suppression should be granted with respect to this appellant; if there is a case for suppression it surely relates to the interests of the son. There was some doubt as to what the precise relationship between the appellant and the victim now is; I therefore took the unusual course of adjourning the appeal forward to today's date, and directed that a report be obtained from the Children Young Persons and Their Families Service as to the now relationship between the appellant and her son.

That report is now to hand. It indicates that until mid-July of 1997 the appellant was living with her daughter and her daughter's partner. The service was seriously entertaining placing the appellant's son in her daughter's care. But then, the daughter and her partner separated, and the family split up. The appellant then moved to live with her mother in a flat in Victoria Street, Hamilton. Her son goes to this residence to see his mother "nearly every Saturday" from about 9.30a.m. to 7p.m. A psychologist's report shows that this boy has no feelings of anger towards his mother, or family, and wishes to have continued involvement with them. He attends School, and is in the fourth form. Apparently he has several mates, and gets on "all right" at school.

Mr Roose urged on me that the Judge had made an error of fact; that there is no estrangement; and that publicity could well imperil such family reunification as may be able to be achieved.

Mr Almao said there is no likelihood of any real impact on the boy; the family circle already knows of the situation; and, Mr Almao added that the Judge was entitled to exercise his discretion as he has.

The general rule is that of an open justice system. There must be therefore, sound reasons why name suppression should be granted in any given case. And, this Court does not act as a censor or arbiter of press publication. In my view, if there is to be suppression in this case, it can only rest on the protection of the child's interests.

It is not easy to evaluate the situation in this particular case. The relationship between mother and son is clearly closer than the Judge thought, on the reports now in front of me. And, reunification is certainly desirable if it can be achieved. It is conceivable that outsiders might say harmful things to the son, although there is no evidence of that before me, and the Court could only speculate.

But it is also the case that the mother and the son have different surnames. I have to take into account too, the

consideration that this is an appeal from a discretion. That being so, the Judge must be shown to have been plainly wrong before this Court should interfere.

As I have indicated, the matter is not free from difficulty; but in the result, I am not disposed to interfere with the decision of the Court below. That for the reason that I do not see a sufficiently realistic prospect of further harm to this boy, to warrant suppression of the appellant's name.

The appeal is therefore dismissed.

Hammond J.