QCAT

Queensland **Civil and Administrative Tribunal**

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| **CITATION:** | *FSI v Department of Communities (Child Safety Services)* [2011] QCAT 108 |
| **PARTIES:** | FSI<br>v<br>Department of Communities (Child Safety Services) |
| **APPLICATION NUMBER:** | CML191-10 |
| **MATTER TYPE:** | Childrens matters |
| **HEARING DATE:** | On the papers |
| **HEARD AT:** | Brisbane |
| **DECISION OF:** | C Endicott, Senior Member |
| **DELIVERED ON:** | 29 March 2011 |
| **DELIVERED AT:** | Brisbane |
| **ORDERS MADE:** | **1. The application to review the decision to remove AB from the care of the applicant is dismissed.**<br>**2. The dates set for hearing of the application to review the decision to remove CD from the care of the applicant are vacated.**<br>**3. The hearing of the application to review the decision to remove CD from the care of the applicant is to be scheduled after 23 June 2011.** |
| **CATCHWORDS:** | CHILD PROTECTION – reviewable decisions – removal of children from care of approved foster carers – where child no longer in the custody of the Chief Executive – no longer any power to change or amend care decisions – early end to proceedings – where hearing would be contrary to objects of the *Queensland Civil and Administrative Tribunal Act* 2009 |

**APPEARANCES and REPRESENTATION (if any):**

The hearing took place on the papers in the absence of the parties.

## REASONS FOR DECISION

[1] On 23 November 2010 FSI lodged an application in the tribunal seeking a review of a decision made by the Department of Communities (Child Safety Services) on 22 November 2010 to remove AB and CD from their approved foster carers, FSI and FT. The children had been placed in the temporary custody of the Chief Executive of the Department. On 20 August 2010 AB was placed in the care of the applicant and his wife and CD was placed into their care on 3 September 2010.

[2] The President of the tribunal granted permission for the application to review the decision to be brought on behalf of the children. A stay of the decision to remove the children from their carers was refused.

[3] The children were subject to applications for Child Protection Orders filed in the Children's Court. On 17 February 2011 the Department amended its application for a Child Protection Order for AB and no longer sought an order for the short-term custody of AB in favour of the Chief Executive of the Department.

[4] On 17 February 2011 the Children's Court made an order requiring the Chief Executive of the Department to supervise the child's protection in relation to his emotional well-being, physical well-being and his education until 17 February 2012. The effect of this order is that from 17 February 2011 AB was no longer in the custody of the Chief Executive. According to the submissions made by the Department, AB has been returned to his mother's care.

[5] The Department has sought to bring an early end to the review application about the decision to remove AB from his carers in November 2010 on the grounds that there is no longer any jurisdiction for the review. The Department contends in its submissions that the tribunal must decide the review in accordance with the provisions in the *Queensland Civil and Administrative Tribunal Act* 2009 and in accordance with the provisions in the *Child Protection Act* 1999.

[6] The tribunal in conducting a review of a decision has all the functions that the Department had when the reviewable decision was made.[1] Under the *Child Protection Act* 1999 the Department can only make decisions about the placement of children into the care of a carer when the Chief Executive has custody or guardianship of the children.

[7] FSI has sought an order in the review that would result in both AB and CD being returned to the care of FSI and FT until a more comprehensive review is given to their care needs. While such an outcome may have been open to the tribunal to bring about at the time the review was commenced in November 2010, it is no longer an outcome that can be achieved for AB. Since 17 February 2011 AB was removed from the custody of the Chief Executive. Neither the Department nor the tribunal has the power to make decisions about in whose care AB is placed. The only outcome that can be reached by the tribunal about AB is to dismiss the application for review.

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1 Section 19(c) of the *Queensland Civil and Administrative Tribunal Act* 2009.

[8] The tribunal registry sent a copy of the Department's submissions to FSI on 16 March 2011 and asked for his comments by 23 March 2011. As no response was received from FSI, a registry officer telephoned him on 25 March 2011 to enquire if he had any comments to make about the Department's application to bring an end to the review about AB. FSI indicated that he opposed the application and that he intended to respond by the end of that day. No further response has been received by the tribunal registry.

[9] The tribunal must deal with matters in a way that is fair, economical and quick.[2] Most matters in the child protection jurisdiction are finalised either by an alternative dispute resolution process or by a hearing. In this case the tribunal considers that proceeding to a finalisation of the review application about AB by way of a hearing is not an economical option for the tribunal when the only outcome the tribunal can reach is to dismiss the application for review.

[10] The tribunal accepts the submissions made by the Department that the tribunal does not have the power to make decisions about the care of AB since he was taken out of the custody of the Chief Executive on 17 February 2011 by the order made by the Children's Court. The tribunal cannot either change the care decision made in November 2010 or confirm that decision. Continuing the review application to hearing will not meet the objects of the tribunal, would be futile and would amount to an unnecessary impost on the parties.

[11] Section 47 of the *Queensland Civil and Administrative Tribunal Act* 2009 gives the tribunal power to bring a proceeding to an early end if the tribunal considers that an application is misconceived or is lacking in substance or is otherwise an abuse of process. In view of the change to the custody of AB since the order made by the Children's Court on 17 February 2011, the tribunal concludes that the review application about AB is lacking in substance as the outcome being sought by FSI cannot be delivered by the tribunal.

[12] The tribunal concludes that the application lodged by FSI about AB should be brought to an early end. To proceed with the review application to a hearing in May 2011 would in the opinion of the tribunal be tantamount to permitting an abuse of process.

[13] The Department has applied for an order to vacate the hearing set for four days in May 2011 of the application to review the decision about removing CD from the care of FSI and FT.

[14] The Department has submitted that CD is subject to a child protection application in the Children's Court and on 17 February 2011 the Court made an order granting temporary custody of CD to the Chief Executive and adjourning the further hearing of the child protection application to 23 June 2011. That adjournment was brought about at the request of the Department for the purpose of exploring the prospect of reunifying CD into the care of one of her parents. During the period until 23 June 2011 the Department submits that it will assess the planned reunification of CD into

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[2] Section 3(b) of the *Queensland Civil and Administrative Tribunal Act* 2009.

the care of her mother. CD is presently having contact with both of her parents on a frequent basis.

[15] The Department submitted in December 2010 that the hearing of the review application scheduled by the tribunal for May 2011 may involve evidence being given by at least 12 witnesses from various parts of Queensland. Although some of those witnesses may no longer be necessary given the dismissal of the application about AB, the tribunal accepts that there will be significant costs associated with conducting a hearing about CD.

[16] The Department has submitted that the Children's Court will consider the child protection application once again six weeks after the scheduled tribunal hearing dates. At that time the Department anticipates that it may amend its application to seek a non-custodial order in the event that the reunification process has been successful. In that event, CD will be removed from the custody of the Chief Executive and neither the Department nor the tribunal would then have any power to make orders about in whose care CD is placed.

[17] The Department has submitted that it is not desirable that the tribunal allows a four day hearing to proceed in circumstances where there are positive indications that the Department may relinquish custody of CD some six weeks after the tribunal hearing. Such an event would extinguish the effect of any decision made by the tribunal to set aside the reviewable decision in favour of FSI.

[18] FSI has not responded to this application for an adjournment apart from giving verbal comments to a registry officer that he opposes an adjournment.

[19] The tribunal accepts the submissions made by the Department that an active process is currently in place to assess the viability of reunifying CD with her mother. The tribunal notes that the process is likely to be concluded by 23 June 2011. If the reunification is successful by 23 June 2011, CD will not be in the custody of the Chief Executive after that date. The effect of any decision made by the tribunal at the hearing in May 2011 will be automatically at an end.

[20] The tribunal concludes that it would not be fair or economical for the tribunal to conduct a hearing of a review application over several days in May 2011 when the child the subject of that hearing may not be in the custody of the Chief Executive after 23 June 2011. To proceed with the hearing in May 2011 would be contrary to the objects of the *Queensland Civil and Administrative Tribunal Act* 2009 in circumstances where it is reasonable to anticipate that neither the Department nor the tribunal may have jurisdiction to make decisions about CD's care after 23 June 2011.

[21] The tribunal considers that the only reasonable option open to the tribunal is to adjourn the hearing of the review application about CD until after the further mention of the child protection application in the Children's Court on 23 June 2011. If the reunification process has been unsuccessful and the tribunal continues to have jurisdiction to determine the review application, the tribunal will re-schedule the hearing after 23 June 2011.