

Family Reports of New Zealand

33 FRNZ 745 to 951

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CASES REPORTED IN THIS UPDATE:

- Hartley v Wood* (2022) 33 FRNZ 783 (FC)
- Long v Steine* (2022) 33 FRNZ 745 (FC)
- New Zealand Police v YL* (2022) 33 FRNZ 775 (YC)
- Newton v Family Court at Auckland* (2022) 33 FRNZ 829 (CA)
- Payne v Wood* (2022) 33 FRNZ 760 (FC)
- RM v JB* (2022) 33 FRNZ 798 (HC)
- TUV v Chief of New Zealand Defence Force* (2022) 33 FRNZ 892 (SC)
- Wood v Payne* (2022) 33 FRNZ 930 (HC)

INDEX OF CASES REPORTED:

BILL OF RIGHTS

Refusal of medical treatment — Freedom of religion — Disputes between guardians — Parties' 12-year-old son in parents' shared care — Mother applied for orders under s 46R of the Care of Children Act 2004 that son receive COVID-19 vaccination, that son remained in her interim care until he had received both COVID-19 vaccinations, that parties not to discuss antivaccination views around him, and that any information provided to him about vaccination be medically approved information presented in child-friendly form — Son expressed view to counsel and Judge that he did not want vaccination and that he understood consequences of non-vaccination — While counsel adopted "welfare and best interests" focus, expression of non-mainstream view not "distasteful" — Care of Children Act 2004 consistent with philosophy that parent's interest in child development akin to "duty" rather than "right" — Son had carefully considered available information and able to articulate clear consequences of non-vaccination — Son had right under s 11 of the New Zealand Bill of Rights Act 1990 to refuse vaccination — Applications dismissed — Care of Children Act 2004, ss 4, 5, 5(a), 5(b), 5(e), 5(f), 6, 16(1), 46R, 139; Family Court Act 1980, ss 11B, 11C, 11D; New Zealand Bill of Rights Act 1990, ss 11, 13.

Long v Steine (2022) 33 FRNZ 745 (FC)

COURT OF APPEAL

Appeals — Specialist reports — Lawyer for the Children — Wishes of the children — Statutory interpretation — Provisions — Ascertaining the views of a child before making a s 133 order — Judicial review of s 133 orders — Lawyer for the Child(ren) reports are not amenable to judicial review — Implications for these proceedings — Relevant legislation — Application for parenting order by maternal grandmother — First s 133 order — First judicial review proceeding — First High Court judgment — Judge de Jong's October 2018 minute — Recall application in relation to October 2018 minute — Second s 133 order — Second judicial review proceeding — Second and third High Court judgments — Issue one: appropriateness of judicial review of s 133 orders — Issue two: ascertaining children's views in relation to obtaining s 133 report — Issue three: pre-determination — Issue four: reviewability of Lawyer for the Children's report — Issue five: claim for removal of documents from the Court file — Relief — Costs — Non-publication orders — Care of Children Act 2004, ss 3(1)(a), 3(1)(b), 4(1), 4(2), 4(2)(a), 4(2)(a)(i), 6(1), 6(2), 7, 133(4A), 133(6), 133(7), 133(8), 133(9), 143(1), 143(2), 143(3), 143(3A); Family Court Act 1980, ss 9B(1), 9B(2), 9B(3), 9B(4).

Newton v Family Court at Auckland (2022) 33 FRNZ 829 (CA)

FAMILY LAW

Dispute between guardians — Parents disagreed about whether child should be vaccinated against COVID-19 — Whether vaccination safe for children — Whether risk outweighs benefits — Whether Court should take judicial notice of government's health advice — Whether Court should order that child be vaccinated — Care of Children Act 2004, ss 5, 5(a), 5(e).

Hartley v Wood (2022) 33 FRNZ 783 (FC)

GUARDIANSHIP

Disputes between guardians — Wishes of child — Vaccination — Bill of rights — Refusal of medical treatment — Parties' 12-year-old son in parents' shared care — Mother applied for orders under s 46R of the Care of Children Act 2004 that son receive COVID-19 vaccination, that son remained in her interim care until he had received both COVID-19 vaccinations, that parties not discuss anti-vaccination views around him, and that any information provided to him about vaccination be medically approved information presented in child-friendly form — Son expressed view to counsel and Judge that he did not want vaccination and that he understood consequences of non-vaccination — While counsel adopted "welfare and best interests" focus expression of non-mainstream view not "distasteful" — Care of Children Act 2004 consistent with philosophy that parent's interest in child development akin to "duty" rather than "right" — Son had carefully considered available information and was able to articulate clear consequences of non-vaccination — Son had right under s 11 of the New Zealand Bill of Rights Act 1990 to refuse vaccination — Applications dismissed — Care of Children Act 2004, ss 4, 5, 5(a), 5(b), 5(e), 5(f), 6, 16(1), 46R, 139; Family Court Act 1980, ss 11B, 11C, 11D; New Zealand Bill of Rights Act 1990, ss 11, 13.

Long v Steine (2022) 33 FRNZ 745 (FC)

HAGUE CONVENTION

Wrongful retention — Return of child — Whether return would cause grave emotional or psychological harm — Parties' seven-year relationship in Australia marred by family violence, mental health challenges and drug use — Parties' relationship ended during family holiday in New Zealand — Mother remained in New Zealand with child, then nine months old — Child had regular video calls with father but no physical contact — Mother claimed she was recovering from abusive relationship of which she and child were victims — Although evidence established incidents of abuse by father and risk that father would again be abusive, Court satisfied of sufficient protective measures available to mother in Australia to guard against, or respond to, risk of further family violence — While mother's return to Australia with child raised risk of deteriorating mental health, evidence established significant improvement in mother's mental health, mother's ability to seek mental health services and counselling in Australia and take advantage of childcare and work opportunities — Court not persuaded "grave risk" defence established — Orders made for child's return — Care of Children Act 2004, ss 94, 105, 105(1), 106(1)(c)(i), 106(1)(c)(ii), 110, 139; Family Court Act 1980, ss 11B, 11C, 11D.

Payne v Wood (2022) 33 FRNZ 760 (FC)

HEALTH LAW

COVID-19 Vaccination — Parents disagreed about whether child should be vaccinated against COVID-19 — Whether vaccination safe for children — Whether risk outweighs benefits — Whether Court should take judicial notice of government's health advice — Whether Court should order that child be vaccinated — Care of Children Act 2004, ss 5, 5(a), 5(e).

Hartley v Wood (2022) 33 FRNZ 783 (FC)

HEALTH LAW - *continued*

Vaccination — Guardianship — Disputes between guardians — Wishes of child — Vaccination — Bill of rights — Refusal of medical treatment — Parties' 12-year-old son in parents' shared care — Mother applied for orders under s 46R of the Care of Children Act 2004 that son receive COVID-19 vaccination, that son remained in her interim care until he had received both COVID-19 vaccinations, that parties not discuss anti-vaccination views around him, and that any information provided to him about vaccination be medically approved information presented in child-friendly form — Son expressed view to counsel and Judge that he did not want vaccination and that he understood consequences of non-vaccination — While counsel adopted "welfare and best interests" focus expression of non-mainstream view not "distasteful" — Care of Children Act 2004 consistent with philosophy that parent's interest in child development akin to "duty" rather than "right" — Son had carefully considered available information and able to articulate clear consequences of non-vaccination — Son had right under s 11 of the New Zealand Bill of Rights Act 1990 to refuse vaccination — Applications dismissed — Care of Children Act 2004, ss 4, 5, 5(a), 5(b), 5(e), 5(f), 6, 16(1), 46R, 139; Family Court Act 1980, ss 11B, 11C, 11D; New Zealand Bill of Rights Act 1990, ss 11, 13.

Long v Steine (2022) 33 FRNZ 745 (FC)

HIGH COURT

Appeal — Best interests of the child — Hague Convention — The appellant, respondent and their child arrived in New Zealand for a holiday — Just prior to returning to Australia, the appellant told the respondent that she and their child would not be returning to Australia — Respondent filed an application for an order for return of the child under the Care of Children Act 2004 — Family Court issued a judgment ordering child L's return to Australia — As well as appealing that decision, the appellant sought leave under r 20.16 of the High Court Rules 2016 to adduce further evidence from Australia — Relevant case law — Applicable approach on appeal — The statutory background — The Family Court decision — High Court's approach to this case — The Hague Convention — General structure and principles — High Court's approach to the evidence — Grounds of appeal — Whether the Court erred in its findings as to the nature and extent of the family violence perpetrated by the father on the mother (and the child) — Whether the Family Court was selective in its treatment of the evidence of the risk to the mother's psychological health if she returned to Australia with the child and that this would create an intolerable situation for the child (that is, if the mother's psychological wellbeing deteriorated or she relapsed into depression or cannabis use) — Appeal granted.

Wood v Payne (2022) 33 FRNZ 930 (HC)

HIGH COURT - *continued*

Appeal — Family Court decision — Section 4 of the Care of Children Act 2004: Child's welfare and best interests to be paramount — Section 5 principles — Parenting and contact orders — Approach on appeal — Mr and Mrs B's past behaviour — The potential risks associated with Mr and Mrs B's polyamorous lifestyle, and strategies to mitigate those risks — Whether V and L had been exposed to adult sexualised behaviours in the B home — Whether V and/or L had been introduced to short-term partners of Mr and Mrs B — Whether Mr and Mrs B were child focused and appropriately nurturing to V and L — Whether V and/or L had been psychologically abused — Whether Mr and Mrs B's past behaviour had raised safety concerns — Whether the Judge erred in concluding that shared care would be in V's best interests — What were the risks to V's psychological safety in the B household? — Whether the Judge placed undue weight on V's views and/or the status quo — Whether shared care was in V's best interests — Whether the Judge erred in her determination of the final parenting order for L — What were the risks to L's psychological safety in the B household? — Whether the Judge was correct to order unsupervised daytime contact and supervised overnight contact — Whether the condition that L not be exposed to, nor educated in his father's polyamorous lifestyle, was appropriate — Whether the conditions of the parenting order requiring L's parents to obtain a psychiatric diagnosis and agree a treatment plan before overnight contact commenced was appropriate — Whether the condition requiring that L be transported in a five-point car seat harness was appropriate — Whether the Judge erred in making final parenting orders for L, rather than further interim ones — Care of Children Act 2004, ss 4, 5, 48(1), 48(2), 48(3), 48(4).

RM v JB (2022) 33 FRNZ 798 (HC)

SENTENCING

Young person admitted charges of unlawful possession of firearm, unlawful possession of ammunition and possession of objectionable publication — Appropriate option that would address concerns that it is too early for Youth Court to end involvement in Young Person's life — Order under s 283(c) of the Oranga Tamariki Act 1989 would create formal criminal record — Impact of order under s 283(c) on young person — Whether young person should be subject to order under s 283(c) to come before the Court if called upon within 12 months — Whether order under s 283 necessary or appropriate — Oranga Tamariki Act 1989, ss 282, 283, 283(c).

New Zealand Police v YL (2022) 33 FRNZ 775 (YC)

SUPREME COURT

Appeals — Dispute — Mediation — Signed settlement agreement — Compliance with settlement terms — Statutory interpretation — Provisions — Purpose — The Employment Court and the Court of Appeal both agreed that a s 149 agreement could be set aside on the basis of lack of capacity — Employment Court found appellant did not have capacity at the time she entered into the settlement agreement — Settlement agreement not set aside because the Employment Court concluded that the respondent did not know and was not put on notice as to the appellant's incapacity — Court of Appeal took the same approach — Whether s 108B of the Protection of Personal and Property Rights Act 1988 applied to settlements approved under s 149 of the Employment Relations Act 2000 — The statutory scheme and relevant concepts of the Employment Relations Act 2000 — International law — Treaties — United Nations Convention on the Rights of Persons with Disabilities — Protection of personal and property rights — Postscript — Non-publication orders — Employment Relations Act 2000, ss 3(a), 68, 149(2), 149(3), 162, 164; Protection of Personal and Property Rights Act 1988, ss 108B, 108B(1), 108B(2), 108B(3), 108C, 108C(1), 108C(2).

TUV v Chief of New Zealand Defence Force (2022) 33 FRNZ 892 (SC)

Appeals — Dispute — Mediation — Signed settlement agreement — To apply s 108B of the Protection of Personal and Property Rights Act 1988 to the present case would undercut the central concepts underlying the Employment Relations Act 2000 and the institutional structures set up by that Act, as well as undermining the efficacy of the Act's dispute resolution processes — If there is to be an exception to *O'Connor v Hart* [1985] 1 NZLR 159, [1985] AC 1000 (PC) to deal with unfair agreements entered into by persons with disabilities, even if the other party did not know of the disability or failed to make inquiries having been put on notice, there is merit in the proposition that this should be a generic exception, that is, not one limited to the employment field — Section 152(2)(a) of the Employment Relations Act 2000 does enable agreed terms of settlement signed under s 149 to be challenged on the ground that the provisions of s 149(2) and (3) were not complied with — If s 152(2) was not simply procedural, but rather applied to an employee who says they did not understand the import of the information provided because of lack of capacity that could allow s 149(3) to be read as ensuring finality subject to the remedial jurisdiction under s 152(2)(a) — Protection of Personal and Property Rights Act 1988, ss 108B, 108B(1), 108B(2), 108B(3), 108C, 108C(1), 108C(2).

TUV v Chief of New Zealand Defence Force (2022) 33 FRNZ 892 (SC)

WORDS AND PHRASES

“Court”.

TUV v Chief of New Zealand Defence Force (2022) 33 FRNZ 892 (SC)

“Disability”.

TUV v Chief of New Zealand Defence Force (2022) 33 FRNZ 892 (SC)

“Eligible person”.

Newton v Family Court at Auckland (2022) 33 FRNZ 829 (CA)

“Parties”.

Newton v Family Court at Auckland (2022) 33 FRNZ 829 (CA)

“Psychological report”.

Newton v Family Court at Auckland (2022) 33 FRNZ 829 (CA)

“Specified person”.

TUV v Chief of New Zealand Defence Force (2022) 33 FRNZ 892 (SC)

“Statutory power”.

Newton v Family Court at Auckland (2022) 33 FRNZ 829 (CA)

YOUTH JUSTICE

Sentencing — Young person admitted charges of unlawful possession of firearm, unlawful possession of ammunition and possession of objectionable publication — Appropriate option that would address concerns that it is too early for Youth Court to end involvement in Young Person’s life — Order under s 283(c) of the Oranga Tamariki Act 1989 would create formal criminal record — Impact of order under s 283(c) on young person — Whether young person should be subject to order under s 283(c) to come before the Court if called upon within 12 months — Whether order under s 283 necessary or appropriate — Oranga Tamariki Act 1989, ss 282, 283, 283(c).

New Zealand Police v YL (2022) 33 FRNZ 775 (YC)

