

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
PRACTICE COURT LIST

Not Restricted

S ECI 2020 01526

THE SECRETARY OF THE DEPARTMENT  
OF HEALTH AND HUMAN SERVICES

Plaintiff

v

CHILDRENS COURT OF VICTORIA

First Defendant

EMILY POWELL (a pseudonym)

Second Defendant

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JUDGE: John Dixon J  
WHERE HELD: Melbourne  
DATE OF HEARING: 26 March 2020  
DATE OF JUDGMENT: 27 March 2020  
CASE MAY BE CITED AS: The Secretary of the Department of Health and Human  
Services v Children's Court of Victoria & Anor  
MEDIUM NEUTRAL CITATION: [2020] VSC 144

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APPEAL – Children's Court of Victoria – Interim accommodation order – Whether in best interest of child to remain with mother – Whether unacceptable risk of harm to child – Unacceptable risk not made out – Whether COVID-19 pandemic creates unacceptable risk to child's best interests if child does not remain with mother – Child to remain with mother – *Children, Youth and Families Act 2005 (Vic) ss 8, 10, 271, 276.*

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| <u>APPEARANCES:</u> | <u>Counsel</u> | <u>Solicitors</u>                     |
|---------------------|----------------|---------------------------------------|
| For the Plaintiff   | Ms S Buchanan  | Child Protection Litigation<br>Office |
| For the Defendant   | Ms M Stead     | TP Legal and Associates               |

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HIS HONOUR:

- 1 Emily Powell (a pseudonym)<sup>1</sup> ('Emily') is aged 17 months, born 14 October 2018.
- 2 On 25 March 2020, a Children's Court Magistrate made an interim accommodation order placing Emily with her mother, Lisa Taylor (a pseudonym) ('Lisa') at an undisclosed address. The order was subject to a number of conditions that I will come to in due course.
- 3 The Secretary of the Department of Health and Human Services ('the Secretary') has appealed this order. When the appeal came on some 19 hours after the Children's Court order was made, Emily remained in the custody of the Secretary, placed in out-of-home care.
- 4 On 23 March 2020, the Secretary made a protection application in respect of Emily in the Moorabbin Children's Court, having taken Emily into emergency care on 22 March 2020. The Secretary contended that Emily was in need of protection on the grounds that:
- (a) she has suffered or is likely to suffer significant harm as a result of physical injury, and her mother has not protected or is unlikely to protect her from harm of that type;<sup>2</sup> and
  - (b) she has suffered or is likely to suffer emotional or psychological harm of such a kind that her emotional and intellectual development is or is likely to be significantly damaged and her mother has not protected or is unlikely to protect her from harm of that type.<sup>3</sup>
- 5 The hearing at the Moorabbin Children's Court proceeded intermittently over the course of 23 - 25 March 2020.
- 6 This appeal comes before me pursuant to s 271 of the *Children, Youth and Families Act*

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<sup>1</sup> Any information that is likely to lead to the identification of a child or other party is prohibited from being published, pursuant to s 534 of the *Children, Youth and Families Act 2005* (Vic). Pseudonyms have been used to anonymise the relevant persons referred to in these reasons.

<sup>2</sup> *Children, Youth and Families Act 2005* (Vic) s 162(1)(c).

<sup>3</sup> *Children, Youth and Families Act 2005* (Vic) s 162(1)(e).

2005 ('CYFA'). Section 271(2)(a) provides that if the court thinks a different interim accommodation order should have been made, it may set aside the order of the Children's Court and make any other order that it thinks ought to have been made.

7 The Secretary's central contention was that there was an unacceptable risk of harm to Emily in the care of her mother. The Secretary's concern was borne in the circumstances in which Emily sustained an injury to her face, although the scope of the dispute about the risks to Emily's welfare have widened. During the course of the hearing below, on 24 March 2020, Emily was examined by Dr Alyce Horstmann, a paediatric fellow at VFPMS Monash Children's Hospital.

8 The Secretary contends that Emily remains subject to an unacceptable risk of significant harm and the order that ought to have been made was an interim accommodation order to out-of-home care on particular conditions. I will come to the conditions later in these reasons.

9 The appeal was supported by the affidavit of Jordan Barnard, a child protection practitioner employed by the Department, sworn 26 March 2020. Mr Barnard draws attention to six significant risk factors that the Secretary contends warrants an out-of-home interim accommodation order. In summary, those factors are:

- (a) unexplained injuries;
- (b) exposure to family violence;
- (c) Emily's age and vulnerability;
- (d) substance abuse by Lisa;
- (e) isolation and transience of the family (Lisa and Emily); and
- (f) a firearms incident.

10 This is the Secretary's first child protection involvement regarding Emily. Contact commenced with a report to the Department on 23 December 2019, when Lisa's

grandmother, Carol Taylor (a pseudonym) sought advice in circumstances where Lisa and Emily had moved in with her. However, the application is based on events from late January this year.

- 11 Lisa has a partner, one Barry Brandon (a pseudonym) ('**Brandon**'). The material before the court suggests that Brandon has a methamphetamine addiction, a diagnosis of schizophrenia, and a tendency to engage in aggressive verbal argument and physical violence towards Lisa. These observations are consistent with his criminal history report. Brandon is currently restrained by a family violence interim intervention order. On a number of occasions, he has identified where Lisa and Emily have been living and made contact with them, resulting in incidents involving the police. It is unclear whether he has always done so on Lisa's invitation, but I am satisfied for present purposes that he has regularly breached the interim intervention order.
- 12 Emily was born at 27 weeks and required months as an in-patient due to her prematurity and associated medical conditions. She has a significant haematoma on her right arm and congenital foot abnormalities. She requires ongoing medical interventions including ophthalmology, audiology, orthopaedic and plastic surgery intervention. The Secretary contended that Emily was under the care of the Royal Children's Hospital, who had informed protection workers that seven appointments had been missed since 10 September 2019. However, the facts about Lisa's management of Emily's medical condition appear more complex and to be in contention.
- 13 The immediate incident that led to the application to the Children's Court was a report on 21 March 2020 that Emily had an unexplained serious injury to her face. Photographs of her face were in evidence. It appears that on 18 March 2020, Lisa left Emily in Brandon's care while she was making accommodation arrangements. While in Brandon's care, Emily sustained the injuries to her face. Lisa's account of the incident was that when she returned, she received no report from Brandon of any incident and Emily was in bed. In the early hours of 19 March 2020 during a nappy change, Lisa discovered the injury to Emily's face and called an ambulance. The police

also attended, it being normal protocol for the ambulance to call police in response to a dog bite or scratch to a child. A divisional van attended at 3:42am. Police members observed the injury to Emily's face. They also saw the dog and the police report noted that the scratch marks on Emily's face matched the paws of the dog. Police members took no further action, as their observation of the injury and the dog and the mother's account of the events all matched.

- 14 Dr Alyce Horstmann expressed a provisional opinion that she could not exclude Lisa's explanation of Emily's injury, although she noted that other mechanisms explaining the injury were possible. She suggested that that a photo of the dog paws with a measurement reference be obtained. The Secretary explained that the dog is not known or available to the Department. Further inquiries revealed that the police had satisfied themselves about the relationship between the scratches and the dog paws as I have noted.
- 15 Lisa instructed her counsel that the dog belonged to the owner of the premises where she was staying at that time, who was a close friend of Brandon. She invited me to accept that there was no prospect of contact or interaction between either Emily or Lisa and the dog again.
- 16 The incident that primarily sparked the application has been explained, and once seen in a new light, does not of itself warrant the order that the Secretary sought from the Children's Court.
- 17 There is little evidence of inappropriate behaviour by Brandon towards Emily placing her at direct risk of physical harm, as opposed to Lisa, although it appears that he can be irrational and unpredictable. I note this simply for proportionality and context and should not be taken to be diminishing the significance for Emily of living in an environment where her mother suffers significant domestic violence. Brandon appears to have a more established relationship as a stepfather to Emily than her real father, who has no relationship with her at all.
- 18 I am satisfied that on considered reflection, the initial incident that sparked the

SC:

Secretary's concern, the unexplained bruising and scratching to Emily's face, may have been misunderstood, in the sense that the Secretary was initially contending that Lisa had not been frank about the circumstances of the injury. In the context of the domestic violence between Brandon and Lisa, the risk to Emily was being pitched at a much higher level than was warranted. I am satisfied that in the assessment of risk, Lisa's explanation of Emily's injury is both probable and consistent with the known facts. The residual concern must be whether her decision to leave Emily in Brandon's care left her vulnerable to harm from different causes, such as a want of attention and care to her safety and circumstances, and raises concerns about her decision-making about Emily's safety.

19 Then, on 20 March 2020, Lisa left Emily with a family member explaining the injuries to her face, consistently with her explanation to the court. The family member contacted the Afterhours Child Protection Emergency Service (AHCPEs) who supported that person's decision to take Emily to a GP. Following that medical review, AHCPEs arranged for Emily to remain with the family member. Then, on 22 March 2020, Lisa contacted AHCPEs and demanded Emily's return to her care. At that time, the family member raised concerns for her own safety. The AHCPEs team considered Emily's injuries to be significant and Lisa's explanation of how they occurred to be inconsistent with the facts as then understood. They activated a protective assessment that resulted in this application.

20 Developing the case of risk through exposure to domestic violence, the Secretary alleged six family violence incidents since 12 October 2019, in which Lisa has been the victim and Brandon has been the aggressor. Presently, police are searching for Brandon in order to serve an application for a full exclusion order, presumably motivated by the acceleration in the occurrence of incidents between 13 and 19 March 2020. I have no hesitation in accepting that Emily's exposure to these incidents of violence, in some cases direct exposure, is a significant exposure to a real risk of harm.

21 During the hearing, it was revealed that Lisa is a diabetic and was experiencing problems with her blood sugar levels. However, it is not being suggested that there is

any imminent risk to Emily's welfare through the state of Lisa's health, other than by reference to possible drug use.

22 Substance abuse was a further basis for the Secretary's assessment of imminent risk for Emily. There is no proper basis to be confident that Lisa is engaging in substance abuse. Even the anecdotal evidence of it is thin. Lisa denied any current substance abuse. That denial has not been effectively challenged to date. That said, the Secretary has not had the opportunity to make a proper assessment. It is a matter for ongoing assessment that can be undertaken by appropriate conditions and supervision.

23 Significantly, when AHCPEs conducted its protective assessment, the assessing workers noted that Lisa was able to detail a good normal routine for Emily, including appropriate food and mix of other daily activities and routines. She appeared to have a good understanding of Emily's needs as a small child, and apart from the recently inflicted injury, Emily was observed to appear to be in relatively good health. Emily has only ever known her mother as her carer, following her discharge from hospital after a difficult period prematurity and with medical disabilities and complications. These matters tend to mitigate the implication that Emily is in imminent risk of significant harm.

24 It is also premature to conclude that Lisa is not properly attending to Emily's special health needs. Against the suggestion that she had missed numerous appointments at the Royal Children's Hospital, her counsel suggested that she had other arrangements in place, including regular attendances upon her general practitioner. There may be some confusion around Emily's hospital clinics. She was born at the Mercy Hospital in Heidelberg and originally her appointments for follow up were at that hospital. Those clinics were then transferred to the Royal Children's Hospital, but Lisa found attendance at that hospital very inconvenient, and is in the process of transition to clinics in Western Health.

25 The present state of the material does not enable me to make any conclusive findings of risk in this respect. Plainly, from the perspective of Emily's welfare, given her

special needs, appropriate attention to a medical treatment plan is highly desirable. This is another aspect of risk readily manageable by appropriate conditions without necessitating the more extreme step of out-of-home care.

26 A further issue of concern to the Secretary is the suggestion of a possible propensity in Lisa towards the use of firearms. In October 2016, she was found guilty by the Melbourne Magistrates' Court for possession of an unlicensed non-prohibited firearm, but the circumstances of that offending were not revealed. Then, in December 2019 Lisa's grandmother reported verbal disputes that included Lisa making the threat that she would get her brother to shoot the grandmother's dog. While each of these incidents can be dismissed as distractions, there is a further report that, in Emily's presence, Lisa demanded money from her own mother while threatening her with a 9mm handgun. Precisely when this occurred was not clear. The material reveals tension and ill feeling within Lisa's family, and it is difficult to assess the extent to which reports of conflict between family members should be accorded real significance. There is nothing in these circumstances that persuaded me to feel significant concern of an imminent risk to Emily's welfare from Lisa.

27 The next issue of concern raised by the Secretary is the contention that Lisa has been transient since September 2019. The Secretary contends that she has lived at four different addresses in that time and that Brandon has been able to discover her address on each occasion. It is unclear whether he is told by Lisa where she is living or discovers her address through mutual contacts. In the totality of the circumstances, the former explanation seems probable. Lisa has committed to an application for a full exclusion order and, to the extent that Brandon is a source of significant risk of harm to Emily, Lisa's commitment to exclude him from her life in the future can be fortified by conditions of any order. Should Lisa waver in compliance with this or any other condition, the Secretary can return promptly to the Children's Court. Should Lisa comply with the conditions, significant amelioration of risk such that it may no longer be classifiable as unacceptable is achieved.

28 Lisa reported to the Secretary on 25 March 2020 that she plans to reside in a serviced



apartment. She has been invoiced through to next Wednesday, 1 April 2020. At present, she only has sufficient funds for one night's accommodation, but is seeking to borrow money from friends. Her present accommodation arrangements are unsatisfactory given this uncertainty and a want of appropriate secure accommodation contributes to increased risk for Emily, as I made clear in the hearing. Although I was informed that she has the prospect of receiving assistance from Unison Housing, enquiries made of them by the Secretary revealed that some months ago, Lisa had sought housing assistance to obtain accommodation for herself and Emily, together with Brandon, and had been referred to the Private Rental Access Program ('PRAP'). However, that organisation reported that they had not had more recent contact with her. That said, her circumstances have clearly changed, and I accept that she will not be looking for accommodation with Brandon. Rather, she now presents as a victim of recent domestic violence who is seeking respite.

29 Notwithstanding that there has not been recent contact, and that the earlier contact had included Brandon, Lisa and Emily have good prospects of receiving assistance from Unison Housing and the PRAP. In that event, she may become linked to appropriate support services. Although the prospect of appropriate long term accommodation remains uncertain, it should not follow that Lisa will not receive proper assistance from the Secretary in mitigating this aspect of her circumstances in Emily's best interests.

30 After I reserved my decision, the mother clarified that she has support for housing assistance and had linked with appropriate support services, namely Unison Housing. In the overall assessment of risk, accommodation remains a matter causing me significant concern.

31 Counsel for Lisa drew my attention to s 276(3) of the CYFA, which provides the fact that a child does not have adequate accommodation is not by itself a reason for refusing to make a protection order under subsection (2) of that section. However, the section is concerned with protection orders and this appeal concerns interim accommodation orders. I was urged to accept, and I do, that with the police seeking

to serve Brandon with an application to upgrade the interim apprehended violence order, if Emily was returned to the custody of her mother, they ought to be afforded some priority in entitlements to welfare housing. Nevertheless, whether Emily would have secure and appropriate accommodation if left in the custody of her mother is a relevant consideration in identifying the decision that is in the best interests of the child.

- 32 Counsel submitted that Lisa has successfully been Emily's carer since birth until their separation last Sunday, and that she desperately wants her daughter returned to her. The existence of a strong mother/daughter bond was not contested. Fracture of such a bond should be avoided, unless the balance of immediate risk outweighs the likely damage to welfare. Counsel stated that Lisa is willing to, and interested in, cooperating with the Secretary, and submitted that there will be many opportunities for the Secretary to provide assistance to Lisa and Emily in their own home without unacceptable risk to Emily's welfare. Lisa is particularly interested in access to childcare to enable her to find employment.
- 33 Another relevant consideration that I must take into account is the present COVID-19 pandemic and the restrictions that have been imposed on the community in response to it. The Secretary now faces a substantial restrictions in face-to-face contact with families. Such contact is now being limited to emergency circumstances. The Secretary is attempting to continue to provide services through reliance on technology such as telephone and video communication. On the one hand, these restrictions will limit the opportunities for the Secretary to provide important services to Lisa and Emily as a family unit in their own home, but regular contact and supervision is not being completely excluded. It will just be more difficult for such contact to be effectively conducted using alternative communication technology.
- 34 On the other hand, if Emily is placed in out-of-home care, the opportunities for Lisa to have access visits with Emily will be illusory. Such visits would also have to be conducted by either telephone or video conferencing. It seemed to be accepted in argument that a telephone visit was out of the question, given that Emily is 17 months

old. I was invited to accept that video contact could be effective.

- 35 I have grave reservations about doing so. It is not usual practice for foster parents to arrange and supervise contact between children in care and their parent. Such contact is usually arranged by the Department. Under the current restrictions, that seems impractical. How the foster parent will be involved in video communications between Emily and Lisa was not explained. How such contact could be effective and meaningful for Emily and Lisa, assuming the foster parent was involved, was also not explained. I have no confidence that meaningful contact can occur by any video medium between a mother and a 17 month old baby. In practical terms, there will be no access and mother and baby will be subjected to significant isolation, possibly for a substantial period of time.
- 36 The prospect of fracturing the mother/daughter bond in this way itself may cause very significant harm to Emily's best interest, and I cannot contemplate imposing that risk of harm by compulsion of law, save where Emily's circumstances clearly demonstrate unacceptable risk to her best interests, unless that risk of fracture of the bond is confronted.
- 37 Macaulay J summarised the applicable legal principles on an appeal under s 271 of the CYFA in *Secretary to the Department of Human Services v Children's Court of Victoria*.<sup>4</sup> His Honour said:
- (a) an appeal under s 271 (like its predecessor) is in the nature of a re-hearing on the material before the magistrate, and on any other relevant material placed before the court hearing the appeal;
  - (b) for an appeal to succeed, it is not necessary for this court to identify any error in the decision made by the magistrate – that is, a view may be taken that the decision of the magistrate was open, but nonetheless the court thinks a different order should have been made instead;

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<sup>4</sup> [2014] VSC 609.

- (c) although the view of an experienced Children’s Court magistrate should be afforded respect, and weight given to it, it is ultimately the appellate court’s responsibility to form its view on all the relevant facts and circumstances;
- (d) although a child is only to be removed from the care of a parent if there is an unacceptable risk of harm, the existence of an unacceptable risk of harm is not the only matter to be considered – all the circumstances relevant to the paramount interests of the child must be considered;
- (e) when considering an appeal concerning an interim accommodation order, whether there is an unacceptable risk of harm, it is neither necessary nor usually appropriate for a court to attempt to make findings of fact about events of past alleged harm; and
- (f) analogously to hearings for interlocutory injunctions, the court is to weigh the evidence concerning the conduct in question, consider the likelihood of it occurring in the future, consider the nature and extent of the risk of harm to the child associated with the conduct were it to occur or re-occur, and consider whether that risk is unacceptable having regard to the paramount interests of the child.

38 Like Macaulay J and Zammit J (as Incerti J then was) in *Secretary to the Department of Human Services v Children’s Court of Victoria*,<sup>5</sup> I emphasise that I make no factual findings regarding contentious matters in these reasons. I am evaluating risk based on allegations that are yet to be fully tested.

39 Section 8 of the CYFA requires that the court must have regard to the principles set out in Part 1.2 of the Act. Section 10, found in Part 1.2, sets out ‘best interest principles’. Section 10(1) provides:

For the purposes of this Act, the best interests of the child must always be paramount.

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<sup>5</sup> (2018) 58 VR 490.

40 What is in the 'best interests' of the child will be informed by the balance of the CYFA and, in particular, the remaining subsections of s 10.<sup>6</sup> Subsection (2) stipulates that certain matters must 'always be considered' including the 'need to protect the child from harm, to protect his or her rights and to promote his or her development'.

41 Subsection (3) lists an additional 18 considerations that must be taken into account. The considerations relevant to this case are as follows:

- (a) the need to give the widest possible protection and assistance to the parent and child as the fundamental group unit of society and to ensure that intervention into that relationship is limited to that necessary to secure the safety and wellbeing of the child;
- (b) the need to strengthen, preserve and promote positive relationships between the child and the child's parent, family members and persons significant to the child;
- (f) the desirability of continuity and permanency in the child's care;
- (g) That a child is only to be removed from the care of his or her parent if there is an unacceptable risk of harm to the child;
- (i) The desirability, when a child is removed from the care of his or her parent, to plan the reunification of the child with his or her parent;
- (j) The capacity of each parent or other adult relative or potential care giver to provide for the child's needs and any action taken by the parent to give effect to the goals set out in the case plan relating to the child;
- (k) Contact arrangements between the child and the child's parents, siblings, family members and other persons significant to the child.

42 Because the proper focus of the question before the court is not whether there is any risk of harm, but whether the risk of harm is unacceptable, it is necessary to have regard to conditions that might be imposed on the future parenting of Emily by Lisa under the terms of an interim accommodation order. That inquiry is necessary because risk can be ameliorated by conditions such that even though risk may still exist, it is no longer appropriately regarded as unacceptable when the paramount interests of the child are evaluated in all of the relevant circumstances. In several respects, the Secretary questioned Lisa's commitment or capacity to advance Emily's best interests. This was particularly evident in the Secretary's concern that Lisa will continue to

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<sup>6</sup> *Re Beth (No 3)* [2014] VSC 121 [43].

associate with Brandon, may continue to indulge in substance abuse and, in the context of unsatisfactory accommodation arrangement, may be a flight risk, in the sense of being uncommitted to departmental supervision and assistance to the extent of evading any imposition on her life by the Department.

43 I am satisfied that the accumulative contribution of the risk factors upon which the Secretary relies ultimately cannot be regarded as unacceptable when assessing where Emily's best interests lie, when regard has had to the conditions that Lisa is willing to accept. Her counsel told me that the Children's Court magistrate made it very clear to Lisa that significant adverse consequences will follow any breach of the conditions attached to the interim accommodation order, being an application to vary the order to return Emily to out-of-home care. I accept that Lisa understands the seriousness of committing to these conditions and the consequences of any breach.

44 Further, the conditions involve mutual obligations and the Secretary is required to have regard to best interest principles in making any decision, taking any action, or providing any service to children and families under the Act. That role is not discharged by obtaining an order for out-of-home placement and delegating care responsibilities to a foster parent. I should not be taken as suggesting that this was the Secretary's intention. Rather, I wish to stress that there is an obligation on both parties to ensure that then interests of Emily remain paramount. In this context, such obligations require that both parties work to ensure the success of the conditional interim accommodation order.

45 Appropriate amelioration of risk for Emily to an acceptable level can be achieved by the implementation of five separate categories of special condition.

46 The first set of special conditions concerns accommodation and will be as follow:

- (a) The child will be released into the care of her mother Lisa Taylor (the mother) pending the hearing or the resumption of the hearing of the Secretary's application.
- (b) The mother will use her best endeavours to secure appropriate accommodation forthwith and to become linked to appropriate accommodation support services.

- (c) The mother must inform the Department of Health and Human Services (DHHS) of the address at which she and the child will reside from the time of release of the child into her care.
- (d) The mother must notify DHHS within 24 hours of changing address.
- (e) The mother must not encourage or permit Barry Brandon to live with or have any contact with the mother and child.

47 In the context of the Victorian community presently being in 'stage two' restrictions as a result of the COVID-19 pandemic, with the imminent prospect of moving to 'stage three' restrictions, appropriate accommodation for Lisa and Emily is a critical consideration. It is, however, a short term problem that is capable of being solved. That, in my view, does not swing the balance of the considerations in favour of an out-of-home placement. Having regard to these restrictions, I will note in other matters that I expect that the Secretary will use best endeavours to assist the mother to secure appropriate accommodation forthwith. There is an opportunity for a constructive working relationship to be established immediately between Lisa and departmental workers.

48 The second group of conditions concern the maintenance of that relationship. Those conditions will be:

- (f) The mother must accept visits from and cooperate with DHHS. Such visits or cooperation may be governed or restricted in accordance with government directives and/or medical advice required by the community response to the COVID-19 pandemic. Such restrictions may include contact by audio-visual means (including Facetime, Skype and telephone) if DHHS assesses or is directed that physical contact cannot proceed due to the COVID-19 pandemic.
- (g) The mother must accept support services as agreed by DHHS.

49 The third set of conditions will reinforce the court's expectation that Emily will no longer be exposed to physical or verbal violence. I have already indicated a condition that there be no contact with Brandon and, in particular, he must not reside with Lisa and Emily. This condition is expressed as an obligation upon Lisa, because I expect that she and the police will continue with the application to obtain a full exclusion order that will impose positive obligations on Brandon to stay away. The obligations on Lisa will be further reinforced by the following conditions:

- (h) The mother must not expose the child to physical or verbal violence.
- (i) The mother must go to family violence counselling as directed by DHHS and must allow reports to be given to DHHS.

50 I noted above that the extent of risk associated with the use of alcohol or illegal drugs cannot presently be evaluated, however it is appropriate to have a set of conditions that reinforce the appropriate response as that evaluation occurs over the course of the operation of the order. To that end, the following conditions will be included:

- (j) The mother must not drink alcohol or use illegal drugs.
- (k) The mother must submit to random supervised urine drug screens three (3) times per week or otherwise as directed by DHHS and must allow the results be given to DHHS.
- (l) If any negative results are returned on drug use screening, the mother must participate in assessment and/or treatment for alcohol and drug dependence as directed by DHHS and must allow reports to be given to DHHS.

51 Finally, there is the question of Emily's medical needs. Again, it was unclear on the material before the court that there was a significant risk in this regard. Nevertheless, the following three conditions will be included:

- (m) The mother must take the child to the Maternal and Child Health nurse as often as the nurse recommends.
- (n) The mother must take the child to the doctor for regular check-ups as required by DHHS or doctor and must allow reports to be given to DHHS.
- (o) The mother must take the child to all scheduled medical appointments at the Western Health, Victorian Forensic Paediatric Medical Service and any other medical appointments scheduled by those hospitals, clinics and services and must allow reports to be given to DHHS.

52 I was informed that the Children's Court practice in current circumstances is for applications where the child is in the care of a parent to be adjourned for a period of approximately ten weeks. Accordingly, I have directed that the Secretary's application be adjourned to 21 May 2020 for mention at the Melbourne Children's Court.



CERTIFICATE

I certify that this and the 15 preceding pages are a true copy of the reasons for judgment of John Dixon of the Supreme Court of Victoria delivered on 27th March 2020.

DATED this 27<sup>th</sup> day of March 2020.



