



Childrens Court New South Wales

Medium Neutral Citation: FaCS v Dimitri [2012] NSWChC 12

Hearing Dates: 12, 13 & 14 June 2012

Decision Date: 22/06/2012

Jurisdiction: Care and protection

Before: Magistrate Graham Blewitt AM

Decision: All aspects of parental responsibility to the father - supervision by the Minister for 12 months - court accepts undertakings of father - mother prohibited from having any contact with children until they attain the age of 18 years

Catchwords: CHILDREN - care proceedings - Narcissistic Personality Disorder - Factitious Disorder by Proxy - Munchausen by Proxy - grandiosity - Section 90A order prohibiting mother from having contact with children until 18

Legislation Cited: Children and Young Persons (Care and Protection) Act 1998

Category: Principal judgment

Parties: The Director General
Alena Dimitri (mother)
Cyril Dimitri (father)
Alex, Kylie, Luke and Rebecca (the children)

Representation: Mr David for the Director General
Mr Dawson for the mother, Alena Dimitri
Ms Rutkowska for the father, Cyril Dimitri
Ms Mowbray for the four children, Alex, Kylie, Luke and Rebecca Dimitri

File Number(s): 69-72/2011

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JUDGMENT

- 1 This case is unusual and unique in the sense that the Department is seeking orders that, if granted, would result in the mother having no contact of any kind with her children, including by written correspondence, until they attain the age of 18 years.
- 2 There are four children the subject of the proceedings, namely Alex aged 9 (he was born on 1 March 2003); Kylie aged 7 (she was born on 4 August 2004); Luke aged 6 (he was born on 5 October 2005) and Rebecca aged 3 (she was born on 19 May 2009).
- 3 The proceedings have been before the Court since 18 May 2011 when the Director-General filed an application following the removal of the children from the mother's care. The children have been placed with the father, who resides with his parents, and the Director-General proposes that the Court make orders allocating all aspects of parental responsibility to the father, until the children attain the age of 18 years. The Court made a finding on 24 June 2011 that this children were in need of care and protection, and this occurred on a by consent, without admissions, basis.
- 4 The proceedings were listed for hearing, as a special fixture, commencing at this Court on 12 June 2012. The

evidence and submissions concluded on 14 June and the matter was adjourned to 22 June for judgment.

- 5 Briefly, the contextual background leading to the commencement of the proceedings, and the central issue in the case, is that the mother, Alena Dimitri, allegedly suffers from Narcissistic Personality Disorder (NPD) that manifests itself with marked interpersonal dysfunction and overt hostility, in respect of which the mother has a significant lack of insight, and this has set the scene for the mother having Factitious Disorder by Proxy (FDBP), or Munchausen by Proxy (MBP), which, according to the Director-General amounts to child abuse.
- 6 There is no dispute that the mother's eldest son, Alex, suffers from asthma, and at times this condition has required his hospitalisation and has resulted in a number of near death experiences.
- 7 The allegations are that the mother's actions in relation to the medical treatment of Alex has exacerbated his illness, to the point that medical opinion is that the child may die if he remained in the mother's care.
- 8 Against this background, the Department intervened to remove the four children from the mother's care. The relevant evidence in this case is too voluminous to summarise, and I make no attempt to do so. I merely confirm, as I did at the outset of the hearing, that I have read and considered all of the evidence filed in these proceedings. Most of this material was re-read in preparation of this judgment. It is necessary, however, to set out some of the allegations.

Factual Allegations

- 9 The factual allegations supporting the finding that the four children are in need of care and protection are set out in the initiating application, filed on 19 May 2011 and are also summarised in a report prepared in these proceedings by Forensic and Clinical Psychologist, Cinzia Gagliardi dated 7 September 2011. This document appears as annexure A to the affidavit of Caseworker Tamara Smith, which was filed on 4 October 2011 and has been admitted as exhibit 1 in the proceedings. I do not propose to set out in this judgment all of the allegations that have been made in this case. It is to be noted also that the mother either denies or explains most of these allegations, and has done so substantially, in her affidavits filed in these proceedings - exhibits 6, 7 and 8. Again I do not propose to set out in this judgment, details of the mother's denials and explanations.
- 10 Briefly, in relation to the allegations, and to place these proceedings into context, the Department had received 26 risk of harm reports relating to the children, dating from the time of Alex's birth in March 2003. The reports include allegations of the mother's aggression and abusive behaviour at the hospital when Alex was born; the father confirming the mother's aggression; the mother being offered Tresillian assistance and assessment for Post Natal Depression and her refusal to accept such assistance or treatment. Further reports of the mother's aggression towards medical staff were made in October 2005, shortly after the birth of her third child, Luke. Again the mother refused to be assessed or treated for anger management.
- 11 In 2006 there were concerns that the mother was making up, or lying about, the medical conditions of her three children, Alex, Kylie and Luke, and there were concerns regarding the need for their hospital admissions. Allegations were also made of the mother's aggression, threats and abuse to medical staff and her own children.
- 12 In April 2007 there was the incident that was the subject of considerable testimony during the hearing, and involved the admission of Alex to Wollongong Hospital following a severe attack of asthma. The risk of harm report, however, focused on the mother's refusal to assist Alex in the ward in relation to the use of the toilet, and alleges that the mother became abusive of Alex and encouraged him to hit his head harder when he started to hit his head due to distress over his mother's behaviour. Other material confirms that during this hospital admission the mother was aggressive and threatening towards medical staff. In fact this incident plays a central part in this case, and is relied upon by the mother as her justification for being so protective of her children, and of Alex in particular.
- 13 There were several reports concerning incidents throughout March, April and August 2008 at the hospital, involving the mother's inappropriate behaviour; her mental health; physical and verbal abuse of Alex; and alcohol consumption. It is difficult to attach much weight to these particular allegations, without more evidence being produced.
- 14 In 2009 there were reports of the mother physically abusing Alex and persistently bringing him to hospital when he is healthy and making up reports of him being unwell; concerns regarding her mental health and her refusal to seek treatment, and the adverse impact this is having on Alex; questionable reports regarding the mother showing pornography to hospital staff and the mother being drunk. Following Rebecca's birth on 19 May 2009 there were reports of the mother's bizarre and aggressive behaviour towards hospital staff and concerns regarding her ability to provide for Rebecca's feeding requirements. Further reports were received regarding the mother's physical and verbal abuse of her children, and Alex repeatedly suffering distress at the mother's behaviour at hospital, including when the staff refuse to provide treatment for Alex, who in the opinion of the hospital staff, did not require treatment. Concerns were expressed regarding Alex not attending school. Medical staff expressed concerns that the mother's behaviour is

exacerbating Alex's asthma, and she is ignoring her other children's welfare.

- 15 In 2010 reports were made to Community Services regarding the mother not cooperating with the school in relation to Alex's asthma plan and Alex over-medicating himself at school; concerns were reported regarding the mother discussing death and funeral arrangements in Alex's presence; reports of Alex missing school and concerns regarding his social and academic development; and concerns regarding 115 reported presentations by the mother with Alex at Wollongong hospital between April 2007 and December 2010. Very concerning was a report that Alex expressed the desire to kill himself. Also of concern was that the mother was continually raising Alex's medical problems with medical staff, problems which the medical staff were not able to diagnose. A report was received in February 2011 that Alex made a suicide attempt at hospital, saying he had "*had enough*".
- 16 It is apparent that some of the reports made to Community Services have not been investigated or are of a dubious nature, and the Court attaches no weight to such matters. There are, however, more serious reports that have been investigated and cannot be disregarded, notwithstanding the mother's rejection of them.
- 17 It is helpful, in my view, to set out here, the contents of a medical report prepared by Associate Professor (now Professor) Adam Jaffe, on 5 May 2011, which is annexure K to exhibit 2. Dr Jaffe was a Senior Staff Specialist in Respiratory Medicine and Head of the Respiratory Department at Sydney Children's Hospital at Randwick. The report states:

"2. Alex has difficult to manage asthma which has resulted in severe life threatening episodes necessitating admission to Wollongong Hospital and the Intensive Care Unit at Sydney Children's Hospital on multiple occasions.

3. He was referred to this hospital in 2007 under the care of Dr Yvonne Belessis, Respiratory Consultant and was subsequently admitted under the care of Dr Andrew Numa, Director of Intensive Care and Honorary Consultant in Respiratory Medicine.

4. It was noted at that time, in a letter dated 31 March 2008, that there were concerns regarding the behaviour of Alex's mother.

5. Dr Numa was concerned about the abnormal illness behaviour of Alex's mother and discussed this with the Child Protection Team because he thought that her response to her son's illness constituted abuse of the child. He suggested that Mrs Dimitri seek psychiatric help because her behaviour seemed so unusual.

6. Alex has also been under the care of Dr John Morton, Respiratory Paediatrician but I have managed most of his admissions at this hospital.

7. He has been extensively investigated to identify the underlying cause of his difficult-to-manage asthma.

8. These investigations have included a detailed scan of his chest (computerised tomography), a bronchoscopy (an examination of his lower airway under anaesthetic to look for structural problems) and various immune blood tests and heart investigations.

9. The only significant abnormality to date has been an increased number of neutrophils (a type of white blood cell which fights infection) in his broncho-alveolar lavage (this is a washing of his lung to look for infection and to see what type of asthma he has) which has suggested to me that he has neutrophilic asthma for which he has been prescribed Azithromycin (an antibiotic with anti-inflammation properties) with little effect. Neutrophilic asthma is asthma caused by certain inflammatory white cells called neutrophils which respond to anti-inflammatory antibiotics.

10. He has tried nearly every known anti asthma medication available with varying degrees of success.

11. I sent him for a second opinion to Dr Peter Cooper, Respiratory Physician, at Children's Hospital at Westmead who could not find any additional abnormality and felt that he had hyper-secretory asthma. This is a condition in which there is a lot of mucus produced by the lungs in relation to asthma. It is not a new diagnosis but merely a manifestation of the type of asthma he has. He commenced him on hypertonic saline which is salt water in a bid to help cough up mucus plugs.

12. Despite all these trials of medication Alex's asthma remains difficult to manage. He can present with sudden deterioration in the context of a relatively well boy which can happen both in hospital and outside hospital.

13. It is my expert belief that his mother's response to his asthma is the main contributory factor with regard to the severity of his presentation. I have grave concerns that his severe asthma may result in death (emphasis added).

14. I have discussed with his parents in the past that I believe that his mother's state of anxiety contributes to his physical deterioration. In order to address this there have been multiple requests for his parents to engage in psychiatric follow up. His mother and Alex have been assessed by Dr Michael Fairly, Child Psychiatrist at this hospital.

15. It is well recognised in the field of Paediatric Respiratory Medicine that psychological stress can result in physical respiratory symptoms similar to that seen in Alex. External psychological stresses can cause anxiety in people with asthma causing airways to close and result in a severe asthma attack.

16. It is my expert opinion that there is no known medication that is capable of controlling his asthma and that he would benefit from removal from the major psychological stress caused by his mother's response to his illness" (emphasis added).

Witnesses

- 18 Four witnesses testified during the three day hearing. I do not propose to restate their evidence here, but merely highlight what are the main aspects of their evidence, as appears relevant.
- 19 Cinzia Gagliardi was the first witness. Her report dated 7 September 2011, which forms part of exhibit 1, is critically important to these proceedings. If accepted by the Court, the result is that there is no realistic possibility of the children being restored to the mother, and there are serious implications regarding the issue of the mother's contact with her

children. If the report is rejected by the Court, as urged by the mother, then the Director-General's application will fail. I will return to Ms Gagliardi's evidence later in this judgment.

- 20 Tamara Smith, Child Protection Caseworker, was the second witness. Her three affidavits are exhibits 1, 2 and 3 in the proceedings and the Care Plans relating to the children, which provide for restoration to the father, are exhibit 5. Exhibit 3.
- 21 Ms Smith's affidavit filed on 4 June 2012 (exhibit 3) is important in respect of several central issues in these proceedings, namely:
- Alex has had no hospitalisations for his Asthma since being moved into his father's care (paragraphs 10 and 14);
 - Alex's asthma symptoms have dramatically improved and most of his medications have been withdrawn (paragraph 12);
 - The children's school attendance has improved since being placed with the father in May 2011 (paragraph 8);
 - The mother failed to follow through with recommended, and agreed, psychiatric assistance in 2008 (paragraph 44);
 - The parents failed to keep appointments in 2008 that had been arranged to address concerns regarding Alex's abnormal behaviours and relationship with his mother (paragraph 44);
 - On 12 March 2012 Dr Adam Jaffe advised that Alex had been tested against sensitivity to mould on skin prick testing and had been seen by two allergy specialists, at Randwick Children's Hospital (Dr Brynn Wainstein) and at Westmead Children's Hospital (Prof Andrew Kemp) neither of whom expressed the view that Alex had any major allergy problems (paragraph 47); and
 - That Alex does suffer breath-holding spells (paragraph 48 and annexure P - a letter dated 21 December 2009 from Dr Peter Cooper of Westmead Hospital addressed to Dr Jaffe).
- 22 Ms Smith agreed in her evidence that the current, and proposed, placement of the four children with the father and his parents is not ideal, however, given the circumstances of this case, it is the best available placement. The Department is prepared to support the father in the care of his children.
- 23 In cross-examination by Mr Dawson, for the mother, Ms Smith explained the reasons that the Department is seeking orders from the Court accepting undertakings from the father that he have no contact with the mother until the children attain the age of 18 years. Namely, consistent with the Department's position that there should be no contact between the mother and her children (as recommended by Ms Gagliardi), it would be unhealthy and disturbing for the children if the father is able to see the mother but they are not. Further, there are concerns at the level of control the mother has over the family, even if she is not present. The Department is concerned that if the father allows the children to have contact with the mother, this may result in the removal of the children from the father, which would not be in their interests.
- 24 Ms Smith also agreed in cross-examination that the contact reports regarding the mother's contact with the children are positive, and that the children, in particular Alex, are affectionate towards their mother.
- 25 In relation to the medical treatment being provided to Alex for his asthma, and in relation to the issue and relevance of the presence of mould in the mother's residence, Ms Smith said that Alex is being treated by the best medical specialists in NSW, if not in Australia. Their opinion is that the problem with Alex's unusual or unique medical condition is the mother, not the mould.
- 26 Alena Dimitri, the mother, was the third witness to testify. Her three affidavits are exhibits 6, 7 & 8 in the proceedings.
- 27 The mother contradicts the evidence of Ms Gagliardi that the MMPI-2 personality test undertaken by the mother was performed at the mother's home. The mother claims that this test was carried out in Ms Gagliardi's office, and that the mother had been given only two hours to complete the test. The mother said that she did not understand all of the questions contained in the test, but she was required to answer all of the test questions. Some reliance is placed on this discrepancy by the mother, to demonstrate the unreliability of Ms Gagliardi's expert opinion. It seems to the Court, however, that this issue carries little consequence, given the totality of the evidence and the substantial matters covered during Ms Gagliardi's assessment..
- 28 The mother also asserted in her evidence that Ms Gagliardi had expressed her concerns that there would be something seriously wrong with the mother if the her claims regarding the incident involving the deceased assault

victim were untrue. Having heard both Ms Gagliardi's evidence and the mother's evidence in this regard, there appears to be a fundamental misunderstanding on the mother's part, which is not particularly subtle, in relation to the relevance and the role of the mother in this particular incident. Namely, Ms Gagliardi does not assert that the incident did not occur, merely that the mother's role in it is questionable, and there is no independent police evidence available to confirm the mother's stated role.

- 29 The mother conceded, somewhat reluctantly, in cross-examination by Mr David (on behalf of the Director-General), that in relation to the many risk of harm reports made to Community Services, those reports were made by people who were concerned about important things that they had observed, and in some cases these people had a responsibility to report such things. The mother agreed that in the main those people try to report honestly. Insofar as reports by hospital staff, the mother was not prepared to accept that most reports were made honestly, she believes sometimes people make false reports, and in relation to her circumstances, most reports are false.
- 30 The mother believes that when Alex was born, she upset people in high places, which resulted in malicious claims being made about her. The mother denied the truth of the reports made to the Department in 2003, and gave an alternative account of the circumstances mentioned in the reports.
- 31 In relation to the various other reports made by hospital or school staff, they either did not occur or are exaggerated, according to the mother. The mother claims that the large numbers of people who have made reports about her all have issues with her and are dishonest or misleading in their claims and are acting to prejudice her - this happens, the mother says, if you upset people in high places. The mother did, however, concede that on occasions her behaviour was not appropriate but that she was upset and under stress at the time, and whilst not seeking to justify her behaviour, this does not justify others making false claims against her. The mother rejected the proposition that the reporters were making honest reports from their point of view. She believes they knew they were being dishonest in their claims. She says she was told by a doctor that this was their "*payback*". She believes their dishonesty is merely a cover up for their incompetence.
- 32 The mother accuses Ms Gagliardi of being biased against her, accusing Ms Gagliardi of lying and of being prejudiced against the mother before they even met. Ms Gagliardi had formed a negative opinion based on the false material she had read beforehand. The mother said that Ms Gagliardi says in her report that she, the mother, did not save the man in the surf. Again, it appears the mother misunderstands what Ms Gagliardi says in relation to this incident, which is the same as the deceased victim incident. Ms Gagliardi did not say that the incident did not happen, merely that the mother inflated her role in it.
- 33 The mother was cross-examined regarding the conversation Ms Gagliardi reported overhearing during the assessment process, when the mother was reported telling Alex not to call her sexy - refer to page 20 of the Gagliardi report. The mother denies that this conversation took place. I note here that when Ms Gagliardi testified, she was able to produce her contemporaneous hand written notes, where the conversation was recorded. The report was later prepared on a computer, from these notes. The mother says Ms Gagliardi is lying about her notes, however, the Court was able to observe Ms Gagliardi locate the notes in the witness box, including the reported conversation about Alex calling the mother sexy. The mother further says that the hospital staff reports on the same topic or theme, were also lies, and this formed the basis of Ms Gagliardi's lies. The mother claims Ms Gagliardi has merely repeated, or "*doubled up*", many of the untrue reports made by hospital staff. The mother also accused the medical profession of doing the same, namely of picking up on the first lie, and then repeating it and incorporating it in their subsequent reports.
- 34 The mother also claims Ms Gagliardi is lying in relation to her observation, as set out on page 13 of the report, that the mother attended the assessment in dirty, worn clothes and had pronounced body odour. The mother questions Ms Gagliardi's ability to provide a reliable opinion after only three meetings and very short periods of assessments, totalling no more than 6 hours. Ms Gagliardi did not know the mother before the assessment.
- 35 On the second day of the hearing, when the cross-examination continued, the mother's aggressive nature became more apparent when answering some of the questions.
- 36 The mother claims to have undertaken her own research into the MMPI-2 personality test administered by Ms Gagliardi, and the mother concludes that the test is unfair and that anybody doing the test will come out as being abnormal.
- 37 The mother also is adamant in her opinion that the presence of mould in her residence was the trigger for Alex's asthma attacks, and is critical about the lack of investigation in this regard. His subsequent removal from those premises has solved his problems.
- 38 The mother rejects the opinion that her Post Traumatic Stress Disorder (PTSD) is in remission - as expressed by her own doctor, Dr Pai in his report dated 9 June 2011, which is annexure C to the mother's affidavit filed 15 February

2012 - exhibit 7. She says she is still seeking treatment for PTSD, however, whilst very little turns on this issue, the mother's claim about ongoing treatment for PTSD is not borne out by her own medical reports from Dr Pai or Alan Ward, which are attached to her affidavits. The mother does agree that she did not have PTSD prior to the assault incident in March 2007.

- 39 The mother said that Dr Pai got it wrong, or misunderstood what the mother had said when he recorded, in his report dated 9 June, 2011, that she had witnessed "*one of her known acquaintances being beaten to death, and her attempts at resuscitating him after he had fallen in a pool of blood.*" The mother seems to have missed the point of the question, which was about "*one of her known acquaintances*". Instead she said that she had never said that she had witnessed the assault.
- 40 The mother conceded, in answer to Ms Mowbray's cross-examination, that the children were smacked when they misbehaved, but they were not belted or beaten, and having now attended parenting courses, she is aware of techniques of disciplining children without smacking them. The mother became animated and somewhat aggressive towards the end of Ms Mowbray's cross-examination, and repeated that she, the mother, had not neglected her children; she is not a bad mother; she was always there for Alex; she was the one who sought treatment for Alex; she got the best of the best for her children who never had hand me downs; how do the experts know; and that all the allegations against her are false and baseless; she loves her children, she wants to be with them, they want to be with her, she wants to be with her husband and he wants to be with her.
- 41 Cyril Dimitri, the father, was the final witness to testify. His two affidavits are exhibit 12. He came across as a witness of truth, albeit he had difficulty answering a straight question, without a thoughtful or convoluted answer. This merely took more time to complete his evidence rather than impact on his credibility. Given that the stakes in this case are so high, I adopted the position that it was preferable to allow him to answer questions in his own way.
- 42 Even though he does not accept the expert opinions in the case, he is nevertheless committed to co-operating with the Department and does not want to risk having the children removed from his care, which he accepts would be the result if he allows the mother to have any contact with the children. His personal desire is to have his family reunited, but he accepts that this may not be possible.
- 43 His evidence supports the mother's claim that she was not wearing dirty or worn clothes when she went for the Gagliardi assessment, or that the mother's personal hygiene was inadequate.
- 44 The father agreed that he insisted that the mother seek assessment and treatment for her inappropriate behaviours, but she refused. In relation to their separation in early 2009, this was a mutual decision. When they did separate, prior to the birth of Rebecca, Alex remained in the mother's care, whilst he assumed the care of Kylie and Luke. When he went to reside with his parents, his own asthma condition improved.

Gagliardi Report and Testimony

- 45 The Report - as mentioned elsewhere in this judgment, Ms Gagliardi was commissioned by the Department to undertake an assessment of the parents and their children and to provide a report for the benefit of the Court. This report was prepared on 7 September 2011 and is part of exhibit 1 in these proceedings.
- 46 The report is comprehensive and extensive, and it is not possible to provide a useful summary. The main aspects of the report, in my view are as follows: There is a historical background provided on page 3 through to page 13. This background is based on the documents filed in the proceedings and were provided to Ms Gagliardi. In relation to this history, the mother has provided extensive response, in her affidavit filed on 15 February 2012 (exhibit 7) which is contained in pages 57 to 79 of that affidavit, and consists primarily of denials, with some explanations regarding the mother's versions of events.
- 47 The report next deals with issues relating to the mother's assessment, from pages 13 to 22. In particular the mother's presentation is dealt with on pages 13 and 14 and provides a description of the mother being defensive, predominantly angry, and critical of others who did not agree with her view of the world. Ms Gagliardi next provided the mother's psychosocial history on pages 14 and 15, which includes the notation that the mother was 18 when she met the father, and that they separated in 2009. The report deals with the mother's medical, psychiatric and psychological history on page 16; her parenting history on page 17; and the circumstances relating to the removal of the children on pages 17 and 18, which included the mother's opinion that "*the reason why the children have been taken out of her care is because she has offended people in authority and has 'pissed them off' in her pursuit to being a caring, protective and loving mother. She said that as a result, nurses, specialists, school staff, other parents, and community service workers, have fabricated and/or mis-communicated events to portray her as a bad mother. She stated that in her opinion she has been a model parent, to which all other parents should be modelled against*". The mother also referred

to Kylie, Luke and Rebecca being "side salad" and she could not provide for them in the same way as she did for Alex.

- 48 The report then dealt with observations made by Ms Gagliardi of the mother with the children, and these observations are set out on page 19 and 20 of the report. Ms Gagliardi then detailed the psychological tests and evaluation procedures relating to the mother's assessment, and these are set out on pages 20 to 22 of the report, with the conclusion being that *"Overall, the results of the MMPI-2 suggests a profile of a woman who is emotionally unstable, egocentric, and with chronic problems in the control and expression of anger. Her temper can be overtly expressed, or expressed vicariously through others. She is concerned about health and somatic complaints, and this too can be vicariously expressed through others. She seeks attention and approval, and will become hostile and irritated if this is not forthcoming. She strongly denies anger, hostility, cynicism or mistrust, and is easily paranoid"*.
- 49 The report addresses the father's issues from pages 23 to 30 but I do not propose to address this aspect of the report in this judgment. On pages 30 to 33 the report details Ms Gagliardi's interview with the principal of the children's school, Ms Janet Hope. As mentioned above, the mother deals with this aspect in some detail in the latter parts of her affidavit, exhibit 7.
- 50 Ms Gagliardi's conclusions and opinions are set out on pages 33 to 44 of the report.
- 51 On page 34 of the report Ms Gagliardi notes that *"An analysis of all the sources of information provided and obtained by the assessor provide extensive evidence of severe personality dysfunction in the mother. Ms Dimitri exhibits a lifelong pattern of behaviour, thinking, perception and emotional expression consistent with Narcissistic Personality Disorder (NPD)"*. Ms Gagliardi goes into some detail in relation to NPD, including the characteristics of the main feature of NPD, namely grandiosity; the mother's lack of insight which impacts on the poor prognosis for future therapy; the presence of the abusive pattern of behaviour referred to as FDBP/MBP (see below), including the common characteristics of FDBP (on page 39 of the report); and the characteristic of perpetrators, victims and families in cases of FDBP (page 40). Ms Gagliardi undertook an analysis of the presence of FDBP in this case, which is set out on page 41 of the report, and which concludes, on page 42 *"It is thus the opinion of the assessor that the form of child abuse, known as Factitious Disorder by Proxy, is evident in this matter".....and "it is the opinion of the assessor that all four children are at risk of harm in their mother's care and under no circumstances should a restoration to the mother be considered"*. Finally, the report sets out, on pages 42 to 44, specific responses to the questions sought to be addressed by the assessment.
- 52 Those responses include the following: *"Ms Dimitri exhibits the signs of (NPD), which impacts on all areas of her functioning. Her condition is severe, long standing, and relatively entrenched. Its impacts on parenting is significant, and long term prognosis is poor.....(the mothers parenting capacity) is limited. She cannot put the needs of others before her own and places her children at risk. Treatment for this condition usually takes years to elicit any change, and requires the initial capacity to form some degree of insight....It is thus the assessor's opinion, that even with treatment, the mother's capacity to rehabilitate in a timeframe to also assist her with parenting the children safely is not possible.....The mother cannot meet the children's social, emotional and psychological needs. The attachment of the children to the mother is dysfunctional and differs between each child. Alex and his mother have an unhealthy enmeshed relationship, and Alex has been the vessel through which the mother's pathology has been predominantly expressed. His whole sense of identity, understanding of others, and how to behave, is markedly affected by the mother. Kylie believes she is impaired and has been generally neglected by her mother, as have Luke and Rebecca. They do not exhibit a primary attachment to their mother. All three older children have learnt to behave based upon a fear response, rather than due to safety and security.....the assessor recommends no contact with the mother at all, under any circumstances, until the children reach the age of 18 years"*.
- 53 In her evidence Ms Gagliardi said that she had seen the mother's response to the report, which is contained in the mother's affidavit filed on 15 February this year, which is exhibit 7. Ms Gagliardi is not surprised by the mother's response, which consists of denials and accusations of lies and falsities, and this is consistent with Ms Gagliardi's diagnosis of the mother's condition.
- 54 In cross-examination (by Mr Dawson) Ms Gagliardi said that the mother was not suffering from post natal depression and was not aware that that had been diagnosed following Alex's birth in 2003.
- 55 Ms Gagliardi agreed that given the short time available for her assessment of the mother and the children, it was not possible to assess the level of attachment between them, however, the fact that the children were competing for the mother's attention and that they displayed affection towards the mother, does not equate with attachment. Ms Gagliardi agreed with many of Mr Dawson's assertions in cross-examination, which place the mother in a favourable light, including the mother providing the children's basic needs; she attended to Alex's medical needs, whilst the father attended to the needs of Kylie and Luke; that the mother attended to Rebecca's needs; that it was normal for a mother to attend and stay at hospital with a very sick child; that there is nothing unusual about Kylie's physical development;

and that the parents were able to overcome her early diagnosed cerebral palsy condition through treatment and therapy.

- 56 In relation to the March 2007 fatal assault incident, the mother asked Ms Gagliardi whether she believed the mother had a mental illness. This incident is referred to on page 12 of the Gagliardi report. Ms Gagliardi said in her evidence that it was not a case that she disbelieved the mother, rather if the mother was not a prosecution witness as she was claiming, and which was not corroborated by any police COPS event, then her participation in the event could amount to grandiose ideation, which would be partially relevant to any diagnosis of Narcissistic Personality Disorder (NPD).
- 57 In cross-examination, Mr Dawson questioned Ms Gagliardi regarding her observation that the mother's "*mood was predominantly angry*" (report page 14) and Ms Gagliardi said that the mother's demeanour was forceful with aggressive and threatening hand gestures, with abusive language and swearing, with "*venom coming out of the mother*", and this was directed to her own parents and sister, school teachers and medical professionals, and Ms Gagliardi concluded this was disproportionate and inappropriate anger, and that is why it was necessary to include it in the report. In relation to Ms Gagliardi's observation that the mother did not display any anxiety or depressions (again page 14 of the report), Ms Gagliardi said the mother's behaviour was not anxiety or depression, rather it was hostility and vitriol, both verbal and non-verbal. Ms Gagliardi agreed, however, that she did not herself feel threatened by the mother.
- 58 Mr Gagliardi said in evidence that the mother has a severe form of NPD, which will need specialist therapy with experts specialising in the treatment of NPD, and that such therapy will require years of treatment before any change will be seen. Ms Gagliardi said that the Northfields Clinic does not have the required level of expertise to treat the mother's NPD. Further the mother has a significant lack of insight into her condition, and this is very detrimental to her effective long-term treatment - Ms Gagliardi also confirmed that the three components of the required insight for effective treatment are set out on page 38 of her report.
- 59 Ms Gagliardi said that she was aware that the mother had been previously diagnosed with Post Traumatic Stress Disorder, and this was explored, but the mother's test results did not suggest that she was suffering any anxiety or trauma, accordingly PTSD was not pursued further. Ms Gagliardi said that the mother did not report having any flashbacks in relation to the 2007 fatal assault incident.
- 60 Ms Gagliardi agreed with Mr Dawson's assertion that the difference between NPD and PTSD is grandiosity. Ms Gagliardi concludes that the mother is grandiose, she takes a piece of information and will embellish it to demonstrate that she is special, or is a victim - she is not psychotic, but is pervasively grandiose.
- 61 Ms Gagliardi was questioned about the tests for grandiosity, as set out on page 34 of the report, and as identified by the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR). Ms Gagliardi said that the mother has the first indicia, namely the mother does "*have a grandiose sense of self-importance (for example, exaggerates achievements and talents, expects to be recognised as superior without commensurate achievements)*". Ms Gagliardi said the mother takes any information and refers it back to herself, regardless of the question or the topic. Mr Gagliardi used the mother's use of the PCD forum on the internet, as an example, where the mother asks people to contact her with responses (reference is made to paragraph 34 of the affidavit of Ms Smith, filed on 21 June 2011 - exhibit 2, and the annexure thereto).
- 62 In relation to the second DSM-IV-TR test indicia - "*being preoccupied with fantasies of unlimited success, power, brilliance, beauty or ideal love*" - Ms Gagliardi said this is very relevant in the mother's case and she regards herself as being more capable than anyone else, constantly using words and language, that demonstrates that she is the champion and prime mover in everything she does. The way she uses information also shows she has elements of fantasy.
- 63 In relation to the nine points of the test, Ms Gagliardi said that it is not necessary that all criteria be met before a person can be regarded as being grandiose, rather, at least five points of the test are required to be present.
- 64 Concerning test four - "*requires excessive admiration*" - this is very relevant in the mother's case and includes everyone in the mother's life, including her own children - if you do not admire the mother then you are against her and you are then the subject of her hostility.
- 65 Mr Dawson's cross-examination then focused on Ms Gagliardi's opinion that the mother engages in a pattern of behaviour referred to as Factitious Disorder by Proxy (FDBP) or Munchausen by Proxy (MBP) - as set out on page 38 of the report. Ms Gagliardi said that some of the more recent evidence in this case suggests that the mother may be deliberately exaggerating Alex's medical condition, for example in the information she provided on the PCD internet forum (referred to above). Deliberately exaggerating existing medical conditions can amount to MBP.
- 66 Mr Dawson then cross-examined Ms Gagliardi regarding the known list of common characteristics in all cases of

FDBP diagnosis and maltreatment dynamics, as set out on page 39 of the report. Even though the mother does not have a background or training in medicine (point 6 of the diagnosis), the mother has an incredible medical knowledge and is well versed and experienced in how to find out relevant information. Ms Gagliardi says that in this case the mother has a lot of the characteristics set out on page 39, and in this regard it is not necessary for all the boxes to be ticked to meet the diagnosis or for the case to fit within the dynamic. In this regard, there is no quantifiable research available to indicate which of the boxes must be ticked before a case can be said to be FDBP. In Ms Gagliardi's opinion, there is enough evidence available to suggest the presence of MBP, and she sets out on pages 40 - 41 of the report, why she believes MBP is a feature of this case.

- 67 In relation to the dynamic set out at point two of the list, namely, "*there has been no established medical condition that would explain persistent symptoms*", Ms Gagliardi said she was not aware that the mother had tested for the presence of mould in the house. In relation to the "*Medical Provider sub-dynamic*" at point 8 - which "*suggests suspected perpetrator has established a relationship dynamic with medical staff wherein:(d) the individual 'thrives' in the medical hospital or office environment*", Ms Gagliardi agreed that the mother did not '*thrive*' with the medical professionals, but the mother did identify with the sick child, that she was the champion of this sick child - and in this sense the mother did '*thrive*' - this was her identity. In relation to sub-dynamic (e) "*the individual is gratified by interactions with medical staff*", Ms Gagliardi said this was not the situation in the mother's case, unless the medical staff happened to agree with her.
- 68 In relation to page 40 of the report, and Ms Gagliardi's comments regarding further information about the characteristics of perpetrators, and that "*mother perpetrators often fabricate many details of their own life history....*", Ms Gagliardi said that she did not believe the mother fabricated certain incidents, rather Ms Gagliardi is concerned that the mother has embellished the role she has played in them - the mother creates events around events, and this is a form of fabrication. The mother is very focused on things medical.
- 69 Mr Dawson then cross-examined Ms Gagliardi in relation to the known outcomes in this matter when considering whether FDBP was occurring in the case, and these outcomes are set out on page 41 of the report. In particular Mr Dawson focused on the final outcome on that page, namely "*the four children have all displayed marked improvement in their functioning since the intervention to remove them from their mother's care occurred*". Ms Gagliardi was aware that counselling for Kylie and Luke had commenced with John Parker, a Registered Psychologist with Illawarra Health Child Protection Counselling Service. Ms Gagliardi was aware that Kylie lacked boundaries, as this was a feature when the assessment was undertaken. Ms Gagliardi said she did not observe that Kylie has an insecure attachment with her father, as reported in Mr Parker's report relating to Kylie, dated 1 June 2012 (which is attached as annexure F to exhibit 3). Ms Gagliardi said she did not have enough data in this regard, although she did observe a healthy relationship between Kylie and her father.
- 70 In relation to Luke's "*improvements*" Mr Dawson referred to Mr Parker's report (which is annexure H to exhibit 3) and contrasted the problems that exist in relation to Luke. Ms Gagliardi agreed that in Luke's case "*we do not know what is happening*" - Kylie and Luke learnt to problem solve in the same way as the mother. They had to fight to get what they wanted/needed, they had to protect themselves. The mother had an incredibly powerful influence over the family. When contrasting the behaviour of the children at the separate contact visits with the mother and the father, the visits were vastly different in relation to the children's behaviour.
- 71 Finally, Mr Dawson cross-examined Ms Gagliardi in relation to her conclusions and recommendations relating to the issue of contact between the mother and the children, as set out on page 43 of the report. Ms Gagliardi's position is that the mother should have no contact with the children until they attain the age of 18 years. Despite that position, and accepting that the children displayed affection towards the mother during the contact assessment, Ms Gagliardi's concern is that the children's pattern of behaviour, when around the mother, is to vie for her attention, and their interaction with the mother is a real concern, and is not healthy for the children. The potential for the children to develop severe pathology later in life is real. Affection does not equate with attachment. Even supervised contact would have a negative impact on the children. The mother is able to exert a level of control even in her absence - she has an incredible power and influence and it is necessary to undo the harm that the mother has done to the children, to prevent them from developing or growing up like the mother.
- 72 For these reasons, in Ms Gagliardi's opinion it is absolutely necessary in this case that the children have no contact with the mother - that will be the best option for the future welfare of the children. Ms Gagliardi conceded that such an extreme recommendation is unusual for her to make. Identity is the main issue - the mother has a toxic identity - which the children reflect in themselves. This is not a normal case and for the children to avoid the turbulence of their adolescent years, it will be necessary for the children to re-formulate their own identity. Mr Gagliardi does not support any contact for identity purposes, not even four times a year, even if it is supervised.

Submissions

- 73 I propose to deal first with Mr Dawson's submissions made on behalf of the mother.
- 74 Mr Dawson made the following submissions at the conclusion of the evidence.
- 75 This is not a case involving the neglect of the children; there is no domestic violence; there are no issues of alcohol or drug abuse. Rather this is a case where both parents are concerned for the welfare of their children, including bullying at school, in respect of which the school where the children were attending failed to observe their duty of care towards the children and failed to act in relation to incidents of bullying involving Alex and Kylie. The mother has interceded and complained on these occasions when the children complain of bullying at school, but the school does not take any action.
- 76 The children do have health problems. The child Kylie had cerebral palsy as a young child but this condition has been overcome by treatment and physiotherapy, indicating that she has not been neglected. The child Alex has severe asthma and the parents have taken him to specialists for diagnosis and treatment. The mother does get angry when the health professions have not acted professionally, and she has merely been assertive with those health professionals when that occurs.
- 77 In relation to Alex's admissions to Wollongong Hospital, Mr Dawson observes that the schedule of admissions, attached as annexure F to the affidavit of the Caseworker, Tamara Smith filed on 21 June 2011 (exhibit 2), demonstrates a decreasing level of admissions between 2007 and 2010, with 5 admissions in 2007; 19 in 2008 (17 of which were asthma related); 14 admissions in 2009 (all of which were asthma related); and 11 in 2010 (again all asthma related). Having regard to these figures Mr Dawson submits that this does not fit the profile of a person with Munchausen by Proxy, who would be seeking additional hospital attention, resulting in increasing admissions, not decreasing admissions.
- 78 Mr Dawson then addressed the incident involving Alex's admission to that hospital on 14 April 2007, in respect of which a great deal of evidence was adduced during the proceedings, following Alex having a severe asthma attack in the early hours of 16 April, which appears was life threatening. In relation to this incident, the mother produced a hospital investigation report, which was admitted into evidence as exhibit 10.
- 79 Mr Dawson submitted that the parent's requests in relation to the treatment of Alex on this occasion were being ignored. The father said in evidence that the mother was firm with the nursing staff. He said it was apparent that Alex needed medication more regularly than the four hourly dosage stipulated on his medical chart, however, when the mother insisted that it be administered more frequently, this was ignored by the nursing staff. Mr Dawson also submitted that the mother was not present in the ward when Alex required oxygen being administered on this occasion, and that this only occurred because of the father's intervention.
- 80 The Court notes that a careful examination of the hospital report, exhibit 10, indicates that hospital staff failed to medicate Alex with one dose of the drug prednisone on 15 April and that this may have contributed to his deterioration on 16 April, otherwise the hospital investigation, and report, indicated due diligence in the care of Alex and increasing responses to his changing condition throughout the period, including appropriate response to the emergency situation on 16 April, prior to Alex being transferred to Sydney. It appears that the parents were provided with a copy of the report and were also provided with an explanation of the findings. The letter from the General Manager of the hospital network also included an apology to the mother and her family for "*those situations where you felt our staff were not sensitive to the needs of Alex*".
- 81 Mr Dawson submitted there were other times when the parents felt that Alex was not receiving proper medical treatment. He referred to the occasion when they had taken Alex to Wollongong Hospital for treatment, and being confronted with a 3-hour wait, they drove him to Sydney for hospital treatment, where he was admitted within 10 minutes and received appropriate attention.
- 82 Mr Dawson submitted that the mother was not present on the occasion when Alex had a severe life threatening asthma attack at the Westmead Children's Hospital on 15 December 2009 - this incident being detailed in annexure P to the affidavit of Caseworker Tamara Smith, filed on 4 June 2012, exhibit 3. This was the occasion when Alex was woken by nursing staff for regular nursing observation. The report indicated that Alex started coughing and was crying out for his mother. Whilst the mother was not present in the room when the nursing staff woke Alex, she was nearby, as the report does note that the mother became very anxious and verbally abusive to the nursing staff. Mr Dawson submits that the mother's questioning of health professionals was justified in some instances.
- 83 Mr Dawson reminded the Court that the mother has provided responses and explanations in her affidavit filed on 15 February 2012 relating to the various allegations made against her. The health specialists have provided various

theories in relation to Alex's conditions, the latest being that the mother has caused them, however, on two occasions the mother was not even present. When provided with these theories, the parents have made their own investigations, including on the Internet, and the mother informs the medical specialists of her findings, in an attempt to resolve the possible causes for Alex's conditions.

- 84 In relation to the issue of mould being a possible cause, Mr Dawson notes that it was not the mother who initiated the inquiries and research, rather it was the father. The mother was the one who followed up. In relation to the question of mould, Mr Dawson also notes that the father is an asthma sufferer and his evidence is that since he moved away from the family residence, his asthma has improved, as has Alex's asthma. Further when Alex was exposed to the library bag, he had an adverse reaction, by starting to wheeze. Mr Dawson also submits that the mother relies on the report filed in the proceedings from the anti-mould company, Pure Protect, which is exhibit 11, indicating the presence of mould in the house, including in the cupboard in the room where the mother and Alex slept.
- 85 It is appropriate, in my view, to outline here the Court's position in relation to Mr Dawson's submission that the mother was not present when Alex suffered the two life threatening attacks in April 2007 and December 2009. It is obvious that the mother was at the hospital, even though she was not in the ward at the relevant times. It is also apparent from the evidence that Alex was aware that his mother was staying at the hospital, as this was her normal behaviour during his hospital admissions. Alex's reaction when woken by the nursing staff at Westmead on this occasion was to cry out for his mother. It seems perhaps that her absence was causing him stress. In my view, having regard to the findings I have made in this case, as set out elsewhere in the judgment, the fact that the mother was not present in the ward when Alex suffered the attacks, does not substantially change my concluded opinion that the mother is responsible for Alex's acute condition.
- 86 He submits there is no dispute that the children adore and love their mother.
- 87 Mr Dawson next addressed the Court in relation to the Gagliardi report. He observed that Ms Gagliardi only had about 6 hours to interview and observe the mother as part of the assessment process. He submits that Ms Gagliardi has formed preconceived ideas in relation to the mother, and has formed a negative opinion that has been based on false information. In particular, in relation to the incident involving the death of the adult male outside the Commercial Hotel at Port Kembla on 16 March 2007, Mr Dawson submits that Ms Gagliardi had taken an adverse view in relation to the mother's role in that incident.
- 88 Following the incident, the mother was diagnosed with suffering from Post Traumatic Stress and she attended counselling for it. The father's evidence was that the mother was different following the assault incident.
- 89 Mr Gagliardi dismisses the mother's claims that she is suffering from flashbacks.
- 90 Mr Dawson also draws the Court's attention to the concession made by Ms Gagliardi in her evidence, that there is no basis for the statement on page 8 of her report, that the child Kylie had stated that the mother was "*constantly angry and physically abusive*". Mr Dawson submits that the disclosures made by Kylie in the interview with Caseworkers on 16 May 2011, annexure A to the affidavit of Tamara Smith filed 21 June 2011, exhibit 2, raises more concerns regarding the father than it does regarding the mother. Notwithstanding this, the Department is proposing that the father be allocated parental responsibility. Having re-read Kylie's interview mentioned above, I agree that the use of the word "constantly" is inappropriate, although the mother being "*angry and physically abusive*" is not inappropriate.
- 91 Mr Dawson observes that the mother and the father dispute Ms Gagliardi's claims regarding the mother's dress and personal hygiene during her presentation for the assessment. The mother also disputes Ms Gagliardi's assertion that the mother took the MMPI-2 test home with her to complete - the mother claims she was only given 2 hours to complete the test at Ms Gagliardi's office.
- 92 Mr Dawson submits there are no real concerns in relation to the amount of time that Alex has missed school, which is due to his asthma, having regard to the academic/school reports, which are annexures F (date May 2010) and G (date Semester 2, 2010) to the affidavit of the mother filed on 15 February 2012, exhibit 7.
- 93 In relation to the mother's issues with anger management, Mr Dawson submits that she has attempted to address them by attending counselling at Northfields Clinic, and with Dr Pai, consultant psychiatrist, and in this regard reliance is placed on the two reports from Dr Pai prepared on 9 June 2011 (annexure C to mother's affidavit filed 15 February 2012 - exhibit 7) and 9 March 2012 (annexure A to the mother's affidavit filed 4 May 2012 - exhibit 8), as well as a report from Alan Ward prepared 24 January 2012 (annexure B to the last mentioned affidavit). None of these reports raise any questions concerning the mother's mental health.
- 94 In light of other comments made in relation to Dr Pai's report dated 9 June, 2011, it seems relevant to set out relevant some extracts, namely:

"Alena has had periods of anger and sleep disturbances warranting the initiation of antidepressants such as Venlafaxine, and a low dose of Largactil, on a background of what appears to be experiencing excessive hypervigilance, nightmares, sleep disturbances, anger outbursts and flashbacks following the witnessing of one of her known acquaintances being beaten to death, and her attempts at resuscitating him after he had fallen in a pool of blood."

"On mental status examinationsher tone of speech has been with multiple hostile, often unparliamentary comments and threatening gestures towards the treating team for her children. She denied having these kinds of anger outbursts in any other circumstances or in other parts of her life. She had no perceptual disturbances or psychotic experiences. There was no evidence of disorder of thought form or thinking. She denied any thoughts of self-harm or harm to others. Her mood she described as angry and upset. Objectively she had marked restriction of affect to irritability. There were no cognitive function impairments and she had a reasonable insight into her problems."

- 95 The Court notes that this report was published prior to the Gagliardi report, which is dated 7 September 2011. The other reports of Dr Pai and Alan Ward mentioned above, postdate the Gagliardi report, but do not address her findings in relation to NPD or PTSD or FDBP. It would appear that the mother has not told Dr Pai or Alan Ward specifically regarding Ms Gagliardi's finding. I find this to be significant. I also note in this regard that in Alan Ward's report dated 24 January 2012 (annexure B to the mother's affidavit filed on 4 May 2012 - exhibit 8) that "*It appears that the Specialists rejected mould as a possible cause and focussed instead on Alena as the problem*". Further "*Alena was not believed on another occasion (i.e. Clinical Psychologist's report [the Court takes to be a reference to the Gagliardi report]) when Alena reported that she gave assistance to a man that was brutally attacked. Yet I have seen what appeared to be a Police report that detailed this incident*". If Mr Ward had been advised of the specific Gagliardi findings, one might expect to see either some reference to it or a rejection of it. It would seem reasonable to assume that the mother was selective in what she has told her treating counsellors, which in my view is also consistent with Ms Gagliardi's findings.
- 96 In relation to Ms Gagliardi's conclusions regarding the mother's diagnosis, Mr Dawson submitted that Ms Gagliardi conceded in cross-examination that the mother did not meet all of the criteria indicating NPD, however, in that regard, Ms Gagliardi also said that for a finding of NPD, it is not necessary for all criteria or indicia to be present. Mr Dawson also reminded that Ms Gagliardi said that the difference between the conditions of NPD and PTSD is the presence of grandiosity, which is a feature of NPD but not PTSD.
- 97 In respect of the presence of grandiosity in the mother's case, Mr Dawson submits to the Court that this is not a feature of the mother's behaviour, and that there is no evidence of this. He rejects Ms Gagliardi's assertion that the mother sees herself and her children as being superior to others, there is no evidence of this. It is merely a case that the mother wanted to protect her children and she is not claiming that she is superior to others.
- 98 In relation to Ms Gagliardi's finding regarding FDBP, Mr Dawson submits that Alex's illness/medical condition was real, and was not invented by the mother, as is often the situation in cases involving FDBP, where the perpetrator invents or creates an illness. Alex did have asthma and this condition still exists. This illness has been witnessed and treated by doctors, who have also observed Alex to arrest on two occasions due to the illness. The mother's behaviour has merely been to be critical of health professionals when they fail to meet Alex's medical needs in a timely or adequate matter, and this criticism has manifested itself in expressions of anger. Dr Pai's reports support this position as explained by the mother. This is not FDBP, Mr Dawson submits.
- 99 In relation to the mother's expression of anger, this is currently being addressed in counselling with Alan Ward.
- 100 Mr Dawson next addressed the issue of Alex's asthma improving since he has been removed from his mother's care. The mother's case is that this is due solely to the change of the living environment, where Alex is now free from a residence containing mould or moisture, which was the cause of his severe asthma attacks.
- 101 Accordingly the mother submits to the Court that it is appropriate to dismiss the Director-General's application and for the Court to make no orders. For restoration to occur, however, the mother concedes that it will be necessary for some renovations to occur at her residence, to remove the moisture and mould, so accordingly it may be necessary for parental responsibility to be allocated to the father for a period of 12 months, to enable this work to be completed.
- 102 If the Court is not prepared to allow restoration to the mother, then in relation to the issue of contact, Mr Dawson submits that the children want to see their mother, and all previous contact reports were positive, the mother was always appropriate in her behaviour.
- 103 Ms Rutkowska - I propose to deal next with the submissions made by Ms Rutkowska on behalf of the father.
- 104 The father's position was to neither support or opposes the mother nor the Department in these proceedings. Despite the father doubting some of the claims being made about the mother, he is nevertheless willing to obey any orders made by the Court and he is willing to care for the children. He says the children want to see the mother, however, he is willing to obey any Court orders in this regard, as the children come first.
- 105 Ms Rutkowska submitted, and the Court accepts, that the father was a truthful witness, that he loves his children, and

their welfare is his main concern. Further there are no problems with his parenting capacity. Despite the level of the mother's influence and her exercise of power over the family, this does not impact on the father's parenting capacity and he is not under her influence.

106 In relating to the undertakings sought by the Department, in particular that they remain in force until the children attain the age of 18 years of age, including undertaking number 1, namely "*Not to allow the mother to have contact with the children until they attain the age of 18 years unless stipulated in any order of this Court*", Ms Rutkowska questions the feasibility of the undertakings, particularly when the children get older and if the father is unable to prevent the children from having contact with the mother or self placing with the mother. The father's position is that the children know their mother, they love her, she is very important in their lives and they will not forget her. Ms Rutkowska submits that it may be preferable to make the orders until the children attain the age of 12 years.

107 Ms Rutkowska submits that the Court has no power to require the father to sign an undertaking that requires him to refrain him from having contact with the mother (undertaking number 2). Ms Rutkowska submits that section 73 of the *Care Act* does not provide the power for the making of such an order. The test is what is required for the care and protection of the children. Ms Rutkowska submits that this undertaking is disproportionate to the risk to the children and is not required for their care and protection. The relevant parts of section 73 provide:

73 Order accepting undertakings

(1) If the Children's Court, after inquiring into a care application in relation to a child or young person, is satisfied that the child or young person is in need of care and protection:

(a) it may make an order accepting such undertakings (given by a responsible person for the child or young person) as it thinks fit with respect to the care and protection of the child or young person, or

(b) it may make an order accepting such undertakings (given by the child or young person) as it thinks fit with respect to the child's or young person's conduct, or

(c) it may make an order accepting undertakings under both paragraphs (a) and (b).

(2) An undertaking referred to in this section:

(a) is to be in writing signed by the person giving it, and

(b) remains in force for such period (expiring on or before the day on which the child or young person attains the age of 18 years) as may be specified in the undertaking.

108 Ms Rutkowska submits that undertaking number 2 is not practical as the mother is entitled to be informed of the health and schooling of the children, and this can only occur if the father is permitted to have any contact with the mother. Further, whilst the likelihood is low that the mother will be able to improve her condition, it is possible that she may do so, and in that event the undertaking becomes unnecessary. Given that the mother and the father live in close proximity, it is impossible that they will not come into contact with each other, for example chance encounters at the shopping centre. Ms Rutkowska submits that the children have a strong bond and attachment to the mother, even if it is insecure, and asks what is wrong with the mother being able to communicate with the children by letter. Finally Ms Rutkowska submits that such an undertaking will adversely impact on the father's ability to care for his children, therefore there is no need for the undertaking.

109 Ms Mowbray, for the children, supports the Department's position and urges the Court to accept Ms Gagliardi's report and evidence. Ms Mowbray acknowledges that this is an extreme case, as it is very rare for the Court to order that the mother is to have no contact with her children, which is the recommendation set out on page 43 of Ms Gagliardi's report.

110 Ms Mowbray supports the children being placed with the father; they are doing well in that placement; there have been no hospital admissions; and they are attending school and sport. The mother did admit in the witness box that she smacked the children. In relation to the mother's criticism of the medical profession, Ms Mowbray submits that the children were and are being treated by leading experts in the country, including Professor/Dr Adam Jaffe, who reported on 5 May 2011 (refer to annexure K to exhibit 2) that the mother was the main concern regarding Alex's medical condition and Dr Jaffe was concerned that the mother may cause Alex's death, and therefore he should be removed from the stress caused by the mother.

111 Ms Mowbray supports the diagnosis that the mother is suffering from a severe form of NPD and the prognosis for improvement is poor and this explains the need for the undertakings being sought by the Department.

112 Mr David, for the Director-General, was the first to make submissions at the conclusion of the evidence, however, I have elected to deal with those submissions at this point in the judgment, as I accept the majority of his submissions, and I adopt them in my determination of this case.

113 Mr David submits to the Court that the Department's case relies on reports made by other persons which support the observations made by the caseworkers, as well as relying on the expert opinions of the medical practitioners in relation to Alex's health. In relation to the other three children, who in many ways are the forgotten children, they have learned

to cope with the mother and realise that to elicit a response from her, requires them to elicit a hostile or angry response. Mr David submits that the Department relies on the expertise of Ms Gagliardi and on the powerful and persuasive conclusions contained in her expert assessment.

- 114 Mr David submits that the mother's case consists of a series of denials of all the claims and assertions made against her, and that she adopts a position that they did not occur or have been misreported or misrepresented. It is not a case that mistakes have been made, or that others are incompetent, rather the mother accuses others of either deliberately lying or acting maliciously.
- 115 Mr David referred to the mother's presentation which was set out on page 13 of the Gagliardi report, which describes the mother as being defensive throughout the assessment, blaming others for the current situation due to their malignant and despicable character, that she was the victim of a corrupt health, educational and child protection system, and that she is a self sacrificing model parent. This description echoes the mother's presentation in the witness box.
- 116 This is a case, Mr David submits, that having regard to the number and range of circumstances and the lengthy period over which the risk of harm reports have been made, that it is not easy to accept the mother's denials. Whilst it would be possible to take the mother's denials point by point, Mr David submits this is not necessary and it is possible to examine one situation that demonstrates the unsustainable position being adopted by the mother. Namely, the challenge made by the mother about the conversation Ms Gagliardi said she overheard between Alex and his mother, during the assessment, when the mother told Alex not to call her "sexy". The mother denied that this exchange occurred. Ms Gagliardi was convincing that it did, and was able to produce her contemporary hand written notes where she recorded this exchange. Mr David submits that this is significant, that in the face of Ms Gagliardi's evidence, the mother denies it and accuses Ms Gagliardi of being biased or malice. Mr David invites the Court to reject the mother's denials and to accept Ms Gagliardi's assessment of the mother's personality type and the conclusions reached by Ms Gagliardi in relation to the children.
- 117 Mr David then invited the Court to reject the mother's explanations relating to the causes of Alex's condition, including the mother's earlier obsessive insistence that Alex was suffering from PCD, in respect of which the mother herself has now abandoned this explanation, and the more recent claim that mould is the cause of Alex's severe asthma attacks. An examination of the mould report, exhibit 11, clearly indicates that there is only one area in the house where mould is excessive, namely in a cupboard. More importantly the issue of mould was addressed by the medical specialists and was rejected as being a significant factor. Mr David also submits that it would be commonsense that the medical specialists would have addressed the issue of contaminants in Alex's environment - that in all environments there are contaminants, such as the parent's cigarette smoke, pets, mould, untidy house etc, all of which are potential triggers of asthma attacks, but the extent of some of Alex's asthma attacks are concerning. Mr David urges the Court to reject the mother's claim that all of Alex's problems relate to mould and the children can be restored now that they would be returned to a mould free environment.
- 118 In relation to the mother's assertion that she does not have a Narcissistic Personality Disorder but her behaviour is due to her Post Traumatic Stress Disorder, Mr David refers to the reports available in this case, which raise the possibility of NPD as early as 2008. Ms Gagliardi agrees that PTSD is a subjective and self reporting condition, however, NPD is capable of being observed by others and being identified by testing, and involves an objective judgment by others, in a holistic sense. In this regard, Mr David submits that it is significant to look at the mother's pattern of behaviours in relation to Alex. There are very early reports that the mother has had a pattern of assertive and aggressive behaviour. Mr David refers to annexure F to exhibit 2 relating to Alex's hospital admissions and submits that he was a well child up to about his fourth birthday in March 2007.
- 119 It was about this time that two significant events occurred, first the incident on 16 March, involving the deceased assault victim, which led to the mother suffering PTSD. Looking at the mother's involvement in the incident, she has moved herself to playing a central role, which became progressively more central, to the point that she told her own doctor that she witnessed a friend being beaten to death. The mother claims the police, ambulance officers and bystanders were all incompetent - there were 27 others there, the mother can even describe what they were wearing, that she believed she was under threat by the perpetrator, and that she became a victim in the process. This behaviour of the mother is consistent with Ms Gagliardi's findings in relation to NPD.
- 120 The second significant event occurred on 14 April 2007, when Alex was admitted to hospital and suffered a life threatening asthma attack. Whilst it appears there is evidence that the nurses missed an administering of medication - refer to exhibit 10 - the mother received a form of apology from the hospital which is then used as "a hook" by the mother to say that no one but her can look after Alex. Thereafter Alex's hospital admissions increase dramatically. It is submitted that from then onwards the mother thrived on Alex's illness - again becoming the centre of attention. Unfortunately, Alex picks up on the mother's behaviour and he sees himself as a sick child - that he has no life

expectancy and that he will not live long. This is promoted by the mother, and she discussed his death and funeral arrangements in his presence. Then the mother introduces the concept of ghosts with the other children. Alex becomes enmeshed in a bizarre relationship with his mother, and this becomes worse over time. The other children were neglected, even though they were unwell. This behaviour of the mother is also consistent with Ms Gagliardi's findings in relation to NPD.

- 121 Mr David urges the Court to accept the diagnosis by Ms Gagliardi, and others, that the mother has NPD, that it is a proper diagnosis, and that the prognosis is that the mother will not be able to address the disorder. The three precursors for successful long-term treatment of NPD, as described by Ms Gagliardi in her report (at page 38) are not present in the mother's case. Accordingly restoration to the mother is not possible.
- 122 Mr David then addressed the Court in relation to the proposed placement of the children with the father, submitting that whilst it is not an ideal placement, the Department will attempt to address the shortcomings through supervision and requiring the father to comply with undertakings, which should remain in force for the duration of the orders, that is until the children attain the age of 18 years.
- 123 Mr David acknowledges that undertaking number 2 is the most contentious, namely that the father refrain from having contact with the mother. The purpose of this undertaking is to reinforce on the father the importance of the mother not having any contact with the children, and to provide him with a justification for maintaining the position that the mother is not to have any contact with the children. Further the Department is concerned that the father finds it difficult to accept all the material filed in these proceedings, and that his life partner is a threat to the children. Mr David submits that the father presents as an apologist for the mother, that he is not critical of her and is still willing to advance other reasons to explain her behaviour, therefore it is necessary to seek the order that the father comply with the undertakings set out in the draft proposal, including that the father undertake to refrain from having contact with the mother.
- 124 Finally, Mr David submitted that the Court does have the power to make orders pursuant to section 73 that would encompass undertaking number 2, that the father refrain from having contact with the mother, because the section is broad and provides that the Court can make orders "*as it thinks fit with respect to the care and protection of the child or young person*".

Disposition

- 125 Dealing first with the question of whether there is a realistic possibility of restoration of the children to the mother, I am satisfied on the evidence, affidavits and annexed materials:
- That Prof. Jaffe was correct when expression his concerns that Alex was in a life threatening situation if he remained in his mother's care;
 - That Alex was tested by the medical professionals to ascertain whether mould had a part to play in his serious asthma attacks;
 - The result of this testing was that Alex was found to have no allergies that would indicate that mould played a significant part in his asthma attacks;
 - That it was not a coincidence that the need for Alex to be admitted to hospital for medical treatment in relation to his asthma ceased completely once he was removed from his mother's care;
 - That the mother had been advised, even by her husband, to seek psychiatric and or psychological assessment;
 - That the mother refused to do so at relevant times;
 - That Ms Gagliardi is a qualified and experienced forensic and clinical psychologist;
 - That Ms Gagliardi has not invented or lied in her observations and assessment of the mother;
 - The Court accepts Ms Gagliardi as a credible and honest witness;
 - The Court accepts the contents of Ms Gagliardi's report;
 - That having regard to the expert evidence, and my own observations of the mother in the witness box, that sadly the mother is suffering from NPD;
 - I accept also Ms Gagliardi's assessment that the mother displays many signs of having Factitious Disorder by Proxy or Munchausen by Proxy and her behaviour is consistent with this assessment;

- That in the case of Alex, this was a significant factor in his illness and attacks that required his hospitalisation;
- That this amounted to child abuse and could have lead to a fatal asthma attack being suffered by Alex;
- That given the mother's condition, all four children are at risk of harm;
- I am satisfied that there is no reasonable possibility of restoration of any of the children to the mother;
- That there is no reason that the children cannot be placed with the father, and
- That the care plans adequately address the issue of permanency planning.

Contact

126 I now turn to the more difficult question of contact. Ms Gagliardi presents powerful arguments for her recommendation that the mother not have any form of contact with the children until they turn 18 years of age. The Department and Ms Mowbray urge the Court to adopt Ms Gagliardi's recommendation. The determination of this question is more difficult because the unequivocal evidence is that the children want to see their mother. It is obviously a big step for the Court to grant the order sought by the Department.

127 There is no doubt, however, that the Court is required to make orders that are in the best interests of the children, not the mother.

128 Ms Rutkowska makes some valid submissions when she observes that the father may not be able to prevent the children, when they are older, from exercising their own initiative by "*voting with their feet*" if they want to see the mother. It is difficult to say whether a prohibition order pursuant to section 90A of the *Care Act*, prohibiting the mother from having contact with her children, will provide a barrier preventing such contact if the children are determined to see their mother. Ms Rutkowska submits that it may be appropriate for the Court to make orders that will remain in force until the children attain the age of 12 years of age.

129 What are the best interests of the children? In my view, the child Alex holds the key to this dilemma. Apart from the mother, and perhaps the father whose position is that he supports neither the mother nor the Department, there is irrefutable evidence, which the Court accepts, that the children have suffered significantly as a consequence of the mother's behaviour. The Court also accepts that the mother does exert significant influence over the family. The children are undergoing counselling to overcome the harm already caused. This is going to take a great deal of time, considering their current psychological state and lack of social skills. Whilst Ms Rutkowska's suggestion that the Court made orders expiring when the children attain the age of 12 has a certain appeal, the fact is that Alex is currently nine years of age. He will be 12 in less than 3 years time. He has suffered the most as a consequence of the mother's behaviour. If it is assumed that his counselling will be successful during that period, the risk that positive gains being undone by untimely contact with the mother must be regarded as being unacceptably high. If when he turns 12 he is permitted to have contact with his mother, that will make it impossible, in my view, to resist the other children also wanting to see their mother. This will also result in an unacceptable risk of harm to all children.

130 The conclusion the Court comes to is that it is appropriate to make orders, for the welfare, safety and well being of the four children, that the mother has no form of contact with the children until they attain the age of 18 years of age. To reinforce this finding, I am also of the opinion that it is appropriate to make an order pursuant to section 90A, prohibiting the mother from having any form of contact with the four children until they attain the age of 18 years.

Undertakings

131 Accordingly, in light of this finding in relation to the mother's contact, I am also satisfied that it is appropriate to make orders pursuant to section 73, that will remain in force until the children attain the age of 18 years that the father sign certain undertakings.

132 The most controversial undertaking being sought is contained in the draft order that requires the father to refrain from having any contact with the mother.

133 In relation to such an undertaking I am satisfied that section 73 is sufficiently broad in its terms to enable the Court to accept such an undertaking, if the Court is satisfied that the children are in need of care and protection.

134 It is a separate question whether the Court should require the father to make such an undertaking. I note Ms Rutkowska's observations regarding the practical implications of such an order. I also note the justification provided by the Department for seeking such an undertaking. In my view the existence of the section 90A order, as outlined above, should reinforce in the father's mind, the seriousness with which the Court makes the orders in this case, and the

likely consequences of any breach of undertakings on his part.

135 Accordingly, I am not satisfied that it is necessary to require the father to give an undertaking that requires him to refrain from having any contact with the mother.

136 In light of that finding, I am satisfied that it is appropriate, that the father give undertakings that:

- he will not allow the mother to have contact with the children until they attain the age of 18 years;
- he will continue to engage with Community Services fully and to accept referrals from Community Services regarding counselling and therapy for himself and the children;
- he will ensure that Alex's asthma treatment is provided in a timely manner and that his asthma plan is followed as recommended by medical professionals, including reviews by medical professionals as required, and
- he will ensure that the children attend regular appointments regarding medical, dental, optical and the like as recommended by medical/health services.

Conclusion

137 In conclusion I make the following final orders:

- (1) Pursuant to section 79(1)(a)(iii) that all aspects of parental responsibility for the children Alex, Kylie, Luke and Rebecca to be allocated to their father, Cyril Dimitri, until each child attains the age of 18 years.
- (2) Pursuant to section 76 the children be supervised by the Minister for a period of 12 months from the date of these orders.
- (3) Pursuant to section 73 the Court accepts the undertakings of the father, as set out in the previous section of this judgment.
- (4) Pursuant to section 90A the Court makes an order prohibiting the mother, Alena Dimitri, from having any contact with the children until the children attain the age of 18 years.

Amendments

28 Jun 2012	Correction to case name	Paragraphs: Coversheet
18 Jan 2013	Minor correction to copy	Paragraphs:

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