

REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
(Family and Children Division)
CHILDREN COURT FYZABAD**

Case No. C-SOUTH-AP-1694-2019-1

**IN THE MATTER OF THE FAMILY LAW (GUARDIANSHIP OF MINORS, DOMICILE
AND MAINTENANCE) ACT CHAPTER 46:08**

And

IN THE MATTER OF THE CHILDREN'S AUTHORITY ACT, CHAP. 46:10

And

**IN THE MATTER OF AN APPLICATION CONCERNING THE MINOR CHILD
ZR BORN ON 2ND JANUARY 2013**

BETWEEN

THE CHILDREN'S AUTHORITY OF TRINIDAD AND TOBAGO Applicant

AND

JR

First Respondent

AND

KB

Second Respondent

Before the Honourable Madame Justice Gonzales

Dated the April 15, 2019

APPEARANCES: Ms. Denelle Singh for the Applicant
First Respondent appearing and unrepresented
Second Respondent not appearing and unrepresented

REASONS

1 This is an application brought by the Children's Authority of Trinidad and Tobago to make the minor ZR a ward of the Court pursuant to section 22 (1)(1A) of the Children's Authority Act Chapter 46:10 on the basis that the child has been ill-treated or neglected in a manner likely to cause him suffering or injury to health.

In the interim the Authority seeks:

- (1) A Care Order
- (2) A Child Assessment order
- (3) Leave to access the medical records of the First Named Respondent, the mother of the child.

2 The Court granted the Wardship Order pending the outcome of the proceedings and placed the child in the care of the Authority in the interim. The Court did not grant the Child Assessment Order and refused leave for the Authority to access the medical records of the First Named Respondent.

THE CHILD ASSESSMENT ORDER

3 The Court refused to grant the Child Assessment Order because the Authority failed to satisfy the Court that it was unlikely that an assessment will be made or be satisfactorily made in the absence of the order.

4 Section 25D (2) provides as follows:

The Court may make a Child Assessment Order where it is satisfied that-

- (a) the applicant has reasonable cause to suspect that the child is suffering or likely to suffer physical, emotional, mental or psychological harm;
- (b) such an assessment is required to enable the applicant to determine whether or not the child is suffering or likely to suffer harm; and
- (c) it would be unlikely that an assessment will be made or be satisfactory in the absence of the Order.

The child is in the care of the Authority and placed in foster care. There is no evidence that the foster parents have refused to make the child available for assessment or are likely to refuse to make the child available for assessment. Ultimately the Authority is responsible for the care of the child, there appears to be no basis for finding that the Authority will not make the child available for assessment or that the assessment would not be satisfactory in the absence of an order.

5 An Assessment Order enables the Authority to have access to the child to carry out the necessary examination and assessment of the child. Assessment Orders should only be granted where the state of the child's health, the child's development or the manner in which the child has been treated is in issue, the court being satisfied that a parent or guardian will not make the child available for assessment or will not make the child available for a proper assessment. Once the child is in the care of the Authority, the need for an Assessment Order does not arise.

6 The Authority further requested an assessment of the child's parents and or guardians as follows:

"(b) the assessment shall entail medical, social and/or psychological examination of the child, his parents and/or guardians."

By virtue of section 25D (1):

"A Child Assessment Order made under section 25(d) shall be for the purpose of assessing-

(a) The state of the child's health

(b) The child's development; or

(c) The manner in which the child has been treated."

The Authority is not empowered to carry out any such examinations on parents or guardians. If the Authority wishes to conduct any such examination or assessment of a parent or guardian, it must secure the consent of the parent or guardian. This Court cannot compel any parent or guardian to submit to any medical, psychiatric, psychological or psychosocial examination if a parent or guardian refuses the request of the Authority. A Child Assessment Order is clearly and specifically for the assessment of the child, it does not and cannot cover assessment of parents or guardians.

7 It can be argued that on a broad interpretation of 25D(2)(b) that the assessment of the parent or guardian is necessary to determine whether or not the child is likely to suffer harm. Section 25D (2) (b) provides that the court may make a Child Assessment Order where it is satisfied *inter alia* that –

"(b) Such an assessment is required to enable the applicant to determine whether or not the child is suffering or 'likely to suffer harm'."

8 This section must be interpreted in the context of the purpose of the Child Assessment Order, which according to 25D (1) is to assess the state of the child's health, the child's development or the manner in which the child has been treated. The section therefore is focused completely and entirely on the child and any interpretation extending the power of the Authority to compel medical, psychological and psychiatric examination of parents or guardians cannot be supported.

LEAVE TO ACCESS THE MEDICAL RECORDS OF THE MOTHER OF THE CHILD

9 The Authority sought leave to access the medical records of the mother of the child the 1st named Respondent from the North West Regional Health Authority "including but not limited to all medical reports/diagnosis and to obtain a report from consultant with care of the First Named Respondent on the impact of her diagnosis on her capacity to care for the child."

10 There is no common law right of access to medical records of another¹. The general rule is that medical records can only be disclosed with the patient's consent. The rule is not absolute and medical records can be disclosed when required by law, or where it can be justified in the public interest, where disclosure is essential to protect the patient or third parties from risk of death or serious harm.²

11 The Children's Authority Act does not authorize the Authority to access the medical records of any parent or guardian. The request for the records does not fall under any of the established exceptions to the law on the disclosure of medical records. Whilst medical records may be ordered to be disclosed for the purpose of litigation, on these facts the medical records do not form any part of the proceedings. The request was made so that the Authority could assess "*the impact of her diagnosis on her capacity to care for the child.*" The impact of the mother's diagnosis to take care of the child is not an issue before this court. What this court has to determine is whether on a balance of probabilities the child is a child in need of care and protection.

12 The Authority is relying on subsection(f) of section 22(1) (1A) so the court has to determine, on a balance of probabilities whether the child was ill-treated or neglected in a

¹ Re Toney's Application for Judicial Review 1999 NI 325

² Halsburys Laws of England (Vol 19) 2011 Paragraph 27

manner likely to cause him suffering or injury to health. The test is not whether the parent is capable of taking care of the child. The test is whether it is more likely than not that the child has been ill-treated (that is, subject to abuse or treated in a manner inimical to his well-being), or neglected (that is, the parent or guardian has failed to care for the child in a manner consistent with what is expected of a reasonable parent) in a manner likely to cause him suffering or injury to health. "Likely" means that there is a real risk of suffering or injury to health if there is no intervention and not mere suspicion³.

13 Any medical evidence as to the impact of any diagnosis, on the mother's capacity to take care of the child does not assist this court in determining whether the allegations of failure to meet a reasonable standard of parental care have been proven on a balance of probabilities.

14 While a diagnosis may provide an explanation for the mother's failure or it may provide information to assist in drafting a care plan for the child, it does not assist the court in resolving the issues before it. In those circumstances, the medical records of the mother of the child cannot be said to be for the purpose of court proceedings and as such the Authority has failed to satisfy the court that its request for the medical records of the First Named Respondent falls within any of the exceptions allowing the disclosure of the medical records of another person.

15 In the circumstances the application for an assessment order is refused and leave to access the medical record of the First Named Respondent the mother of the child is also refused.

The court orders as follows:

The child, ZR born on January 2, 2013 do remain a Ward of the court and

It is further ordered that the child ZR born on January 2, 2013 is placed in the care of the Applicant until the determination of this matter or until further Order.

³ In re H and others (Minors)(Sexual abuse (standard of proof))[1996] A.C 563

Gail Gonzales

Judge