

**IN THE CHILDREN'S COURT
OF NEW SOUTH WALES
AT COBHAM**

MURPHY CM

1 September 2006

IN THE MATTER OF AMY

1. 'Amy' was born on [] 2005. She was removed from her parents on 27 July 2005 by the Department of Community Services, pursuant to Section 43(1) of the *Children and Young Persons (Care and Protection) Act 1998*.

2. The Department then lodged a care application with the Children's Court which ultimately proceeded to a defended hearing over 2 days. That hearing was informed by a report from a Children's Court Clinician, evidence filed in the form of Affidavits and cross-examination of relevant witnesses.

3. After hearing and considering all the evidence, Magistrate E A Ellis made an Order on 2 March 2006 that Parental Responsibility of Amy be granted to the Minister until Amy attains the age of 18 years, pursuant to Section 79(1)(b) of the *Children and Young Persons (Care and Protection) Act 1998*. Pursuant to Section 81(1)(b) of the same Act, all aspects of Parental Responsibility were allocated solely to the Minister. Magistrate Ellis also made an Order accepting Undertakings under Section 73 for both parents. Pursuant to Section 86 Orders were made for a minimum contact level of fortnightly for the father and monthly for the mother.

4. No appeal was lodged against such Order.

5. Amy has been in short-term care since the date of her removal. The Department has sought in vain to arrange permanent placement since the making of the Order by Magistrate Ellis.

6. The Department has on 14 June 2006 filed an Application for Leave to Vary that Order pursuant to Section 90 of the Act. In support of such Application they have filed an Affidavit by a Departmental officer which reports that Amy's contact with her father and mother has been largely positive and also recites the difficulty they have experienced in securing a long-term placement for Amy as a result of the minimum contact Orders, particularly those for the father. The Affidavit attaches copies of correspondence from the following agencies:-

- Anglicare Child and Family Services,
- Barnardos,
- Wesley Dalmar Out-of-Home Care,
- Uniting Care Burnside.

which all advise that the agency is not prepared to accept a referral for Amy's placement purely because of the contact regime. In addition, the Department advise that their own attempts to locate a permanent carer have been unsuccessful.

7. In the circumstances, I consider that the Department has established that the grounds provided for in the legislation have been made out and I have granted leave for the Orders to be reconsidered.

8. The concerning feature of this scenario is that each of the above agencies, without apparently considering any of the evidence and without considering the details of the Magistrate's decision and the reasons for it, appears to have taken an "in principle" decision, the effect of which is to thwart the decision of a Court which has considered all the evidence and made a decision based on the Objects and Principles enshrined in the legislation.

9. In those circumstances, the structure of the decision-making process in these matters, which was established by Parliament, is being undermined, with private agencies taking decisions which can frustrate outcomes determined as a result of proper consideration within the judicial process.

10. I consider such a result to be most unsatisfactory and worthy of consideration at a policy level within those Government agencies who have responsibility for the administration of the *Children and Young Persons (Care and Protection) Act 1998*.