

*AMN v CEO Office of Children and Families & Ors* [2013] NTSC 46

PARTIES: AMN

v

CEO OFFICE OF CHILDREN AND  
FAMILIES

And:

AK

And:

MMN

And:

AJM by his legal representative  
MARGARET ORWIN

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE  
NORTHERN TERRITORY  
APPELLATE JURISDICTION

FILE NO: LA 9 of 2013 (21302221)

DELIVERED: 8 August 2013

HEARING DATE: 24 July 2013

JUDGMENT OF: SOUTHWOOD ACJ

APPEAL FROM: HANNAM CM

## **CATCHWORDS:**

CIVIL APPEAL – Appeal dismissed – family matters jurisdiction – child protection order – short term protection order best means of safeguarding the wellbeing of the child

NO SUBSTANTIVE MERIT TO GROUNDS OF APPEAL – Failure to take into account relevant considerations – taking into account irrelevant considerations, giving undue weight to particular evidence, and/or acting on wrong principles – no evidence to justify decision and order – evidence overwhelmingly supports order of the Local Court

NO DENIAL OF PROCEDURAL FAIRNESS TO MOTHER – Local Court not bound by rules of evidence in family matters jurisdiction – court must not transgress principles of procedural fairness – court ultimately still required to establish facts upon which it can base its decision – conclusions of fact must be supported by evidence or material properly placed before the court – family with severe prevalence of domestic violence – Chief Magistrate concerned about the quality of the evidence before her – IJIS and Court of Summary Jurisdiction court files accessed by Chief Magistrate – information used to question mother – questions were not unfair – material identified – parties asked if they wanted to adjourn the proceedings so material could be put before the court – Chief Magistrate stopped relying on material once objection taken

*Care and Protection of Children Act 2007(NT)* s 20(a), s 35, s 93, s 96(1), s 125(2)(d)(ii), s 130(1)(d), s 139(1)(b), s 147, s 148, s 149

## **REPRESENTATION:**

### *Counsel:*

Appellant:	N Aughterson
First Respondent:	G Brown
Second Respondent:	No Appearance
Third Respondent:	N Aughterson
Fourth Respondent:	M Orwin

*Solicitors:*

Appellant:	North Australian Aboriginal Justice Agency
First Respondent:	Solicitor for the Northern Territory
Second Respondent:	No Appearance
Third Respondent:	North Australian Aboriginal Justice Agency
Fourth Respondent:	M Orwin
Judgment category classification:	B
Judgment ID Number:	Sou1308
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IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

*AMN v CEO Office of Children and Families & Ors* [2013] NTSC 46  
No. LA 9 of 2013 (21302221)

BETWEEN:

**AMN**  
Appellant

AND:

**CEO OFFICE OF CHILDREN AND  
FAMILIES**  
First Respondent

AND:

**AK**  
Second Respondent

AND:

**MMN**  
Third Respondent

AND:

**AJM by his legal representative  
MARGARET ORWIN**  
Fourth Respondent

CORAM: SOUTHWOOD ACJ

REASONS FOR JUDGMENT

(Delivered 8 August 2013)

**Introduction**

[1] On 16 April 2013 in the family matters jurisdiction of the Local Court

Hannam CM made the following orders and directions: (1) a protection order

for the child, AJM; (2) a direction that the CEO of the Office of Children and Families have short term parental responsibility for the child for a period of two years; and (3) a supervision direction that the grandmother, MMN, take the child for regular medical checkups and comply with all directions given by the paediatrician or clinic in the event that the child is placed with her.

[2] The mother of the child has appealed against the orders and directions made by Hannam CM. She relies on the following grounds of appeal:

1. The Chief Magistrate erred in failing to take into account relevant considerations.
2. The Chief Magistrate erred in taking into account irrelevant considerations, or gave undue weight to particular evidence, or acted on wrong principles.
3. There was no evidence or other material to justify the decision and order made by the Chief Magistrate.
4. There was a denial of procedural fairness.

[3] The first and fourth respondents concede that:

1. Hannam CM erred in failing to take into account relevant considerations, namely: Hannam CM failed to give sufficient weight to the steps taken by the mother to stop the domestic violence.

2. Hannam CM erred in taking into account irrelevant considerations, or gave undue weight to particular evidence, or acted on wrong principle, namely:
  - (a) The legal representative for the child supported the short term protection order.
  - (b) Undue weight was given to Dr McKenna's general evidence.
  - (c) Undue weight was given to the general tendency of women to return to situations of domestic violence.
  - (d) Undue weight was given to the likely impact of domestic violence on the child.
  - (e) Undue weight was given to the standard of accommodation in the wider community.
3. Undue weight was given to Dr McKenna's general evidence.
4. There was insufficient evidence to conclude that the physical standard of the third respondent's home was insufficient to protect the child from harm.
5. There was evidence that the appellant and the third respondent were aware of the need for a hygienic house.

6. There was not sufficient evidence to justify the conclusion that the child “will be” cared for by the mother and grandmother.
7. There was a denial of procedural fairness. Subsection 130(1)(d) of the *Care and Protection of Children Act* does not allow the Local Court to access documents of its own volition and use those documents to cross-examine a party.

[4] Despite these concessions, the first and fourth respondents maintain that there was substantial evidence to support the orders made by Hannam CM and the appeal should be dismissed.

**History of the application to the Local Court**

[5] On 14 January 2013 the CEO filed an originating application in the Local Court seeking a short term parental responsibility direction giving parental responsibility to the CEO for two years. The CEO was named as the applicant and the parents of the child were named as the respondents to the application. Apart from the child, there were no other parties to the application. The originating application stated that the CEO believed the child was in need of protection on the basis of the facts and circumstances set out in the supporting affidavit and that the CEO believed that the protection order was the best means to safeguard the child’s wellbeing. The ground for making the application was that the child had suffered harm or

was likely to suffer harm and exploitation because of an act or omission of a parent of the child.<sup>1</sup>

[6] On 14 January 2013 Ms Martina Trimble swore an affidavit in support of the originating application. She deposed to the following:

1. Ms Trimble was an Advanced Practitioner and on 31 December 2012 she had been appointed as the case manager for the child and his parents.
2. Ms Trimble first met the child on 31 December 2012 at the Royal Darwin Hospital where he had been admitted as a patient.
3. The child was born on 29 April 2010 and was 2 years old when Ms Trimble met him.
4. The records of the Office of Children and Families revealed the following child protection history.
  - (a) On 29 June 2010 a report was received that the child's father had stabbed the mother with a pair of scissors and was in police custody. Further, the child's father was not permitting the child to access medical treatment.
  - (b) On 7 October 2010 a report was received that the father had woken the mother by punching her on the chin with a clenched fist and telling her to breast feed the child.
  - (c) The father had an extensive criminal history. He had been charged 120 times by the police with criminal offences. 23 of the charges involved physical violence.
  - (d) On 5 November 2010, the Office of Children and Families requested a police history check. It was noted that between 2000 and 2010 the father had been involved in 23 incidents of domestic violence. In 2010 the father

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<sup>1</sup> s 20(a) *Care and Protection of Children Act* (NT)

had been involved in 4 incidents of domestic violence, 3 with the mother and one with the child.

- (e) On 19 May 2011 the CEO undertook an investigation to determine if the child was in need of protection.<sup>2</sup> This followed the receipt of reports of severe domestic violence between the father and the mother including reports of the father holding the mother and the child hostage for up to 24 hours and threatening to suicide them. The report noted that the child has sustained a physical injury to his face as a result of the father biting him.
- (f) From 4 to 27 December 2012 the police at Peppimenarti received numerous reports about the child suffering from neglect.
- (g) On 14 December 2012 the child presented at the Peppimenarti Health Clinic with school sores on his head. Staff at the clinic provided the mother with medication for the sores.
- (h) On 24 December 2012 the child again presented at the Peppimenarti Health Clinic and the sores had progressed into huge boils. The child was commenced on daily antibiotic injections. However, the treatment was unsuccessful and on 27 December 2012 the child had to be transported to the Royal Darwin Hospital.
- (i) On 27 December 2012 the Office of Children and Families' Central Intake Team identified the following child protection concerns: the child required immediate medivac to the Royal Darwin Hospital for medical treatment for severe boils and sores on his head. The boils and sores were the result of child's parents failing to access and comply with prescribed medical treatment. Further, the child had been living in unhygienic conditions. When the police arrived at Merrepen Outstation to collect the child so that he could be taken to the Royal Darwin Hospital he was naked and covered in faeces.

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<sup>2</sup> s 35 *Care and Protection of Children Act* (NT).

- (j) The information received from the Peppimenarti Community Health Clinic indicated that there would have been no other cause of the child's infection than returning to a home that was unhygienic and his parents failing to comply with medical treatment including failure to administer pain relief medication.
5. On 31 December 2012 Ms Trimble met with the mother and they discussed the following.
- (a) The mother stated that she had difficulty accessing and following through with medical treatment because the family was residing at Merrepen Outstation and they did not always have access to a car and could not get to Peppimenarti Community Health Clinic.
  - (b) The mother did not want to stay in Peppimenarti Community due to a family dispute.
  - (c) The mother was unaware that the child was covered in faeces on 27 December 2012.
  - (d) Initially, the mother told Ms Trimble there was no longer any domestic violence between her and the child's father. However, she later said that when the father drinks or smokes cannabis he gets violent.
  - (e) When the father gets aggressive both the mother and the child are fearful of him.
6. During the meeting on 31 December 2012 between Ms Trimble and the mother the following safety plan was discussed.
- (a) The mother will bring the child to the medical clinic for check-ups when requested to do so by the medical staff at the clinic.
  - (b) The mother and child will go and live with the child's maternal grandmother. The grandmother will contact the police if the father attends her home and becomes aggressive.

- (c) The mother will not take the child to Merrepen Outstation for the foreseeable future.
  - (d) The mother will apply for domestic violence order against the father.
7. On 2 January 2013 the child was placed in the care of the Office of Children and Families under provisional protection<sup>3</sup> because the mother had failed to comply with the safety plan agreed on 31 December 2012. The mother left Royal Darwin Hospital with the father.
8. On the evening of 2 January 2013 the mother returned to the hospital and reported to staff at hospital that the father had punched her in the lip. The father was picked up by the police for being drunk and disorderly.
9. On 3 January 2013 there was a further meeting with the mother during which the following was discussed.
- (a) The mother said that she did not leave the hospital with the father, instead she had stayed overnight with her sister.
  - (b) The mother said that the father did not punch her on the lip. She slipped and this caused the swelling on her lower lip.
  - (c) The mother said that the child's father was her husband and she wanted to remain in a relationship with him. She wanted her child to be looked after by her mother.
  - (d) Ms Trimble advised the mother that due to ongoing concerns that she may return to the father and thereby expose the child to more domestic violence a temporary protection order would be sought by the Office of Children and Families.

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<sup>3</sup> s 51 *Care and Protection of Children Act*.

10. On 3 January 2013 the child was discharged from Royal Darwin Hospital and placed with approved foster carers.
11. On 4 January 2013 Ms Trimble spoke with the mother on the telephone. The mother told Ms Trimble that she had not had any contact with the father. However, when Ms Trimble told the mother that she had spoken to the father who had her mobile telephone, the mother said that she had given the father her telephone for a short period of time.
12. On 4 January 2013 the mother started staying at Christian Outreach.
13. On 4 and 5 January 2013 the father had gone to the Christian Outreach Centre where the mother was staying. When the father arrived at the Christian Outreach Centre on 5 January 2013, he was intoxicated and became aggressive towards the mother. The police were contacted and the father was arrested and issued with a trespass order preventing him from returning to the Christian Outreach Centre.
14. On 6 January 2013 Ms Trimble received a telephone call from the mother. The mother told her that she was staying at Christian Outreach. The father had been hanging around outside and harassing her. She wanted to obtain a domestic violence order against him and she was never going to resume a relationship with him.
15. On 7 January 2013 an access visit between the mother and the child took place. The mother told Ms Trimble that her ribs and chest were very sore as a result of the father being violent towards her. The mother repeated that she wanted to obtain a domestic violence order against the father so that he could not hurt the child or her again.
16. On 7 January 2013 the father was requested to leave the Royal Darwin Hospital for being drunk and abusive. Ms Trimble spoke to him and he told her that he had been drinking earlier in the day. He was asked to meet with Ms Trimble at 2.30 pm to speak about the child. However, he did not attend the meeting.

17. On 9 January 2013 the mother attended the police station at Palumpa and asked for a domestic violence order against the father. She told the police that the father had shaken the child when he was a baby, locked the child inside the house when he considered that the child had been naughty and thrown the child across the room resulting in the child hitting his head against the wall.
18. The Office of Children and families were concerned that the child would continue to experience emotional and physical harm and neglect if he remained in the care of his parents.

[7] On 14 January 2013 the Office of Children and Families attended Darwin Correctional Centre and served the father with the originating application and supporting affidavit.

[8] On 17 January 2013 the matter was mentioned in the Local Court before Hannam CM. There was an appearance by the legal representatives of the CEO and the mother. Her Honour made the following orders: (1) the CEO have the daily care and control of the child; (2) there is to be a paediatric assessment of the child and the report of the assessment is to be filed by 11 February 2013; (3) the mother to file any affidavits on which she intends to rely by 11 February 2013; (4) the child be separately legally represented; (5) the matter is adjourned to 9.30 am on 14 February 2013.

[9] On 19 January 2013 the father was remanded in custody until 13 March 2013 for an aggravated assault of the mother.

[10] On 23 January 2013 the mother swore an affidavit which was filed in the Local Court on 24 January 2013. The mother deposed that:

1. She suffered domestic violence from the father. He had hurt her since the child was a baby.
2. The father was also rough with the child.
3. She did not want to be in a relationship with the father. She recently obtained a domestic violence order against the father because she did not want him to come near her or her son.
4. Her mother calls the police for her when the father comes near their house.
5. They moved to Merrepen for a short time because there was fighting at Palumpa. She has moved back to Palumpa now. She lives with her mother. They have a clean house.
6. She used to take the child to the health clinic at Palumpa. When they were at Merrepen Outstation she would take the child to the health clinic in her father's car.
7. She wants her son back. She can look after the child. She is not a drinker. Her mother is able to assist her bring up her child.

[11] On 24 and 25 January 2013 the mother visited the father at Darwin Correctional Centre.

[12] On 31 January 2013 the child was assessed by a paediatrician, Dr Annie Whybourne.

[13] On 4 February 2013 Ms Trimble met with the father at Darwin Correctional Centre. He told Ms Trimble that he had tried on a number of occasions to break off the relationship with the mother. However, she had continued to contact him and ask him to remain in the relationship. He had received a visit from the mother while he was in prison. The mother told him that she

may attend court on 13 March 2013 and ask that the charges against him be dropped.

[14] On 7 February 2013 Dr Whybourne provided her report. In it she stated:

1. The child had been taken into care after an admission to hospital with multiple boils on his head and diarrhoea associated with *Giardia lamblia* infection.
2. She had seen the child on three occasions.
3. The child has had 7 admissions to hospital and several presentations to the Emergency Department. The hospital records revealed –
  - At three months of age the child was seen at emergency because he had been assaulted.
  - Between 3 and 6 months of age the child's weight gain had been inadequate.
  - At 12 months of age the child was seen at emergency because he had been assaulted.
  - At 18 months the child was mildly developmentally delayed.
  - For most of his life the child had suffered from chronic diarrhoea.
4. Staff at the Palumpa Community Health Clinic have often been frustrated due to the child's lack of attendance for follow up of health issues.
5. She has always found the child's mother to be concerned and interested in his health problems. The mother sought her out when she attended at the Palumpa Clinic on 7 February 2013.

The mother wanted to hear about the child's progress and she said that she missed him greatly.

6. The child's carer reported that he would rarely approach her and does not seek attention. He will accept attention when it is offered to him. He was contented but subdued. In Dr Whybourne's opinion, the observations of the carer were consistent with a child who had witnessed physical and verbal abuse and become wary of approaching. The child had undoubtedly not received the nurturing that he needs.
7. The child appeared developmentally normal.
8. In her opinion, the child could be returned to the care of his mother at Palumpa or Peppimenarti, well supervised by the health clinic, as long as his father remains out of the community

[15] On 8 February 2013 a further affidavit of Ms Trimble was filed in the Local Court by the CEO. Ms Trimble deposed to the following:

1. Since 17 January 2013 the child has had face to face contact with the mother, maternal grandmother and the mother's sister on three occasions. During the visits the mother was attentive to the child's needs. He became visibly upset when each contact ceased.
2. The mother would like the maternal grandmother to care for the child.
3. Despite the mother being clearly aware of the risk of harm to herself and her child if she maintains contact with the father, the mother has continued to remain in contact with the father thereby placing herself and the child at risk of harm.

[16] On 13 February 2013 MMN, the child's maternal grandmother, swore an affidavit which was filed in the Local Court on the same date. In it, she deposes that:

1. If the child stays with a foster family, he might lose his culture. He would not learn language, hunting or ceremony.
2. If she is given responsibility for the child, she will take him to the doctor and to school. If the child got sick she would take him to the health clinic.
3. She does not drink and she has a working with children card. She works at the Stronger Women Resource Centre in Palumpa and she looks after young children for the kindergarten.
4. Her house is clean and she has a room for the child.
5. If the father comes to her house she will call the police.

[17] On 14 February 2013 the application was mentioned in the Local Court.

Despite the fact the father had been served with the application and the supporting affidavits, no arrangements were made for him to be called up from the prison or for him to appear by way of video conferencing. As a result, Hannam CM made the following orders: (1) the proceeding is adjourned to 28 February 2013; (2) during the adjournment the daily care and control of the child is given to the CEO; (3) interpreter to be arranged for 28 February 2013; (4) notice of call up to issue for the father for 28 February 2013.

[18] On 28 February 2013 the application was again mentioned in the Local Court. Hannam CM stated that she would like the criminal history of the father to be before the Local Court but she made no orders about the father's criminal history. Her Honour also stated:

I have to say, one of the primary child protection concerns for this child, other than there were some immediate medical things [...] is the likelihood of psychological harm due to exposure to violence within the home, and it is possible that he may have also been physically harmed as well. But as far as the psychological harm, I would remain concerned even if the mother does separate from the father, which she would have to do to demonstrate that she understands that, but that she does not fall into another relationship of a similar kind, if she does not understand what impact exposure to domestic violence has upon the child.

[...]

[...] what I would be concerned about, in this court, is her understanding of the impact that exposure to domestic violence has on children. Now it is really only something that is starting to become well known in the community at large [...] because I would say that until the court is satisfied that she understands that, there remains a risk, both in terms of resuming the relationship with the child's father or forming a relationship with another violent partner.

[...]

I am concerned about [the child's] needs, and what [the child] needs is a mother who understands the impact of domestic violence, exposure to violence upon him as a child. The paediatrician makes comments about his presentation, his quietness. It is typical of children who have been exposed. He has not received the nurturing he needs is what she said.

[...]

Now, for her to understand why [the child] is the way he is, and for her to understand that she must not, not only her own needs, but [the child's] needs which is what we are concerned about here, form those sort of relationships. [Otherwise] she might take the view, 'oh I can put up with it' which sadly many victims of domestic violence do say.

But in failing to understand the impact that has on the child, even growing up in the home where there is that level of conflict and violence. That is the matter of concern.

[....]

It is really the main child protection concern that arises here. There are some other issues, but it is about being sure that the mother understands what she needs to do to keep the child safe. [...] It will also improve her skills as a mother if she is not constantly living in a state of fear about what is going to happen to her.

[19] Hannam CM then went on to state that she would write to the Minister about the lack of availability of services to educate parents about the impact that domestic violence has on children. Her Honour also stated that, “what we will need is an expert witness on the issue of harm to children through exposure to domestic violence. It is not a witness who will necessarily have to examine this child because I do not know that he needs to be examined again. We have a paediatrician who has already said [the child’s mental state] is consistent [with exposure to domestic violence].”

[20] During the mention of the application on 28 February 2013, counsel for the mother stated that:

For the purpose of s 20 [of the *Care and Protection of Children Act*] in relation to harm in the past, our client **does** concede that the child is in need of protection.

[....]

Our client accepts that [the child] has been in need of protection based on domestic violence of the father that has been perpetrated in the past. [However], she does not concede that, but for [the child] being in the care of the CEO, he would [still] be in need of protection.

[....]

Your Honour, our client does concede that the child was in need of protection, is in need of protection, for the threshold test under the Act. As I see it, the main issue, [in relation to the order] that has been applied for by the CEO, is what is the best means of safeguarding the child in the interests of the child?

In relation to the present scenario, she is not saying that there are protection concerns. If the child was returned today, she is not conceding that there are protection concerns in relation to him today.

[21] Counsel for the mother frankly stated that the primary issue in the application was whether the order applied for by the CEO was the best means of safeguarding the wellbeing of the child. The mother's case was that as she had separated from the father, obtained a domestic violence order, was now living with the maternal grandmother and had her support, the best means of safeguarding the wellbeing of the child was to return the child to his mother.

[22] On 28 February 2013 Hannam CM made the following orders: (1) the proceeding is listed for hearing on 15 and 16 April 2013; (2) case management inquiry is listed for 4 April 2013; (3) during the adjournment care and control of the child to be given to the CEO; (4) any further Affidavits of the mother and grandmother be filed and served by 1 April 2013; (5) father to appear by video link on 4 April 2013.

[23] On 26 March 2013 Ms Trimble prepared a written memorandum in which she recommended that MMN, the maternal grandmother, be approved as the interim kinship carer for the child as soon as possible. In it she stated:

1. From her discussions with MMN and other community members, it appears that she has the capacity to meet not only the child's physical and emotional needs but also his cultural needs and his need to be residing in his community.
2. The grandmother has implemented a number of strategies to ensure that her home is a safe place to care for the child. This includes the grandmother, in conjunction with the council office, organising for a fence to be built around her home, a landline telephone to be installed so that she can contact the women's safe house and the police if she or the child are in danger.
3. The grandmother has the capacity to meet the child's immediate and long term needs and to protect the child from the child protection concerns.
4. While the mother is not in a relationship with the father, or any other violent person, she does not present as a child protection risk for the child.
5. She has spoken to the child's mother and told her that if she recommenced her relationship with the child's father she would have to leave the maternal grandmother's home.
6. A domestic violence order was in place until 26 February 2015 and the child's mother has agreed to attend domestic violence counselling to assist her in ensuring that she does not return to another relationship that is characterised by domestic violence.
7. The manager of the clinic at Palumpa recommended MMN as an excellent carer and stated that he believed she had the capacity to ask the child's mother to leave her home if she re-formed her relationship with the child's father.

[24] On 27 March 2013 Ms Trimble swore a further affidavit. The affidavit has annexed to it 88 pages of documents which are described as "criminal history check for [the father]". The first 44 pages or thereabouts of the documents contain police case summaries about incidents involving the

father between May 2010 and January 2013. The next 44 pages, or thereabouts, contain the same case summaries contained in the first 44 pages but in reverse chronology with the pages of each summary in reverse order, for example, pages 4 to 1 rather than 1 to 4.

[25] The annexure should have been checked by the solicitor for the CEO to ensure that the documents were in proper sequence and there was only one copy of each case summary. The affidavit itself should have contained a written chronology summarising the information contained in the police case summaries and the affidavit should have stated: (1) where the documents came from; and (2) how the records contained in the documents were created. The evidence contained in the annexure is important evidence and greater care should have been taken in preparing the affidavit.

[26] An analysis of the annexure to Ms Trimble's affidavit of 27 March 2013 reveals the following.

1. Between 16 May 2010 (which was less than a month after the child was born) and 26 December 2012 the father seriously assaulted the mother on at least 8 occasions.
2. Despite the mother obtaining domestic violence orders against the father on a number of occasions, the father continued to assault the mother.
3. The father assaulted the mother both at Palumpa and Merrepen. For a period of at least 12 months from May 2010, the father and mother were residing in the maternal grandmother's house and this did not prevent the father assaulting the mother.

4. On one occasion when the police investigated an incident of domestic violence by the father, the mother told the police that she did not want to take any action. On another occasion, the mother initially told the police that there had only been a small verbal argument.
5. The mother attempted to separate from the father after he assaulted her in Darwin at the end of 2010 and they lived apart for a period of time. On 3 February 2011 she asked the police to escort him out of Palumpa where she was living with her mother. However, the mother and father resumed cohabitation shortly thereafter. In April 2011 the mother told the police that she did not want the father with her anymore but they continued to cohabit.
6. The mother told the police in December 2012 that she wished to leave the father because he was continuing to behave in a violent manner.
7. On 18 May 2011, which was while the family was living at Palumpa, the father assaulted the child.
8. The mother was unable to protect herself and the child while the family was living at Palumpa.
9. The child was being severely neglected while the family was living at Merrepen.

[27] On 4 April 2013 the mother and maternal grandmother each swore a further affidavit. In her affidavit, the mother stated the following.

1. When the father and the mother had their first two children the father was not physically violent towards the mother. Something changed when the child the subject of the application was born.
2. The mother was unable to remember two significant violent incidents involving the father and her.

3. The mother and father left Palumpa and went to Merrepen Outstation because some of her brothers were fighting with weapons and she thought it was dangerous to remain in Palumpa.
4. While the family was at Merrepen the child was clean and had clean clothes and she always fed the child.
5. She took the child to the clinic but it was harder to take him to the clinic when they were at Merrepen because the father was threatening her and the child.
6. On 25 December 2012 the father hit the mother on the back and she got bruises on her back. On the same day the child told the mother that the father had hurt his forehead.
7. On 26 December 2012 a relative took the mother and child to the clinic at Palumpa. The staff called the police because they were concerned about issues of domestic violence as the father followed the mother to the clinic. However, when questioned by police, the mother denied that there had been any domestic violence. There were no visible injuries on either the mother or the father.
8. On 26 December 2012 the mother asked for a domestic violence order.
9. The child was taken to hospital in Darwin. The father behaved aggressively towards the mother and child while the child was in hospital. However, the mother never left the hospital with the father. She left to see her sister and she stayed overnight at Christian Outreach.
10. The mother went to see the father in prison to speak to him about who was going to care for the child. She told the father that the CEO wanted the maternal grandmother to care for the child and she asked him if he would agree to this proposal. The father said he agreed to the proposal.
11. The mother does not want the father to go near her or the child.

12. On 27 February 2013 the mother obtained a domestic violence order against the father.
13. The mother and the maternal grandmother had made arrangements to try and get a telephone installed in the grandmother's home so the police could be called if the father tried to breach the domestic violence order. They had also made arrangements to try and get a fence built around the grandmother's house.
14. The mother had ordered and paid for a cot for the child.
15. The mother had made arrangements to try and get counselling about domestic violence.
16. If the child is returned to Palumpa the mother will take the child to the Women's Centre to engage in play and learning activities.
17. The mother was prepared to abide by the care plan for the child.

[28] In the affidavit she made on 4 April 2013 the maternal grandmother stated the following.

1. The grandmother used to work at the school canteen. She now works with Strong Women in Palumpa. In her current employment she cooks for children at the Resource Centre where food is provided for children in the community who are losing weight. They also teach mothers about feeding their children properly.
2. She has been raising the mother's two daughters since they were four years of age.
3. She had lived with the child for about two years before the family moved to Merrepen Outstation.
4. The grandmother is prepared to be the kinship carer for the child and she has filled in all the necessary forms to do so. However,

she does not want the CEO to have the power to make decisions for the child. She wants the family to make those decisions.

5. Her house at Palumpa is safe for the child.

[29] On 4 April 2013 the application was again mentioned in the Local Court.

The father of the child appeared in court by way of video conferencing from the prison. He wanted his son to stay with his wife's family. He did not want to be brought into court for the hearing on 15 and 16 April. He had nothing further to say. He was to be released from prison on 17 April 2013 and he would be returning to Port Keats.

[30] During the mention on 4 April 2013, the legal representative for the CEO advised Hannam CM that the CEO had not obtained an expert report from a psychologist and did not plan to do so because harm was conceded by the mother as was the fact that the child was in need of protection. In response to this advice Hannam CM stated:

But I had indicated that I want evidence before the Court of the long term impact and the nature and type of harm occasioned to children by exposure to domestic violence and in my view, it is critical to whether the orders – when you say orders in issue, the court is the one that makes the order and I think it is extraordinary having identified that as an issue, that I want expert evidence on that you are in fact saying you are not going to call it.

[31] As a result, the legal representative for the CEO obtained further instructions and ultimately advised the court that Ms Louise McKenna, who was a psychologist, would be called to give evidence. Hannam CM then made the following orders: (1) the proceeding is adjourned to 15 and

16 April 2013; (2) during the adjournment the daily care and control of the child is to be given to the CEO; and (3) under s 125(2)(d)(ii) of the *Care and Protection of Children Act*, the grandmother is joined to the proceeding as a party.

[32] On 5 April 2013 Margaret Wedgwood Hewett made an affidavit in support of the mother and the maternal grandmother. Ms Hewett stated the following.

1. She is a qualified teacher. In January 2011 she started working at the Palumpa Pre-School. She now co-ordinates a job find program and works at the Palumpa Resource Centre.
2. She met the grandmother in 2011 when they were both working at the pre-school. The grandmother worked in the kitchen. The grandmother now works at the community health clinic.
3. When the grandmother goes to the Resource Centre she leads the playgroup mothers in discussions about children's health and nutrition.
4. She has found the grandmother to be incredibly reliable, gentle and strong willed. She has a good relationship with the child.
5. She met the mother in August 2011. The mother engaged well with the child. She took pride in the way the child looked. She was aware of her role as a mother and the child's needs.
6. The mother would help with the pick up of other mothers and children for the playgroup at the Resource Centre.
7. In May 2012 the mother took the child to Melbourne for kidney treatment.

8. She has seen a big change in the mother in 2013. She attends and participates in the Women's Program and assists and supervises the children.
9. Some photographs of the grandmother's house were annexed to the affidavit. The house is well kept. There is a mattress for the child to sleep on in the allocated bedroom and a play mat. The house is of the same condition as many other houses in the community. The mother has ordered a cot for the child.
10. She is willing to support the mother and grandmother. Both women are in a position to be caring and supportive of the child.

[33] On 5 April 2013 Ms Trimble, the mother and the grandmother visited the child who had been admitted to Royal Darwin Hospital with ongoing problems with diarrhoea. Ms Trimble also spoke to Dr Whybourne who advised her of the following.

1. The bacterium *Campylobacter* was found in the child's stool specimen. The bacterium can cause acute aggressive diarrhoea and can be carried in the gut for a long time.
2. Dwarf tape worm were also still found to be present in the child's specimen stool.
3. The child may need to undergo a upper endoscopy as he may have a damaged absorptive surface in his small bowel as a result of repeated ongoing infections.

[34] On 9 April 2013 Ms Trimble met with the father at the Darwin Correctional Centre. The father told Ms Trimble:

1. He does not want to be in a relationship with the mother. However, he feels that she will get angry with him and will want to get back into a relationship with him.

2. The mother had not visited him in prison for a long time.
3. He wanted to live in Port Keats but he was concerned that the mother may follow him to Port Keats.

[35] On 11 April 2013 Ms Trimble swore another affidavit which had annexed to it the progress notes from the Palumpa Community Health Clinic for the period September to December 2012. In the affidavit Ms Trimble also deposed to the matters set out in par [33] and par [34] above.

[36] On 15 April 2013 the hearing of the application for the short term protection order commenced in the Local Court. The CEO tendered the following documents: (1) the application and the affidavit of Ms Trimble sworn on 14 January 2013 (exhibit 1); (2) the affidavit of Ms Trimble sworn on 8 February 2013 (exhibit 2); (3) the affidavit of Ms Trimble sworn on 27 February 2013 (exhibit 3); (4) affidavit of Ms Trimble sworn on 27 March 2013 annexing police case summaries about offences committed by the father (exhibit 9); (5) memorandum of Ms Trimble which contains an interim kinship carer for the grandmother (exhibit 10); and (6) an affidavit of Ms Trimble sworn on 11 April 2013 (exhibit 11).

[37] The appellant and the grandmother tendered the following affidavits: (1) the affidavit of the mother filed on 24 January 2013 (exhibit 4); (2) the affidavit of the grandmother filed on 13 February 2013 (exhibit 5); (3) affidavit of the mother filed on 4 April 2013 excluding annexures 7 and 8 (exhibit 6);

(4) affidavit of the grandmother filed on 4 April 2013 excluding annexure 7 (exhibit 7); (5) affidavit of Ms Hewett filed on 5 April 2013 (exhibit 8).

[38] The first witness to be called was Ms Louise McKenna who gave the following evidence during her examination-in-chief.

1. She has been a practising psychologist for 30 years. Initially she worked for the Department of Children and Families. She then worked as the Director of Psychologists of an early intervention service for children from birth through to 6 years of age. She worked in that position for 7 years. She has been in private practice for 17 years. She is a regulation 7 counsellor for the Family Court of Australia. The majority of her work is in the area of children and child development.
2. Domestic violence has a significant impact on children. Often people are under the impression that very small children are not impacted by domestic violence, which is contrary to the research. Between the ages of birth and two the brain develops faster than any other period in your life. 85% of brain development occurs within the first two years. So when you are dealing with a child that has been in a traumatic situation, whether it is domestic violence, neglect, physical abuse, those sorts of things, the child's development is directly impacted by the result of those experiences.
3. Often very young children do not have the resources to escape from domestic violence. Very young children are dependent upon their parent and their primary attachment figure for protection in incidents where violence is occurring. If the domestic violence has left the caretaker disabled in some way or unable to respond to the needs of the child in a supportive, sensitive manner then that impacts on the child who actually feels the fear and terror even more so than a child who may be older and can escape from the situation.
4. We know that domestic violence impacts on women and men. But if the woman is the actual victim of the violence then that can render her incapable of being able to be sensitive to the needs of the child. She is often coping with physical injuries of abuse. She is often coping with fear and if she is in a situation

where she is entrapped and cannot escape from the abuse, then that fear is actually amplified because she is never safe in that situation.

5. If the woman flees from abuse then what it means is that she has to escape from her one support system and go into a refuge type situation. The whole move and change, maybe leaving her personal effects behind, maybe leaving her family and community, has a huge impact on her emotional wellbeing and often she does not have the resilience to be able to be as sensitive to the needs of the child as she ought to be if there was no domestic violence occurring.
6. Domestic violence also impacts physiologically on the child, so in the way the brain develops, the actual physical structures of the brain. It has an impact behaviourally for the child ... the physiological impact then impacts on how the child will behave ... the fight/flight response or hyper vigilance and disassociation are two of the types of responses that we see particularly in young children. ...we talk about childhood post traumatic stress disorder. It impacts emotionally on the child, so the child's ability to emotionally regulate, to be empathic and to develop empathy. It impacts on the attachment relationship that the child will have with the parents ...as we move along the sequelae we then look at children who have lived in a violent situation, how they perform at school. Obviously they are often performing less well than other children and that is to do with the way that their brains have actually developed. ...the younger the child the more vulnerable to the impact of domestic violence.

[39] Ms McKenna was then asked a number of questions by Hannam CM

including questions about whether the physiological impact was lasting, whether women who are in a violent relationship were able to protect themselves and how the violence impacts upon their capacity to form relationships, was the profile of men who were only violent to their partners different from men who were violent towards both their partners and their children, what impact did neglect and lack of hygiene have on children, the

impact of remoteness, poverty and lack of services on children, was it unusual for a person who had been the victim of longstanding domestic violence to want to remain in a relationship with their abuser, is there any general research about personality types and their likelihood of re-partnering either with a past partner who is violent or another violent partner, and how critical was intervention in enabling a person who was a victim of domestic violence to stop re-partnering with a violent person.

[40] In response to the questions asked by Hannam CM, Ms McKenna gave the following evidence.

1. When we talk about the neurological impact we are talking about a lifelong impact. The longer the child is in a domestic violence situation, the harder it is to change the neurobiology of the brain.
2. Most partners who are subject to domestic violence will escape for a period of time and then reunite. Often these women have mental health issues themselves. Often they have experienced domestic violence as children growing up, so it becomes a familiar environment in which they live. Often these women have substance abuse issues. Often they are quite dependent personality types, so highly dependent and quite needy in their relationships and often are very much controlled by the perpetrator of the abuse.
3. The research shows quite clearly that, unless a high percentage of women who have been in violent relationships and have separated from their partner have had lots of therapy and lots of intervention, they are likely to re-enter a violent relationship. This pattern of behaviour is often repeated quite continuously. There is often a fear factor. A lot of partners will pursue these women and stalk them. A lot of women are severely injured or killed by an ex-partner after they have left a relationship with a violent partner. For a lot of women, staying is a fallback

position. Sometimes the fear of leaving is quite overwhelming and it overcomes their coping capacity.

4. One of the risks and dangers for children of a domestic violence situation is that they are often used as a tool. The child may intervene and get between the warring parties and end up physically hurt. Sometimes the child may be in the arms of the mother when the abuse is being perpetrated on her and they may get hurt in the cross fire. The child may be used as a tool by the perpetrator and be picked up and withdrawn from the mother or held hostage from the mother until the mother complies with the perpetrator's demands. Hand in hand with domestic violence is a high correlation of child abuse and sexual abuse of children.
5. Often people look at neglect as the lower end of the scale when it comes to child abuse. In fact, neglect has a much more pervasive impact on a child's development than physical abuse. We know that children who are neglected in the sense of not having their basic physiological needs met (ie. poor hygiene and irregular feeding) have development sequelae that are actually worse than if the child had been physically abused.
6. A lot of our indigenous families are really faced with a lot of challenges when it comes to overcrowding in houses and lack of basic sanitary conditions, but we can say that not all children in those environments are severely neglected. Even in impoverished environments parents can look after their children adequately. While the odds are stacked against them we do not see all children that are living in outstation or remote locations necessarily being neglected. It comes down to the motivation and capacity of the parents.
7. Fathers preventing mothers from seeking medical intervention for a child is just another type of manipulation that goes on in domestic violence cases.
8. There is a lot of research that has been done on victims of trauma and hostage situations. The Stockholm Syndrome is a well known syndrome where the abused person strongly identifies with the abuser and can become quite sympathetic to the abuser. This is a product of the fear and dependency that has developed over a long period of time in extreme situations.

9. The extent to which an abused person requires therapy or intervention in order to stay out of a relationship where there is domestic violence depends on whether a person has been raised in a family where there was domestic violence and then partnered an abusive person. Where a person has experienced intergenerational or transgenerational violence it may require very extensive therapy and intervention. There are good services for women who have experienced these difficulties in Darwin. It is critical for a person who is exiting a domestic violence situation to seek out these services and obtain support for them in order to be able to understand the impact that domestic violence has had on them, their children and the people around them.
10. Most people will require at least two years intensive support and counselling. The level and duration of counselling will depend on the intensity of a person's initial resistance to counselling and the person's cognitive capacity to understand the need for counselling and why it has been recommended.
11. Where a child has been exposed to domestic violence for the first two and a half years of the child's life, the child would probably have development issues, the child would have attachment difficulties and the child is likely to show physiological changes.
12. She doubted if it was possible for a child of two and a half years who has been exposed to ongoing domestic violence not to have been negatively impacted.
13. Research shows that chronic neglect is as damaging as exposure to domestic violence.
14. We have learnt a lot from our previous adoption history in Australia. When we are looking at placing a child we should try and match the child with culturally appropriate people. That is really important. As far as Aboriginal children go, it is important to be able to evaluate who is the most capable person within the extended family kinship system to be able to raise that child in a way that the child remains connected with culture and community.

[41] During her cross-examination, Ms McKenna gave the following evidence.

1. She had not been involved in this case. She had not seen the mother or the child.
2. The picture she was presenting was a general picture but is clinically what she has seen in the majority of cases of domestic violence.
3. The general picture did not definitively apply to the mother in this case.
4. It would be worthwhile for the mother to have a full assessment for counselling done.
5. In any case that comes before the court there should be a thorough assessment of the wellbeing of the child including the child's development history, the mother's history, the extended family support system available to the mother and the child. It is necessary to be aware of the nuances and differences in each situation.
6. When assessing where a child should be placed, it is important to make a detailed assessment of the quality and nature of the attachment relationship between the primary caregiver and the child and the available family support. Broadly speaking, there are four different attachment styles: anxious attachment, avoidant attachment, disorganised attachment and secure attachment.
7. She was unable to say what would be the best placement for the child in this case. The child's family situation needs to be evaluated.
8. Violence impacts on children and the degree to which it has impacted on a particular child needs to be assessed.
9. It is people like myself that assist paediatricians to assess whether a child is following a normal development trajectory or whether there are issues around fine motor control, language development, visual spatial control, cognitive problem solving, receptive and expressive language. Those sorts of things need to be assessed.

10. You have to do a thorough assessment that looks at all aspects of the child's development, a parental capacity assessment, and a kinship extended family assessment to be able to make any decisions. It is necessary to make a decision that is going to enable the child to develop to their capacity.
11. At some stage you need to make an assessment about risk factor versus the developmental needs of the child being placed back with the child's family. That is guiding you all the way through.

[42] During examination by the legal representative for the child, Ms McKenna gave the following evidence.

1. Small children are not resilient, they are malleable. The environment and the nature of the nurturing relationship impact on the development of a child's brain. Small children do not have the cognitive resources, the physical resources or the wherewithal to be resilient.
2. It would be difficult for a child who has suffered chronic neglect not to show a developmental impact.
3. If adequate levels of support are not there for a child's primary caregiver it is likely that the child will continue to be neglected.
4. Neglect may be overcome if the primary caregiver recognises that there is a problem, is motivated to make a change and has the capacity to make a change and is prepared to engage with the appropriate service and support agencies. There must be a willingness and ability to work with the intervention services. Ultimately the primary caregiver needs to demonstrate that things have changed.
5. We are at the pointy end of the stick and in all fairness children and their families need to be thoroughly assessed to be able to move forward. It is on very dangerous grounds that those assessments are not conducted.

[43] The next witness to be called was Ms Trimble. She gave the following evidence.

1. On either 26 or 27 March 2013 the grandmother had been approved as a kinship carer for the child on an interim basis. There has been interim approval for the child to be placed with the maternal grandmother in the community. The intention of the Office of Children and Families was to place the child with the grandmother on 4 April 2013. However, this was not possible because the child required further medical treatment.
2. It was still her opinion that the child could go back to the community to be with the mother and grandmother during the two years that it was anticipated the short term protection order would be in place.
3. It was the Office of Children and Families' position that the child should be placed with the grandmother as a kinship carer and the Office of Children and Families was seeking a two year protection order with the CEO having parental responsibility. The child would be returned to the grandmother and mother when Dr Whybourne advised that all of the child's medical needs had been met. Arrangements would also be made for the grandmother to receive any necessary medication to be able to treat the child's medical conditions.
4. She was in the process of organising domestic violence counselling for the mother. It was anticipated that the counselling would last for at least six months.
5. There were to be a number of safeguards in the community. A fence was to be erected around the grandmother's home. The father was banned from Palumpa Community by the elders of the community and people at the health clinic and the Council Office were aware that the father was banned from the community. However, she was unable to say if there was any legal basis for banning the father from the community and enforcing the ban.
6. The mother was motivated to obtain counselling about domestic violence and its consequences for her and the child.

7. At some point in the child's life it will be necessary for the child to again come into contact with his father. It is best if the CEO remains involved with the child so as to ensure that any re-engagement with his father is properly monitored.
8. The CEO does not know specifically what impact exposure to domestic violence has had on the child.
9. There are going to be quite a lot of things that will need to be addressed throughout the coming years for the child. The plan is about empowering the mother to be able to address those concerns for the child. We hope to teach the mother the skills not to re-engage in a violent domestic relationship, support her and get the child the help he needs.
10. If the short term protection order is granted the CEO will be working with the mother over the next two years to develop the skills to be able to manage any emotional issues or physical issues that the child may experience.
11. In the event that the mother re-engages with the father, it is hoped that further harm to the child will be prevented by the fact the child is to remain with the grandmother under a kinship based placement with monitoring by the Office of Children and Families. The Office of Children and Families will keep monitoring the mother and if she chooses to return to a relationship with the father or any other man that is domestically violent she will be encouraged to leave the grandmother's home.
12. There is a very real risk that the mother will re-engage with the father given their history.
13. However, a short term protection order for the child is in the best interest of the child because the mother has stated that she does want to address the child protection concerns. She has acknowledged that in the past she did not want to be in a relationship with the father [and the relationship continued], but in the past she did not have the support she required to do that including attending domestic violence counselling. The Office of Children and Families will be involved and will be assisting the grandmother and providing financial assistance.

14. If the father undertook domestic violence counselling and drug and alcohol counselling and was proactively engaged in addressing the concerns of the Office of Children and Families, it was possible that within the next two years the Office of Children and Families would start facilitating the father's access to the child in accordance with an appropriate case plan. Before that occurred it would be necessary to ensure that the child would not be placed at any risk while contact occurred and that would involve a number of assessments of the father.
15. Ms Trimble's team leader had done a physical check of the grandmother's house and it was found to be a safe house for the child.
16. The mother had not as yet completed the intake assessment for domestic violence counselling at Dawn House.
17. The child was taken into the CEO's care in provisional protection because the mother prioritised her need to be in a relationship with the father over the child's needs and she left the child unattended in the hospital. Ms Trimble's understanding was that the father attended the hospital and was extremely abusive to the mother. The mother then left the hospital with the father and she only returned over 24 hours later with a bruised lip. The mother told the hospital staff that she suffered the injury as a result of the father hitting her.
18. Initially the mother minimised the extent of domestic violence in her relationship with the father. However, once Ms Trimble established a rapport with the mother she was quite honest about the situation.
19. There are different standards that would be used to make a household assessment in Queensland than to make a household assessment for children in the community.
20. An updated care plan would be developed in accordance with the order made by the court. The care plan would be reviewed every six months. The intention of the Office of Children and Families was for the CEO to be granted parental responsibility, for the child to be placed with the grandmother as kinship carer as soon as practicable consistent with the child's safety and his best interests. For the mother to reside with the grandmother

and undergo counselling on the effects of domestic violence on children. For the mother to be monitored and assessed to determine if she has demonstrated that she learnt about the impact of domestic violence and developed appropriate parenting skills with the assistance of her mother and the Office of Children and Families.

21. The Office of Children and Families had not given consideration as yet to having the child assessed by a psychologist consistent with the evidence of Ms McKenna but it was something that they could consider in the future.
22. The CEO has assessed the grandmother's home as suitable for the child. Ms Trimble was not concerned about the lack of furniture in the home.
23. The mother had been engaging with the Office of Children and Families in a constructive way. She has started to recognise that there is a problem with the standard of the child's care. Ms Trimble hoped that the mother had the capacity to make a change. Ms Trimble did not have the expertise to know if the mother had the capacity to change when it came to domestic violence. However, she did not think that the mother had demonstrated any insight into domestic violence. Ms Trimble felt that, but for the intervention and encouragement of the Office of Children and Families, the mother would not have obtained a domestic violence order. The CEO had to look at historical factors. There have been times when domestic violence orders have been obtained in the past and, whether the mother or the father initiated the contact, there have been times when the domestic violence orders have been broken.
24. Ms Trimble was not aware of any specific occasion when there was a domestic violence order in place that the mother approached the father.
25. Ms Trimble thought it was in the best interest of the child if he was placed with his maternal grandmother subject to Dr Whybourne confirming that his medical issues had sufficiently resolved and the CEO having parental responsibility.

26. It was in the child's interest that the CEO was granted parental responsibility for the following reasons. The plan formulated by the Office of Children and Families was first and foremost a plan aimed a reunifying mother and child. The mother has not always listened to the grandmother when it came to issues to do with domestic violence. The father was still in prison and it was difficult to assess the mother's capacity to ensure the safety of the child until the father had been released from prison. The short-term protection order would enable the Office of Children and Families to monitor the care being provided to the child and to ensure the child received necessary medical treatment, regularly went to the clinic and attended playgroup. It was as yet unknown whether the grandmother had the capacity to ensure that these things would occur once the father was released from prison.
27. The grandmother's house was not assessed by an environmental health officer. It was assessed by Ms Trimble's team leader who checked to see if the house was safe for a child to live in. Ms Trimble did not know if there were shower facilities in the house or hot and cold running water or flushing toilets.
28. Her primary concerns about the grandmother, as opposed to the CEO, having parental responsibility for the child were that she did not know if the grandmother had the capacity to manage contact between the child and his father and ensuring that the mother attended domestic violence counselling and had other appropriate support. If the mother and father re-engaged the CEO may deem the placement with the grandmother no longer appropriate. The CEO was in a position to ensure that the child was safe and well and the grandmother's capacity had not as yet been fully assessed. The CEO would engage with the police and obtain reports about whether the father had been in contact with the child and by having an officer from the Office of Children and Families conducting home visits with the child every two weeks.

[44] The next witness to be called was Dr Whybourne. She gave the following evidence.

1. She first saw the child when he was 18 months old.

2. It was not unusual for children living in remote Aboriginal communities to contract infections in their bowels including bacteria and worms. These infections are due to the conditions in which indigenous children are living including poor hygiene and overcrowded houses.
3. Usually when young Aboriginal children receive medical treatment and the infective organism is eliminated their diarrhoea goes away and there is some weight gain. However, the child's case is more complex because despite the medical interventions and the provision of adequate nutrition his diarrhoea has continued. There was concern that the child's gut wall was not as healthy as it could be and his gut has not fully recovered.
4. It would be better for the child to stay in Darwin until he is passing soft stools each day and his diarrhoea has completely resolved. The child has a problem which is a bit beyond what would normally be seen in Aboriginal children.
5. Provided the case workers facilitated good communication with her about the child's progress, she would not have any concerns if the mother and grandmother stayed in Darwin and had the care of the child.
6. She has always found the child's mother concerned and interested in the child's health problems.
7. It was not possible that the child became stressed as a result of being away from his mother for the first time. On the contrary, he has now blossomed and is now a happy, laughing and interactive child. She believes a lot of the child's emotional trauma was probably from his father's behaviour.
8. She was very sure that the child had a very strong bond with his mother, but it was always interesting to see how quickly Aboriginal children adapt to being with other carers. She thinks that is because within their own community they often spend time with many different adults.
9. She feels that having joint responsibility with the child's maternal grandmother would empower his mother more.

However, she was not sure if she had met the child's grandmother.

10. The child has had a very large number of organisms in his bowel. It has taken a lot of effort to clear those. Dr Whybourne had been working on that since December 2012.
11. Dr Whybourne could not say whether the child was malnourished because his mother was not feeding him or because of his health condition.
12. The records of the hospital information service indicate the child presented at the Emergency Department at 3 months of age and again at 12 months of age because he was seen as the patient in a domestic assault.
13. Between 3 and 6 months the child's weight gain fell off. By the time he was in his second year of life the child's weight gain was starting to fall off again. He was not severely malnourished but he was mildly malnourished.
14. From the time the child was of 16 months of age onwards the child was probably infected with organism in his gut that either were not identified or not treated.
15. As, by the time of the hearing, the child had received proper treatment for his gut, there should not be any long term complications from that. There was a risk that the child's gut may become re-infected in the community, but so long as the mother presented with the child at the clinic the child should be appropriately treated.
16. She did not think that the compromised standards of living in indigenous houses would be seen as culturally appropriate. Nor was it acceptable from a health practitioner's point of view.
17. Dr Whybourne qualified the statements that she had made in her report about the child's lack of nurturing. She stated the following. I think the child has not received the nurturing he has needed from his father, but he has been nurtured by his mother. She said that she could only speak of her own

interaction with the mother. She has always found the mother to be concerned about the child's health issues, to be interacting appropriately with him and seemingly to have a very high level of concern for him. However, Dr Whybourne agreed that the mother had not protected the child from the domestic violence she and the child had experienced. However, that was not unrecognised behaviour in the domestic violence culture in our environment.

18. So long as the mother committed to regular checkups for the child at the clinic so the child could be monitored and all aspects of domestic violence were eliminated including the mother not being in a relationship with a violent partner, Dr Whybourne did not have concerns about the mother's capacity to care for the child.
19. If the house and the hygiene levels were found by an environmental health person to be of an adequate standard, Dr Whybourne did not have concerns about the child's health.
20. The outcome for the child would be better if the grandmother's responsibility for the child were formally recognised. She would always have concerns about the child's father being involved in his life.
21. It would be a general assumption that at the times when the child's weight was not as good as it could be that the mother was not providing the child with enough food, but he was only ever mildly underweight not severely underweight.
22. She was aware that there were several occasions on which the clinic would have liked the child to attend for follow up treatment and he did not attend. There may also have been a situation from time to time where the mother was presenting at the clinic but because of changeover of staff the health problems of the child were not being addressed as well as we would like.

[45] The next witness to be called was Mr Geoffrey Parkinson who was a child protection officer with the Office of Children and Families. He gave the following evidence.

1. He looked at the grandmother's house. To his observation it was acceptable. It had a flushing toilet, hot and cold running water, a shower, a kitchen and two or three bedrooms. He looked at safety issues regarding the child and basic hygiene. By basic hygiene he meant that there were no faeces in the house and no maggots in the kitchen and living areas. There was no observable poor hygiene in the grandmother's house.
2. He was not able to observe if there was soap and clean towels in the bathroom, nor was he able to observe if there was clean linen or clean bedding. There were no tables or chairs in the house.
3. He believed the grandmother's house had adequate basic hygiene for the child.
4. There was no telephone in the house nor was there a fence around the house.
5. He would have discussions with his case manager about whether the return of the child should be delayed until there was a fence around the house and a telephone in the house.
6. The doors and windows of the house could be locked.

[46] The next witness to give evidence was the mother of the child. She gave the following evidence.

1. She did not speak to the father on the telephone in March 2013 while he was in prison.
2. If the child was returned to her care she would follow Dr Whybourne's advice and she would take the child to the clinic every day.
3. The father did not wake her up by punching her once to the bottom left side of her jaw.

4. She waited a whole day from Christmas Day to Boxing Day before asking someone to drive her and the child to the clinic. There was no-one else she could ask and she did not realise how sick the child was.
5. She knew the child has sores. She was asking everyone to help her, but they kept saying that they had no diesel. She was worried about her child. She does not remember if the child was on any medication [while they were at Merrepen]. She was given Panadol which she was giving to the child at lunch time and in the afternoon.
6. She was also giving the child antibiotics for his sores and boils in the morning and at lunchtime. She gave the child this medication for one week.
7. She understood that the Office of Children and Families had taken the child because she neglected the child and she was in a domestic violence relationship with the father.
8. She has been with the father for 17 or 18 years. The father of the child was also the father of another child of hers. Her two daughters went to live with her mother because the father was violent. The father has been violent for a long time.
9. When the child gets boils she takes him to the clinic. She knew that when the child was given antibiotics she had to give the child all of the antibiotics. However, she also said that if the child looks better she would stop giving the child the antibiotics.
10. The child has been sick for a very long time. She has always taken him to the clinic to get help.
11. She has agreed to go to domestic violence counselling because she wants to keep the child. She believes that counselling is going to help her. She will go to counselling for as long as it takes. She thinks that counselling will help her protect the child.

12. When the child is returned to Palumpa her mother is going to look after the child. They are both going to look after the child.
13. She will learn to cook food at the Resource Centre. She will go there every day.
14. She said the father only hit her not the child. Then she changed her evidence to say that there were occasions when the father hit the child. The father hit the child with a flat hand on the bottom when he was two years old. However, the mother then said that the father went to gaol because he hit the child. She also said that in December 2012 the father threw the child onto the mattress and the child hit his head. The father had stabbed her with scissors and at Christmas time in 2012 he had hit her in the back. The father went to gaol for three months because of the December assault on the mother and the child.
15. The father had also been sentenced to prison for stabbing her with scissors and breaking her collar bone. Both of these incidents occurred after the child was born.
16. After each assault, including being stabbed with the scissors and having her collarbone broken, she went back to the father because he kept coming around to her house. She did not want him there but he was too strong and she could not fight him.
17. She has obtained domestic violence orders against the father in the past and the father has breached the domestic violence orders and she had been injured. Some of the domestic violence orders have been to protect the child as well, but they have been breached by the father and the child has been hurt.
18. She will be able to protect herself and the child in the future by telephoning the police and by getting counselling. The father is also banned from Palumpa.
19. She does not remember the father biting the child.
20. She thought it was right for the child to be taken into protection because the father was violent towards her.

21. No one had talked to her about why domestic violence between spouses was bad for children.
22. The child was suffering from diarrhoea because he was not eating bush tucker. However, she acknowledged that the child had diarrhoea for years at Palumpa. She does not understand why the child is getting diarrhoea.
23. When they are living in the community the child gets cleaned up every day. His clothes and sheets get washed because they have a washing machine. The child eats with a spoon. His spoon and bowls are washed with soap.
24. She knows that the child has had health problems because he has not been kept clean enough. It is important to keep the house clean, wash the linen, have a shower and to eat healthy food. The child is also to be taken to the clinic if he gets boils.

[47] During the cross examination of the mother an issue arose about the fact that the legal representative of the CEO had not obtained, and tendered in evidence, the criminal history of the father. Hannam CM was concerned that the best evidence about the level and extent of the father's domestic violence was not before the court. There was the following exchange between Hannam CM and the legal representatives for the parties following a reference by counsel for the CEO to a domestic violence incident that was deposed to in par [22] of the mother's affidavit of 4 April 2013.

Hannam CM: Is this the one that says it resulted in the arrest of the [father], if you look at page one of the PROMIS record, and there are numbers there? We have got IJIS on this computer. Did you end up getting an up to date criminal history of the [father]?

Ms Muccitelli: I did not get an up to date one, your Honour. [...]

Hannam CM: Are you going to – because there could be a correlation you will find with some of the matters and numbers?

....

Hannam CM: It just might make the cross-examination make more sense, because looking at the whole of the document this incident resulted in the father being arrested.

....

Hannam CM: In fact, if the numbers are followed through and I looked up on IJIS on the computer I could actually see what happened when it went to court, and that is from an incident that we were told did not exist, did not happen.

....

Hannam CM: [...] I can put [the father's] name in IJIS and a whole lot of stuff will come up as far as things that went to court and it will also say the names of the victims and the charges and everything.

....

Hannam CM: Considering the way in which I can receive the evidence, I think that is the best evidence. [...]

Ms Muccitelli: That is right.

Hannam CM: Does anyone have anything to say about that?

....

Mr Strong: [counsel for the mother] **Your Honour, we do not have a position in relation to what**

**determination your Honour makes about accessing that.**

Hannam CM: Yes, okay. [...]

....

[48] After the mother had been cross-examined Hannam CM asked the mother the following questions and there was the following exchange between her Honour and counsel for the mother:

Hannam CM: Didn't the father actually go to gaol this year for hurting the child?

The mother: Yes.

Hannam CM: What did he go to gaol for? What did he do to the child?

The mother: Because he hit him.

Hannam CM: Do you know how he – **I have got a file here. This is all about the father hitting the child.** What did the father do to the child that made him go to gaol for three months?

*[No point was taken by Mr Strong at this time about her Honour's reference to a file]*

The mother: He threw the child onto the mattress.

Hannam CM: Threw him onto the mattress?

The mother: And made him hit his head.

Hannam CM: The child hit his head.

The mother: Yes.

Hannam CM: How many times did the father hit the child?

The mother: Once.

Hannam CM: Once and when was that?

The mother: Just when we were at Wadeye.

Hannam CM: Right and that was in December last year before Christmas?

The mother: Yeah

Hannam CM: Did he also hit you and was that another reason why he went to gaol?

The mother: Yes.

Hannam CM: And what did he do about that time to you that made him end up in gaol?

The mother: He stabbed me with the scissors.

Hannam CM: We are talking about December last year at Wadeye?

The mother: That time he just hit me.

Hannam CM: What part of the body did he hit her in?

The mother: In the back.

Hannam CM: He hit her in the back, is that the time she got the bruises?

The mother: Yeah.

Hannam CM: So in December last year he threw the child on the mattress and the child hit his head?

The mother: Yeah.

Hannam CM: And he punched her so hard she got bruises?

The mother: Yeah.

Hannam CM: And he went to gaol for three months for that?

The mother: Yeah.

Hannam CM: And that is what he is in gaol for now and he is just about to come out?

The mother: Yeah.

Hannam CM: What other times has he hit you or broken the domestic violence order and he has ended up in gaol?

The mother: That was the stabbing me with the scissors and broke my collarbone.

Hannam CM: So he has been in gaol for stabbing you with the scissors and the collarbone – they are two separate things?

The mother: Yes.

Hannam CM: And these are all after the child was born?

The mother: Yes.

Hannam CM: And each time after stabbing with the scissors and breaking your collarbone and giving you bruises, you went back to him?

The mother: Yes, because he kept coming round to my house. I did not want him there. But he was too strong and I could not fight him.

Hannam CM: Sometimes there have been domestic violence orders, hasn't there?

The mother: Yes we have a domestic violence order now.

Hannam CM: Okay, but there have been domestic violence orders in the past, haven't there?

The mother: Yes, they have all expired.

Hannam CM: Yes, but there have been some in the past?

The mother: Yes.

Hannam CM: And the father has broken those domestic violence orders?

The mother: Yes.

Hannam CM: And even though there have been domestic violence orders in place you have still ended up being injured by him?

The mother: Yes.

Hannam CM: And some of those domestic violence orders have been to protect the child as well?

The mother: Yes.

Hannam CM: And the child still has not been protected because the child has also been hurt by the father?

The mother: Yes.

....

Hannam CM: Apart from the scissors, when she was stabbed, and the breaking of the collarbone, where he hurt you and ended up going to court for that?

The mother: That was back in Wadeye.

Hannam CM: Are there any other times in Wadeye or anywhere else?

The mother: That is all at Wadeye.

Hannam CM: That is all, can she think of any other times?

The mother: No.

Hannam CM: **What about another time in Wadeye where she had an argument with the father and he walked up to her and kicked her in the mouth? That is the same time that her collar bone was broken.**

Mr Strong: Your Honour, sorry to interrupt, what document is your Honour reading from?

Hannam CM: I have got all of the criminal prosecution files of Mr Purruwi.

Mr Strong: We have not seen those.

Hannam CM: No, you have not.

Hannam CM: I am asking her if she remembers any of those incidents.

Mr Strong: I just was not sure what documents you were referring to.

Hannam CM: Yes. I have got the prosecution files.

Hannam CM: That was the time that he kicked you and broke your collar bone?

The mother: Yes.

Hannam CM: Do you know how long he went to gaol for that?

Mr Strong: Sorry to interrupt again you Honour, we have not seen those prosecution files.

Hannam CM: No. No. I am aware of that. They are not prosecution files they are the records of the court and I am asking her what she remembers and the issue about this is the absolute best information about what actual domestic violence has been perpetrated as opposed to someone's summaries or our own speculations reading through files and we do not know if matters have gone to court.

Mr Strong: I just thought when your Honour put it to us that your Honour was going to get that criminal history ....

Hannam CM: I was originally, but the trouble is the criminal history does not tell you who the victim is, the actual files do.

Mr Strong: Yes, your Honour, it is probably a bit late, but I would like to object to that material being put before your Honour without the parties seeing it or being able to tender it or review it. **It is a**

**matter for your Honour what decision you make.**

- Hannam CM: Well that is fine, I actually raised the issue about getting access to the court records.
- Mr Strong: I understood that to be the criminal history printout.
- Hannam CM: That is originally what I was looking for, but the criminal history does not reveal who the victim is.
- Mr Strong: I can only put the objection on notice your Honour. It is a matter for your Honour.
- Hannam CM: On what basis is the objection?
- Mr Strong: I have not seen the material. I do not know if it is controversial. I do not know what is in the material. I have not had the opportunity to take instructions.
- Hannam CM: The only matters I am asking about are matters where the father has been sentenced and dealt with to finality. I do not know what the controversy could be [...] if the issue is a real one as to whether the mother understands the impact of the domestic violence and whether she is in fact minimising the level of domestic violence for the court.

Now, there has been no accurate way of putting to the court what is the totality of the level of victimisation and the extent to which the child was the victim or the secondary victim. Now, you might refer to your affidavits. The mother herself started with the suggestion ... I said, "Why was the child removed?" She said, "The child was removed because of the father." I said, "What did the father do?" She said, "He was violent." I said, "Was he violent to you or to the child?" She

said, "Only to me." Now, I went to the file [where it is revealed] that the father threw him on the mattress and the child bumped his head.

Unless there is some point as to someone who has accurate records, and these must be accurate because these are the files where the defendant himself pleaded guilty and served sentences, there is no other way of the court knowing what the totality of his offending is and does the mother really understand. I mean the very fact the mother stated, "No. The child has not been the victim." And that was in December last year.

Mr Strong: I would have thought that obtaining a court file and having access to that court file without the parties putting it to your Honour would overextend the powers of the court in relation to what material they can look at.

Hannam CM: Well, there is no other way. I explored with everybody, I actually said to you, "What way can I inform myself? I can stand the matter down. The only other way is for the Department to summons the very records that I have access to. Now, if that is objectionable and if it is going to be suggested that it is, then I will stop doing it. But it seems to me that at 3.30 pm, on the second day, everybody has been anxious about exploring it, that this is by far the quickest and most accurate record of informing me about what is important. But if you say that I am overstepping the mark, I have got to consider what you think.

We are going to have to go back and the Department are going to have to summons the very documents I can get access to much quicker, but if that is the way you want to do it, but I do not think I can rely on, there is no other accurate way. We start with your client saying, "No. The child has not been the victim. It did not happen."

Short: Well, there is her affidavit which is the starting point your Honour.

Hannam CM: Well she just gave evidence. I said, "Why was the child removed?" She said, "Because of the father." I asked, "What did the father do?" She replied, "He was violent." I asked, "Who was he violent to?" She said, "Me. I asked, "Only you?" She answered, "Yes, only me." I asked, "And a few months ago, we have got an offence for which he is actually serving a term of imprisonment?" She said. "Yes, that was the father."

Mr Strong: And she has an affidavit that speaks to a lot of these instances as well, your Honour.

Hannam CM: Well, if you want me to stand it down, but it is the best possible evidence that I can find, but if that is what you want me to do I will have ... is that your application?

Mr Strong: With the greatest respect, your Honour, I think that the court does not have the power to obtain its own information and the parties are not putting that information before you. On my client's behalf I am saying to you the information before the court is the evidence the court should rely on and we are asking your Honour to make a determination on the evidence before the court.

*[Her Honour then ruled as follows]*

Hannam CM: A matter that I consider highly relevant under s 131(d) of the *Care and Protection of Children Act*, [...] is the extent and nature of domestic violence to both the child and the mother.

So I will stand the matter down and it is going to have to be adjourned for the Department to put accurate records before me which will need to include the facts of the matters, the criminal

histories and the only way they can get them is by issuing a summons to the police.

So is that your application?

Mr Strong: My application is definitely that, again, with the greatest respect, your Honour is that the Court is overreaching its powers if it is going to access material that is not placed before both of the parties.

Hannam CM: Well I am asking the parties to place it before me then, because I think having an accurate, as opposed to peoples understanding which has already been proved to be inaccurate and incomplete, an accurate picture of exactly the level of domestic violence that this child has been exposed to and has been the victim of, is absolutely essential in the determination of this case and if you say it is overstepping the mark to obtain the files, then I say I must take it into account under that section. It is a must.

Mr Strong: What section?

Hannam CM: Section 131, in making the decision the court must consider (d) any other matter the Court considers relevant. I think understanding the full extent of the level of domestic violence in this case is highly relevant and so I will direct the Department to obtain the accurate – which is what I have been attempting to do, but what I have been given is not a criminal history and even if it were a criminal history it does not give us the facts of the cases, but if you can think of another way that is something I must take into account.

....

[...] The practical effect of what you are saying is that I cannot seek to obtain the actual best evidence about the actual domestic violence

history. We don't even know the father's criminal history, or what he is currently serving a term of imprisonment for, or the facts of the matters where the mother and the child have been the victim of assault. We do not even know that and we are now at the end of the case.

If I cannot get this information, I will adjourn the matter and I will require the department to put the information before me. It is highly relevant that it is accurate.

[49] Despite having stated the above, Hannam CM then heard further submissions from all legal representatives. The legal representatives for the mother and the CEO both submitted that the Court could not go beyond the evidence that the parties placed before the court. As a result Hannam CM asked no further questions of the mother based on the court files and she did not require the Department to obtain and tender the material on the court files.

[50] The next witness to be called was the child's maternal grandmother. She gave the following evidence.

1. The child had lived with her for about two years after he was born. The child stopped living with her when his mother and father took him to Merrepen Outstation.
2. She had not seen the father hit the mother.
3. If the father came to her house she would call the police and take the child to the clinic.
4. The child had boils and diarrhoea when the child was at Palumpa.

5. She understands how to give the child medicine.

#### **Ground 4 – denial of procedural fairness**

[51] In my opinion, there was no denial of procedural fairness to the mother in the Local Court. I remain of this opinion despite the concession by the CEO that the mother had been denied procedural fairness.

[52] Proceeding in the family matters jurisdiction must be conducted as expeditiously *as possible* to minimise their effect on the child.<sup>4</sup> Court proceedings must be conducted with as little formality and legal technicality *as the circumstances permit* and, subject to any directions of the court, the court is *not bound by the rules of evidence*.<sup>5</sup>

[53] The Local Court may adjourn proceedings for an application for a protection order. On granting an adjournment, the Local Court may order that a report about the child and the child's family be prepared and filed in the court and order a medical examination of the child and the filing of the report of the examination in the court.<sup>6</sup> The court may also order that a statement be taken from the child and a report to be prepared about the wellbeing of the child. The court may specify in such an order any one or more of the following: (1) the person who must prepare the report; (2) the matters that must be addressed in the report; (3) the persons who must give information

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<sup>4</sup> s 96(1) *Care and Protection of Children Act*.

<sup>5</sup> s 93 *Care and Protection of Children Act*.

<sup>6</sup> s 139(1)(b) *Care and Protection of Children Act*.

in the report; and (4) that the child, a parent or another person is to be interviewed for the report.<sup>7</sup>

[54] The court may also hear submissions from a person who is a family member of the child, or whom the court considers is able to inform the court on matters relevant to the proceeding.<sup>8</sup>

[55] As the Local Court is not bound by the rules of evidence in the family matters jurisdiction, this generally means that in such matters the court may inform itself as it thinks appropriate. The Local Court's capacity to do so is enhanced by the powers of the court which I have referred to in par [53] and par [54] above. However, when receiving or obtaining information or evidence, it is important the court adheres to the following principles. First, if the court departs from the traditional means by which facts are established, it must not transgress the principles of procedural fairness. Second, the court is ultimately still required to establish facts upon which it can base its decision. Third, the conclusions of fact must be supported by evidence or material properly placed before the court. The Local Court should ensure that there is evidence or other material before the court upon which it can base its decision without recourse to material which is not before the parties. There is no room to doubt that, when exercising its family matters jurisdiction, the Local Court is bound to act in a judicial manner and to observe the principles of natural justice. Therefore the court

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<sup>7</sup> s 147 and s 149 *Care and Protection of Children Act*.

<sup>8</sup> s 148 *Care and Protection of Children Act*.

is bound to disclose to the parties any specific information or evidence received during the course of a hearing. The fact that in the family matters jurisdiction the Local Court may inform itself as it thinks appropriate does not carry with it the result that such information need not be disclosed to the parties.

[56] In the interests of the welling being of the child, some of the provisions of the *Care and Protection of Children Act* give the Local Court power to modify, qualify and limit the extent to which the parents of the child are to be accorded procedural fairness at different stages of a proceeding in the family matters jurisdiction. However, the legislature must otherwise take the Local Court as it finds it. The rules of procedural fairness have not been abrogated under the Act. They have only been limited or modified to the extent expressly stated in the Act. Further, if the Local Court is to depart from the rules of procedural fairness, there must be just reasons for doing so. The Local Court must still act judicially.

[57] In this case the Chief Magistrate made it clear to the parties that she was concerned about the quality of the evidence before the court about the extent and level of the domestic violence engaged in by the father of the child. She raised with the parties the possibility of her accessing IJIS and obtaining information from that source and none of the counsel appearing before the court objected to that course of action. However, rather than rely on IJIS her Honour accessed the Court of Summary Jurisdiction files about various prosecutions before that court involving the father. She then used that

information to ask a number of questions of the mother. The questions were not unfair. They were about matters which the mother had a detailed knowledge as she and the child were the subject of the domestic violence. None of Hannam CM's questions were objected to until her Honour asked the mother if there had been an occasion in Wadeye when the father kicked her in the mouth. The mother accepted that there was such an occasion. She had no difficulty in answering the question. As soon as the objection was taken by counsel for the mother, Hannam CM informed the parties what material she had accessed and why she had accessed the material. She also raised with the parties an alternative means of obtaining the material that was on the Court of Summary Jurisdiction files and placing it before the court. Rather than seeking to access the material, or to re-examine the mother about the material, counsel for the mother submitted that Hannam CM should only decide the case on the material that the parties had placed before the court. Her Honour ultimately, and somewhat reluctantly, accepted this position and she asked no further questions of the mother based upon the material in the Court of Summary Jurisdiction files, nor did her Honour rely on that material in reaching her decision. Instead, she relied on the material that was contained in the police case summaries. Counsel for the mother was apprised of the material and he had a fair opportunity to deal with the matter.

[58] The Local Court has the power to access such material as Hannam CM accessed. However, the following should have occurred:

1. Prior to asking the mother any questions, Hannam CM should have informed the parties that (a) she had accessed IJIS but found the information unsatisfactory, and (b) she had accessed the Court of Summary Jurisdiction files and found that material to be the most satisfactory.
2. She should have then directed the registrar of the Court of Summary Jurisdiction to make the files available to the parties and requested counsel for the CEO to obtain the material and place it before the court, subject to hearing any objection by counsel for the mother.
3. If counsel for the CEO was not prepared to place the material before the court, Hannam CM should have adjourned the court and ordered that a report about the child and the child's family be obtained which included the relevant material that was on the Court of Summary Jurisdiction files.
4. Once the report was obtained, Hannam CM should have given the mother and her counsel time to consider the report and adduce any further evidence they wished to adduce in response to the report.
5. Only then should Hannam CM have questioned the mother.

**Grounds 1, 2 and 3**

[59] There is no substantive merit to grounds of appeal 1, 2 and 3. Having thoroughly reviewed the evidence, I am of the opinion that the evidence overwhelmingly supports the order made by Hannam CM.

[60] I accept that: (1) the mother has insight into what she needs to do to properly care for the child and she has a desire to properly care for the child; (2) the mother has started to develop insight into the harm that the child may suffer as a result of witnessing or being subject to domestic violence; (3) the mother is prepared to engage in counselling in order to understand more about domestic violence; (4) the mother and grandmother have taken steps to protect the mother and the child from further domestic violence; (5) the grandmother's home is suitable for raising the child provided the mother and grandmother exercise appropriate care and diligence; and (6) the mother has stated that she does not wish to remain with the father.

[61] However, it was frankly and fairly conceded by counsel for the mother, in the Court of Summary Jurisdiction, that the child had suffered harm and the only issue was what was the best means of safeguarding the wellbeing of the child? Further, the evidence overwhelmingly establishes that: (1) the mother's capacity to care for the child is severely hampered by the domestic violence of the father; (2) children may suffer considerable harm as a result of witnessing or being subject to domestic violence, it may seriously impede their development; (3) the child had already suffered psychological harm as a result of the father's domestic violence; (4) despite the severe domestic

violence of the father, the mother had remained with the father for more than 18 years; (5) domestic violence had occurred when the mother and child had previously stayed in the grandmother's house at Palumpa; (6) despite declaring that she did not want to remain in a relationship with the father and separating from him for short periods of time in the past, the mother had always gone back to the father; (7) the father has breached domestic violence orders on a number of occasions in the past; (8) the mother will require extensive counselling and support to enable her to succeed in separating from the father; (8) there is still a very real risk that the mother will re-engage with the father; and (9) the purpose of the order sought by the CEO was to enable the mother to re-unite with the child, support her in separating from the father and protect the child from being exposed to further domestic violence. This can be achieved by removing the child from his placement with the grandmother until any domestic violence issues are resolved. Likewise, the child may be removed from the placement if he does not receive necessary medical attention.

[62] In the circumstances, it was very likely that, but for the order made by Hannam CM, the child would suffer harm in the future. The order was the best means of safeguarding the wellbeing of the child.

[63] The appeal is dismissed. I will hear the parties further as to costs.

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