

PARTIES: LNX

v

CEO DEPARTMENT OF FAMILIES
AND CHILDREN

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING APPELLATE
JURISDICTION

FILE NO: LA 6 and LA 7 of 2012 (21040894 and
21040895)

DELIVERED: 10 July 2013

HEARING DATES: 12 October 2012

JUDGMENT OF: SOUTHWOOD J

CATCHWORDS:

APPEAL FROM LOCAL COURT EXERCISING FAMILY MATTERS
JURISDICTION – Appeal dismissed – Section 140 *Care and Protection
of Children Act* does not provide right of appeal against temporary
protection order – no evidence before Court suggesting long term
protection order should not have been made – long term protection
order the only means of safeguarding wellbeing.

APPELLANT HAS MENTAL CONDITION AND SUFFERS
PARANOIA – Appellant consistently made it difficult for people to
serve process or advise change in court dates – CEO may send
application and written notice by post to last known address – CEO
complied with service and service requirements of s 124 *Care and*

Protection of Children Act – Magistrate could proceed to hear application in absence of parents.

REPRESENTATION:

Counsel:

Appellant:	Litigant in Person
Respondent:	G Brown

Solicitors:

Appellant:	
Respondent:	Solicitor for the Northern Territory

Judgment category classification:	B
Judgment ID Number:	Sou1304
Number of pages:	20

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

LNX v CEO Department of Families and Children [2013] NTSC 33
No. LA 6 and LA 7 of 2012 (21040894)

BETWEEN:

LNX
Appellant

AND:

**CEO DEPARTMENT OF FAMILIES
AND CHILDREN**
Respondent

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Delivered 10 July 2013)

Introduction

- [1] The appellant, LNX, has been diagnosed as suffering from a Delusional Disorder and a significant treatment resistant Paranoid Personality Disorder. Her two sons have been placed under protection due to the manner in which she was caring for her sons because of her mental condition. On 21 February 2011 Lowndes SM made a short term protection order giving parental responsibility for the boys to the CEO of the Department of Families and Children for 12 months; and on 21 June 2012 Hannam CM made a long term protection order giving parental responsibility for the boys to the CEO until they reach the age of 18 years.

[2] LNX has appealed against both of the above orders under s 140 of the *Care and Protection of Children Act* (NT). On 2 July 2012 she filed two notices of appeal in the Supreme Court, one in proceeding No LA 7 of 2012 which is an appeal against the order made by Lowndes SM, the other in proceeding No LA 6 of 2012 which is an appeal against the order made by Hannam CM. On 12 October 2012 I dismissed LNX's appeal against the order made by Lowndes SM and I reserved my decision in the appeal against the order made by Hannam CM.

Sections 140, 142 and 143 of the *Care and Protection of Children Act*

[3] An appeal to the Supreme Court against a protection order is governed by the provisions of s 140, s 142 and s 143 of the *Care and Protection of Children Act* (NT). An appellant must file a notice of appeal with the Registrar of the Supreme Court within 28 days after the original decision is made by the Local Court exercising family matters jurisdiction.¹ The notice must specify the grounds of appeal and the facts on which the appeal is based.² An appeal against a protection order must be decided on the evidence that was before the Local Court when the protection order was made.³ The Supreme Court may confirm, vary or set aside the original decision or may set aside the original decision and replace it with a new order or decision.⁴

¹ s 140(2) *Care and Protection Act* (NT).

² s 140(3) *Care and Protection of Children Act* (NT).

³ s 142(2) *Care and Protection of Children Act* (NT).

⁴ s 143 *Care and Protection of Children Act* (NT).

Appeal No LA 7 filed on 2 July 2012

- [4] Appeal No LA 7 was filed more than 12 months after the short term protection order was made by Lowndes SM and almost three months after the short term protection order expired.
- [5] The grounds of appeal were as follows:
1. Lowndes SM gave no reasons for making the protection order.
 2. LNX was not advised of the hearing date.
 3. All of the material before the Local Court was untrue.
 4. The order was contrary to the decision of the Mental Health Tribunal.
 5. The order was contrary to a decision of the District Court of New South Wales which resulted in LNX having custody of her two sons.
- [6] In support of the appeal, LNX (who was unrepresented and appeared as a litigant in person) relied on three affidavits that she swore on 17 March 2011, 24 September 2012 and 3 October 2012 respectively. In addition, Ms Brown, who appeared on behalf of the CEO, filed an appeal book which contained all of the relevant material which was before the Local Court when the protection orders were made. The materials included a transcript of the Reasons for Decision of Hannam CM; however, there was no record of any reasons for decision that may have been delivered by Lowndes SM.

[7] As I have stated above, on 12 October 2012 I dismissed the appeal in proceeding No LA 7 of 2012. I did so because the appeal was made so late that it was futile. The short term protection order, which was the subject of the appeal, had already expired and the outcome of that appeal had no bearing on the outcome of the appeal in proceeding No LA 6 of 2012.

[8] It is also to be noted that all of the grounds of the appeal, save for, perhaps, the ground of appeal that Lowndes SM failed to give reasons, were without merit. LNX did have notice of the hearing date of 21 February 2011.

Because of her mental condition and her paranoia, LNX has consistently made it extremely difficult for people to contact her for the purpose of serving process on her or to advise her about a change in court dates.

However, on 9 February 2011 there was an affidavit of service filed in the Local Court in which Mr Stephen Okot deposes that on 14 January 2011 he duly served LNX at the Cavenagh Hotel with a letter of adjournment and a copy of the adjournment order of the Local Court. Annexed to his affidavit are copies of those documents which clearly state that the matter had been adjourned to 21 February 2011 for hearing. Neither the decision of the Mental Health Tribunal nor the decision of the District Court of New South Wales was placed before this Court by LNX and, in any event, neither of those decisions could give rise to an issue estoppel. The question for Lowndes SM was, did the evidence before the Local Court, at the time he made the short term protection order, satisfy him that the two boys were in need of protection or would be in need of protection but for the fact the

children were currently in the CEO's care. If Mr Lowndes was so satisfied, he was required to make a protection order if he was also satisfied that the order was the best means of safeguarding the wellbeing of the children.

There was ample evidence for him to be so satisfied including a letter from Dr Robert Parker about LNX's mental state, a detailed report from Dr Larry Cashion, a psychologist, about the wellbeing of the two boys, and an affidavit from Mr Stephen Okot which set out the circumstances in which the two boys had come to the attention of the Department of Families and Children.

[9] As to the failure of Lowndes SM to deliver reasons, the issue was simply incapable of resolution by this Court. As LNX had the burden of proof, she also failed on this ground of appeal. LNX was not present when the orders were made on 21 February 2011 and she did not request and obtain a transcript of the proceedings in the Local Court on that day; Ms Morgan, who appeared on behalf of the two boys on that day, had no record and no memory of whether Lowndes SM delivered Reasons for Decision or not. In any event, as I have stated, there was ample evidence before the Local Court to constitute a proper basis for Mr Lowndes to make the short term protection order. LNX failed to appear in Court to contradict that evidence.

[10] Nonetheless, it should be noted that the importance of presiding magistrates delivering reasons for decision in matters such as this in the family matters jurisdiction of the Local Court is self evident. All magistrates are under a duty to deliver reasons for decision in these matters.

The grounds of appeal in Appeal No LA 6 filed on 2 July 2012

[11] As to the appeal against the long term protection order made by Hannam CM, LNX relied on the following grounds of appeal.

1. LNX was not advised of the hearing date of 21 June 2012.
2. There was no evidence before the Local Court which was capable of establishing that the two boys were in need of protection until they turned 18 years of age. Insufficient weight was given to the wishes of the two boys.
3. The order was contrary to a decision of the District Court of New South Wales which resulted in LNX having custody of her two sons and the matter should be removed to the District Court of New South Wales.

[12] LNX abandoned ground 3 when the appeal was heard.

[13] In support of this appeal, LNX also relied on the three affidavits that she swore on 17 March 2011, 24 September 2012 and 3 October 2012 respectively. The CEO once again relied on the appeal book prepared by Ms Brown.

[14] Before going to the grounds of appeal that were pressed, it is useful to review the history of the proceedings in the Local Court.

The history of the proceeding in the Local Court

[15] On 10 November 2010 the Department of Families and Children received a notification requesting assistance for the two boys due to LNX being admitted to the Cowdy Ward at the Royal Darwin Hospital for assessment. The notifier had concern for the children as there was no identified

appropriate adult to care for them. The report also stated that LNX had previously lived in both New South Wales and the Australian Capital Territory and had a history of mental health issues in both jurisdictions.

- [16] On 10 November 2010 representatives from the Department of Families and Children attended the Royal Darwin Hospital and saw the children and placed them in provisional protection of the CEO under s 51 of the *Care and Protection of Children Act* (NT) because such protection was urgently needed to safeguard the wellbeing of the two boys.
- [17] On 12 November 2010 the Department of Families and Children was advised that a two week mental health order had been granted under s 39(3) of the *Mental Health Act* (NT) for LNX to remain in hospital for further assessment. On 12 November 2010 a temporary protection order was granted by the Local Court under s 103 of the *Care and Protection of Children Act* (NT). The order expired on 26 November 2010.
- [18] In November 2010 LNX filed appeals in the Supreme Court against the temporary protection orders made in November 2010. These appeals were dismissed by the Registrar of the Supreme Court on the basis that LNX did not have a right to appeal. Section 140 of the *Care and Protection of Children Act* does not provide for a right of appeal against a temporary protection order.
- [19] On 25 November 2010 the Local Court granted an extension of the temporary protection order until 9 December 2010.

[20] On 6 December 2010 the CEO filed an application for a short term parental responsibility direction, giving parental responsibility of the two boys to the CEO for 12 months. LNX was served with this application on 8 December 2010. On 9 December 2010 Wallace SM ordered that the CEO have daily care and control of the two boys until 17 January 2011. On 10 December 2010 the Registrar of the Local Court listed the application hearing on 14 January 2011.

[21] On 11 January 2011, the matter was mentioned in the Local Court, the hearing date of 14 January 2011 was vacated, the matter was listed for hearing on 21 February 2011 and it was ordered that the CEO continue to have daily care and control of the two boys to 21 February 2011. On 14 January LNX was served with documents referred to in par [8] above. Those documents also advised her that the matter was to be mentioned in the Local Court on 10 February 2011.

[22] On 5 February 2011 Dr Larry Cashion, who is a clinical psychologist, provided his report about the wellbeing of the two boys to the CEO. On 9 February 2011 a document described as an addendum affidavit of Mr Stephen Okot was filed in the Local Court. The report of Dr Cashion was annexed to the affidavit. On 10 February 2011 the matter was mentioned in the Local Court. On 21 February 2011 Lowndes SM made the short term protection orders. There was no appearance by LNX on either 10 or 21 February 2011.

- [23] On 17 February **2012** an application for a long term protection order was filed in the Local Court by the CEO. The application was supported by an affidavit of Mr Peter Cooke that was sworn on 15 February 2012. On 20 February the application was mentioned in the Local Court, the matter was adjourned to 24 May 2012 as none of the parents of two boys had been personally served, and it was ordered that the daily care and control of the two boys was to be with the CEO during the adjournment.
- [24] On 1 May 2012 Ms Vivien Ouwerkerk mailed copies of the application for a long term protection order and the affidavit in support to the last known address of LNX and Mr Yao Guo Lin who is the father of the eldest child. She did so in an effort to try and comply with s 124 of the *Care and Protection of Children Act* (NT). However, in none of her affidavits does Ms Ouwerkerk say that she notified the parents that the adjourned hearing date was 24 May 2012. The application for a long term protection order had a return date of 20 February 2012 not 24 May 2012.
- [25] On 24 May 2012 the matter was adjourned until 14 June 2012 as none of the parents of the two boys had been personally served with the documents and it was ordered that the daily care and control of the two boys continue with the CEO during the adjournment. On 14 June 2012 the matter was adjourned to 10.00 am on 21 June 2012 and it was again ordered that the daily care and control of the two boys continue with the CEO during the adjournment. On 21 June 2012 Hannam CM heard and determined the application.

Ground 1 of the appeal in proceeding LA 6 of 2012

[26] As to ground 1 of the appeal in proceeding No LA 6, counsel for the CEO, Ms Brown, conceded that neither LNX nor Mr Yao Guo Lin had been personally served with the application for a long term protection order. However, Ms Brown submitted that LNX and Mr Yao Guo Lin had been served in accordance with the *Care and Protection of Children Act* (NT). Under s 124(2)(b)(ii) of the Act, if the CEO considers it impractical to personally serve the parents of the child with the application and the prescribed written notice, the CEO may send the application and the written notice by post to their last known address. Under s 126 of the Act, as in force at that time, the Local Court could hear the application in the absence of the parents if the Local Court is satisfied the CEO has given the parents a notice that complies with s 124(1)(a) of the Act. There was affidavit evidence before Hannam CM which established that on 1 May 2012 Ms Vivien Ouwerkerk had mailed a copy of the application for a long term protection order to LNX and Mr Yao Guo Lin at their last known addresses. The application was endorsed with the following notices:

The application will be heard by the Court at Nichols Place Darwin at 10:00am on 20/02/2012 *or as soon afterwards as the business of the Court allows* [emphasis added].

If you do not attend the Court on the date shown above, the Court may make an order in your absence.

[27] There was also affidavit evidence about the extent to which the Department of Families and Children had tried to locate LNX. On 16 August 2011 a

case officer made a home visit to LNX at 12 Cavenagh Street, which was where she had been residing at that time. She was not there. Staff advised the case officer that she was no longer residing at the residence and she had left no forwarding address. In March 2012 the Department of Families and Children contacted the records department at the Royal Darwin Hospital and the Northern Territory Police without any success in discovering the whereabouts of LNX. In March 2012 the Department of Families and Children also contacted Centrelink who advised that they were unaware of her current location. On 22 March 2012 Centrelink advised the Department of Families and Children that the last known residential address that Centrelink had recorded for LNX was 97 Mitchell Street Darwin.

[28] In the circumstances, Ms Brown submitted that Hannam CM could proceed to hear the application in the absence of the parents. I accept Ms Brown's submissions. In my opinion, the CEO complied with the service requirements specified in s 124 of the *Care and Protection of Children Act* (NT) and s 126 of the Act gave the Local Court power to hear the application in the absence of the parents.

[29] There was only one issue which arguably meant that the CEO did not comply with s 124(1)(b)(i) of the *Care and Protection of Children Act* (NT). There is no evidence that the documents sent to the parents on 1 May 2012 notified the parents of the adjourned hearing date, which, on 1 May 2012, was 24 May 2012. In my opinion, this failure does not amount to non-compliance with s 124(1) of the Act. It would have been apparent to both

LNX and Mr Yao Guo Lin that the application for a long term protection order had not been resolved. The notice informed them that the application was to be heard in the Local Court at Nichols Place Darwin, that the date specified in the notice may vary and if they did not attend the Local Court, the Local Court could make the order in their absence. In the circumstances they had sufficient notice and the onus was on them to contact the Local Court and find out what the position was. The paramount object of the Act is to protect the wellbeing of children and protect them from harm. If parents are denied an opportunity to be heard because an application proceeds in their absence, they are able to make an application, with leave of the Local Court, to vary or revoke the order under s 137 of the Act.

[30] While this Court undoubtedly has discretion to set aside the long term protection order if it was satisfied that LNX did not actually receive the notice of the application for a long term protection order, it is unnecessary for this Court to resolve the issue of fact. Even if I was satisfied that LNX did not actually receive notice of the application because she was not at her last known address, I would not set aside the long term protection order. LNX has deliberately made it difficult for the CEO to contact her, despite the fact that her children have been in her daily care and control for a long time; and she did not place any evidence before this Court which supports her submission that the long term protection orders should be set aside.

Ground 2 of the appeal in proceeding LA 6 of 2012

- [31] In my opinion, ground 2 of the appeal is not made out. The Chief Magistrate had before her the affidavits of Mr Stephen Okot sworn on 9 February 2011, the affidavit of Mr Peter Cooke sworn on 17 February 2012 and the affidavit of Ms Vivien Ouwerkerk sworn on 23 May 2012. The affidavit of Mr Okot annexes to it the report of Dr Larry Cashion dated 5 February 2011 and a care plan for the two boys. Those affidavits and the report of Dr Cashion provide cogent evidence in support of the order made by Hannam CM on 21 June 2012.
- [32] In addition, on the Local Court file was an affidavit of Mr Okot sworn on 8 December 2010. That affidavit has annexed to it a letter from Dr Donna Schakelaar about LNX's admission to Cowdy Ward in 2010 and a letter from Dr Robert Parker with a diagnosis of LNX's mental state and a prognosis that her condition was treatment resistant. Dr Schakelaar was a Psychiatry Registrar and Dr Parker is a psychiatrist who was the Director of Psychiatry at Top End Mental Health Service.
- [33] The affidavit evidence before the Local Court set out the history of LNX's mental condition dating back to 2004, a history of her and her sons contact with child protection agencies in New South Wales, the Australian Capital Territory and the Northern Territory, and a history that LNX had ceased engaging with the Department of Families and Children in the Northern Territory. The evidence establishes that there have been child protection concerns for a very long time which relate to LNX's very serious history of

mental illness. The concerns have involved the physical maltreatment of the eldest son when he was young, neglect including failure to provide adequate accommodation and failure to enrol the children in school, isolating the children from external supports, and emotional and psychological harm. In addition, by 21 February 2012 LNX disengaged with her sons. She refused to execute a supervised access agreement so she could have access to her sons and she refused to liaise with the Department of Families and Children about the schooling of her children.

[34] In his report, among other things, Dr Cashion stated the following about

LNX's eldest son who was born on 8 July 1997 and is now 16 years of age.

The child presents as an intelligent, but suspicious young man, who has developed aggressive strategies to cope with situations that upset him. His ability to cope with situations beyond his maturity is not as developed as he believes. In my opinion, much of this has come from being parentalised in his role with his brother. However, the child also appears to have been the main emotional support for his mother and has taken on a role he was not psychologically prepared for, in my opinion.

In relation to the referral question of whether the mother's paranoid personality disorder has affected the child, it is my opinion that there has been a clear negative impact on the child's psychological and emotional functioning. The child displays hyper vigilance and was constantly looking for threats in the interview we had. He genuinely believes everything his mother tells him and has normalised a state of living in a chaotic and litigious world. The child also normalised his mother's conduct that had previously been of concern to child protection authorities, such as the use of strong physical punishment and excessive homework demands. The child knows far too much about his mother's financial dealings and had been highly involved in legal processes that were beyond his maturity to cope with. It was obvious at times in the interview that the child was parroting his mother and has developed a belief that he is more capable than he really is. This was exemplified by the child's heavy crying at

various stages during the interview, which were inconsistent with his statements that he simply “moves on” past potentially distressing issues.

I am relying on LNX’s previous diagnosis of delusional disorder and paranoid personality disorder, as I have not had the opportunity to review them. It is not unusual for these conditions to co-exist when paranoia gives way to persecutory delusions. *Given the extent of the child’s total acceptance of his mother’s delusional beliefs, it is my opinion that he either meets or is in imminent danger of developing a shared psychotic disorder* [emphasis added], otherwise known as Folie á Deux (DSM-IV-TR297.3). The intervention for this condition in children where parents present with the primary delusions is generally agreed to be the removal of the child from the environment of the parent. While this might initially appear extreme, the reality is that children who develop such a condition are unlikely to improve and develop appropriate cognitive perspectives in the continued presence of a delusional care giver.

The child’s current care givers are, in my opinion, showing very good skills in managing his behavioural needs. There are clear boundaries being set and there are also reasonable expectations to be met. In my opinion, the child is likely to improve in his behaviour and mental health over the short and medium terms if this care placement can be maintained. One thing that has been largely absent in the child’s life is stability. The more stable his care placement and schooling, the better the outcomes will be for the child.

I do, however, have significant concerns about how the child would cope if he is explicitly told he would not be returning to his mother’s care. The child sees his mother as an almost invincible figure who will win whatever the odds against her. He was entirely convinced that her absence from his life was not only temporary, but necessary for her to mount a legal challenge to the children being in care. The child reported that his mother is essentially without financial means, while talking about large sums of money she has previously spent in order to have the children returned to her care. He does not, however, seem to see the incongruity between her impecunious state and the amount of money needed to mount a higher court challenge to any child protection order. Whether the unwavering belief in his mother is considered as blind faith or delusion is not particularly relevant in terms of the practical implications for the child. What is evident is that LNX’s statements are used by the child as the lens through which he perceives the world. It is most likely that when the

child is able to develop insight into his mother's mental health issues, he will require intensive emotional and psychological support to work through his feeling and cognitions at that time. I would note that it is my opinion that the child is likely to be extremely defensive if provided with psychological intervention at the current stage and feel it would be more appropriate to wait until he has achieved better stability before offering such support.

If the child were advised of a long term order for him and his brother remaining in care, it is likely his behaviour would be extremely challenging. Despite his intellectual abilities, the child relies on aggression as a response to perceived threats. In my opinion, great care needs to be taken in how he is told if the child is to remain in care. As I stated above, it is my opinion that the child will respond much better to such news if he has been in a consistent care placement in the interim.

[35] In his executive summary, Dr Cashion stated that the eldest child presents as an intelligent young man who struggles coping with social issues. He has a history of using aggression and violence as a first response when upset. The child has taken on some of his mother's delusional beliefs and is at risk of developing serious psychopathology.

[36] In his report, amongst other things, Dr Cashion stated the following about LNX's youngest son who was born on 3 March 2003 and is now 10 years of age.

Although I could not interview the youngest child to the extent I would have liked, I was able to spend significant time observing him. I did not observe the youngest child behave or speak in a manner that suggested he had taken on his mother's delusions or paranoia. He appears to have settled in well to his new care placement and there were no reports of major concern from the carers about the youngest child. The main issue observed was that the youngest child viewed his older brother as a parent, rather than sibling. [...] This strongly suggests that the youngest child's mother experienced difficulties with her role as his parent and primary care giver. Given the

childrens' time in care and their mother's mental health status, it is hardly surprising that the eldest child has become a parental figure in the youngest child's life. It was pleasing to hear from the carers that they are addressing the eldest child's parentalisation. I would hope that the eldest child being removed from that role will result in a different relationship between the two boys, as well as between the youngest child and his carers.

There is some evidence that the youngest child has not been socialised appropriately for his age. If the eldest child had taken in the parenting role, it is not surprising that the youngest child was permitted to eat with his hands instead of a knife and fork, for example. The frequent relocations of his mother, in addition to multiple welfare placements, would also have affected the youngest child's social development. Further to this, the youngest child has missed significant schooling and has not had the opportunity to develop genuine friendships over the past few years. This would have the dual effect of negatively affecting his social development and also relying on his brother and mother as his only friends.

[37] In his general comments in his report, Dr Cashion stated:

It is unfortunate that LNX did not take part in this assessment process. I would like to have confirmed her diagnoses and directly observed how her mental health presentation affected her relationships with the children. However, in my assessment of the children there is evidence supporting LNX's mental health diagnoses and how they have had a significant negative effect on her children's' development. I have *grave concerns* [emphasis added] for the welfare of the two boys if they were returned to the care of their mother if she were not successfully treated. The extent of the ongoing affects of LNX's mental health problems will be minimised if the children are not in her care while she experiences paranoia and delusions. I would hope that the children remaining in care might provide an incentive for LNX to seek treatment. How likely LNX is to seek treatment is beyond the scope of this assessment, but without intervention it is my opinion that the children are at a high risk of *psychological and emotional harm in her care* [emphasis added].

[38] Dr Cashion made the following recommendations:

1. That the boys remain in the care of the Department of Families and Children until such time as the Department of Families and

Children is satisfied that the children's mother, LNX, has been engaged in successful treatment for her mental health problems.

2. That to the extent possible, the boys remain in a stable care placement during the period of their care. This should also include ability in school enrolment.
3. That access between the boys and their mother, LNX, be supervised until such time as the Department of Families and Children is satisfied LNX poses low risk of psychological and emotional harm to her children.
4. That LNX should be directed not to discuss any legal, child protection, or financial issues with her children during any access session.
5. That the eldest child be provided access to an experienced clinical psychologist to assist with psychological and emotional support if an order for long term care was sought and granted, to deal with the issues discussed above. In addition, the eldest child will require assistance with managing his parentalisation of his younger brother. In my opinion, the eldest child's presentation requires a psychological challenge that goes well beyond counselling.

[39] Consistent with the requirements of s 20 (a) of the *Care and Protection of Children Act* (NT), the evidence before the Local Court established that the two boys had suffered harm and they were likely to suffer harm if they remained in the care and control of LNX. As to the best means of safeguarding the wellbeing of the two boys, Hannam CM found that a short term protection order was tried to encourage LNX to obtain assistance for her mental health issues and to engage with the children in a supervised way. However, there has been no meaningful response from LNX and she has disengaged with both the children and the Department of Families and

Children. In the meantime, the children have spent the majority of time with their carers who are committed and available in the long term. There were lots of indicators that a long term protection order is not only the best means of safeguarding the wellbeing of the two boys, but the only means of safeguarding their wellbeing. I agree with her Honour's finding.

[40] In so finding, Hannam CM had regard to the matters listed in s 10 of the *Care and Protection of Children Act* (NT). As to the wishes of the children her Honour stated:

The Act requires that I take into account the wishes of the children. I have been informed today that [the eldest child] would prefer to be with his mother and wishes that he was not taken away. That is certainly a far less emphatic feeling than he had two years ago. He also does seem to realise that the placement he is in is a positive one. And, as far as [the youngest child] is concerned, obviously it appears to have been too stressful a topic for him to discuss, and I think it is entirely appropriate for that not to have been pressed.

I do, however, also notice that in one of the affidavits by the case manager, that on 30 March when the children were interviewed, the [eldest child] did say that living with the carer was the best place for him and his younger brother if his mother could not care for him, so he seems to have maturely recognised that while his preferred option may be to live with his mother, that he accepts that if she cannot care for him, that they are good carers.

[41] Her Honour took into account the wishes of the two boys, but decided that in all the circumstances they required protection and a long term protection order was the only means of safeguarding their wellbeing. In my opinion, her Honour was correct in doing so.

Conclusion

[42] The appeal is dismissed and I will hear the parties further as to cost of the appeal.

[43] Like many cases in the family matters jurisdiction of the Local Court, this is a sad case. It is to be hoped that LNX will develop greater insight into her mental state and that she will re-engage with the Office of Children and Families and her two sons. If she does so, it may be that in the future an application can be made to vary or revoke the long term protection order.
