

IN THE CHILDREN'S COURT OF VICTORIA

FAMILY DIVISION

APPLICANT: Department of Health and Human Services (DHHS)

CHILD: CMR*

MAGISTRATE: GAIL HUBBLE

DATES OF HEARING: 28 October – 1 November 2019; 3 – 6 February 2020; 9 – 13 November 2020; 14 – 17 December 2020

DATE OF JUDGMENT: 22 December 2020

CASE MAY BE CITED AS: DHHS and CMR [2020] VChC 8

REASONS FOR DECISION

Catchwords: Child protection – child aged 5 years, 1 month – child residing out of parental care for a significant proportion of her life – application for Permanent Care Order in favour of maternal grandparents – protective concerns revolving around the parents' illicit drug use, criminal offending, mental health and family violence – parents' efforts to address protective concerns – whether the Court should make a Permanent Care Order – definition of "parent" – whether the Court should make a Family Preservation Order – whether the Court should make a Care By Secretary Order – order most likely to promote the child's best interests given her young age

REPRESENTATION: Legal representative

DHHS: Ms Weinberg

Father (FR): Ms Armstrong

Mother (MM): Mr Brown

Maternal Grandparents (Mr and Mrs M): In person

* The names of the parties and witnesses have been anonymised to comply with s.534 of the CYFA.

HER HONOUR:

1. CMR [is aged 5y1m] and is the child of MM and FR.
2. The Department first filed a Protection Application in respect of CMR on 7 September 2016, when she was ten months of age. On 8 September 2016 CMR was placed in the care of her maternal grandmother, Mrs M, under an Interim Accommodation Order. CMR is currently subject to a Family Reunification Order made by this court on 12 December 2016¹, and extended on 12 October 2017. CMR has resided in the care of her maternal grandparents, Mr and Mrs M, since she was removed from the care of her parents. At the time of [my] decision, CMR had been out of her parents' care for over four years.

Current Applications

3. On 27 April 2018, the Department of Health and Human Services (**DHHS**) filed an application for a Care by Secretary Order pursuant to the *Children, Youth and Families Act 2005 (the Act)*, section 289. That application was superseded by an application for a Permanent Care Order in favour of the maternal grandparents, filed pursuant to section 320 of the Act on 21 September 2018.

The positions of the parties

4. The parents oppose the Department's application and seek that CMR be returned to their care pursuant to a Family Preservation Order, with reunification to occur gradually over a number of months. The maternal grandparents support the making of a Permanent Care Order.
5. The parents submit the following as alternative positions:
 - a. that I adjourn the case and vary the Family Reunification Order to provide for the parents to have increased contact with CMR with a view to reunification, or
 - b. failing that, that I make a Family Preservation Order to the maternal grandparents² with plentiful contact for the parents, or
 - c. failing that, that I make a Care by Secretary Order.

¹ At this time the Protection Application was found to be proven on the grounds that CMR had suffered physical harm and emotional/psychological harm pursuant to sections 162(1)(c) and (e) of the Act.

² On the basis that they are her 'psychological parents'

The Protective Concerns

6. The protective concerns revolve around the parents' illicit drug use, criminal offending, mental health and – in the early days of the protection application – family violence perpetrated by FR against MM. In my view, the protective concerns need to be outlined in detail so that the risks to CMR can be fully understood.

Family Violence

7. The Department alleges that FR has perpetrated numerous acts of family violence against MM. These include:

- in or around September 2015, the maternal grandmother attended the parents' home, and witnessed the mother with a 'fat lip' and crying hysterically. The parents both conceded that the injury resulted from FR slapping MM's face
- in or around April 2016, [CMR's half sibling] CXM told the maternal grandmother³ that he witnessed FR knock MM over with the car, and that he was terrified that FR would run over her as she lay in the driveway. Both parents gave evidence that this referred to an incident where they were arguing in the context of FR's deteriorating mental health, and MM fell to the ground as she was trying to prevent FR driving away
- in or around April 2016, CXM told the maternal grandmother⁴ that he had seen FR holding his mother by the throat up against the wall inside the house. Both parents gave evidence that this never occurred
- during 2015 while the parents were living in [location removed], the police were called to the home on several occasions due to raised voices⁵
- during 2016, CXM told the maternal grandmother that he witnessed FR throwing the remote control at MM and hitting her in the head. Both parents conceded that this had occurred
- in or around September 2016, MM called the police after FR allegedly punched and kicked her. The maternal grandmother recalls that she arrived at the house to find MM sitting on the floor with CMR, looking exhausted and with bruises evident on her

³ Exhibit 52, page 18

⁴ Exhibit 52, page 18

⁵ Evidence of FR and exhibit 52, page 17

body.⁶ Both parents concede that there was some violence perpetrated by FR on this occasion, but that it did not involve kicking.

Mental Health

8. Both parents gave evidence that they have suffered from poor mental health, which has contributed to their drug use and offending behaviour.

Mental health concerns regarding FR

9. FR has been diagnosed as suffering from PTSD, social phobia and anxiety stemming from sexual abuse perpetrated against him by a Catholic priest when he was a teenager.⁷ A psychiatric report by Dr SKB⁸ who assessed FR in 2012 in the context of a claim for compensation against the Catholic Church in respect of the abuse, was tendered. Dr SKB expressed the view that the assault suffered by FR has had adverse effects on his self-esteem, trust, sexual relationships, anger and depression.⁹ The report states that when the abuse occurred, FR was extremely vulnerable, which contributed to the negative psychological consequences experienced by him.¹⁰ FR has clearly suffered from psychological difficulties over a considerable period of time. Dr SKB detailed an incident which occurred in or around July 2012 when, in the context of a relationship with a woman who was also struggling with the impact of sexual abuse, FR took an overdose of Panadol and was taken to the Alfred Hospital.¹¹ FR told Dr SKB that he is probably 'too generous' but that he can also be 'brutal' and that he used to 'lash out (verbally)'.¹² He told Dr SKB he attended a counsellor weekly for three or four months when he was in his late twenties, and that his behaviour was erratic and 'not ever feeling settled'.¹³ He also conceded that he had had a gambling problem and told Dr SKB that he consulted a counsellor four to six times in relation to gambling issues.¹⁴ Similar themes also arose in an interview of FR by Peter O'Callaghan QC in July 2012, conducted in the context of FR's claim against the Catholic Church. FR stated in relation to the impact of the abuse on his relationships 'like I simply cannot stay or be stable

⁶ Exhibit 52, page 21

⁷ The abuse by [the Catholic priest] is detailed by FR in an interview with Peter O'Callaghan QC, conducted in the context of FR's claim for compensation against the church (exhibit 42)

⁸ Psychiatric Report, Dr SKB, 27 July 2012 (exhibit 41)

⁹ Psychiatric Report, Dr SKB, 27 July 2012 (exhibit 41) p. 10

¹⁰ Psychiatric Report, Dr SKB, 27 July 2012 (exhibit 41) p. 12

¹¹ Psychiatric Report, Dr SKB, 27 July 2012 (exhibit 41) p. 4

¹² Psychiatric Report, Dr SKB, 27 July 2012 (exhibit 41) p. 4

¹³ Psychiatric Report, Dr SKB, 27 July 2012 (exhibit 41) p. 9

¹⁴ Psychiatric Report, Dr SKB, 27 July 2012 (exhibit 41) p. 9

in a relationship'¹⁵. He conceded a gambling problem and 'fairly significant alcohol abuse'¹⁶ when he was publican of [a] Hotel in or around 2003, and acknowledged that in 2003 he pleaded guilty to a charge of Obtaining Financial Advantage by Deception in relation to gambling carried out by him in breach of licensing obligations.

10. More recently, FR has been diagnosed by a general practitioner Dr NK as suffering from a 'severe social phobia' and is said to be unfit to perform any job associated with exposure to other people or which require effective communication.¹⁷ Dr NK told the court that FR reported insomnia, generalised anxiety, anxiety seeing other people, and a fear of communicating with other people. Dr NK said it was his understanding that FR could not do any work which involves communication with other people.
11. The court also heard evidence from Mr CN, a psychologist who is treating FR, that he is of the view that FR's mental health difficulties are better understood as Post Traumatic Stress Disorder (PTSD), rather than social anxiety. He told the court that PTSD can impair decision-making, that a sufferer can have outbursts unexpectedly, that the triggers can be unpredictable and that drug use is not an uncommon response to PTSD.
12. I also heard evidence from CMR's mother, MM, about her experience of FR's mental health issues. MM described FR as having had a 'breakdown'. While the timelines around this were somewhat unclear, it would seem that FR experienced a deterioration in his mental health throughout 2015. MM gave evidence that the incidents of domestic violence described above resulted from FR's poor mental health. Both parents also gave evidence that FR's deteriorating mental state coincided with his diminishing ability to perform work obligations.¹⁸ The evidence indicates that by July 2015, FR was struggling financially and was committing dishonesty offences in the [location removed] area. The parents had been evicted from a house in [location removed], leaving rental arrears and the rental property in a poor state, including broken windows. By September 2015, FR was 'disappearing' for days at time prompted, he told the court, by his rising PTSD. Arguments between the parents

¹⁵ Interview with Peter O'Callaghan QC, 2 July 2012 (exhibit 42) p. 20

¹⁶ Interview with Peter O'Callaghan QC, 2 July 2012 (exhibit 42) p. 23. In evidence, FR described himself as a 'functioning alcoholic' around this time

¹⁷ Dr NK, Medical Certificate, 12 August 2017 (exhibit 13)

¹⁸ At this time, FR was operating a business known as [name removed]

were escalating around this time.¹⁹ Problems with FR's mental health appear to have continued to a varying degree until he was remanded in custody on 21 May 2018.

Mental health concerns regarding MM

13. MM told the court she experienced a 'deep depression' in or around 2012 following difficulties in her relationship with Mr BJ, the father of her son CXM. Around this time Mr BJ came out as homosexual, and the couple separated after a relationship which MM says was characterised by family violence. MM concedes that around this time she struggled to make ends meet financially and to manage household chores. I did not gain a clear sense of MM's mental health between 2012 and 2014, but she gave evidence that she failed to take CXM to his birthday party in August 2014 (organised by the maternal grandparents) due to her mental state being poor. In December 2014, FR called the maternal grandparents to tell them that MM is in a 'bad way'. The grandparents find MM incoherent in her bedroom from drug use. In or around September 2015, FR phoned Mrs M to seek assistance, saying that MM was yelling and screaming and was out of control. MM was taken by ambulance to [location removed] Hospital where she was discharged the next day. MM told the Court that this incident was related to her mental health. In or around September 2015, FR again phoned Mrs M to report that MM was out of control and that he didn't think he could go on with the relationship.²⁰ In or around January 2017, MM attended at the house of the maternal grandparents in a highly agitated state. They called the police and an ambulance, and she was admitted to the Royal Melbourne Hospital psychiatric facility for four days. MM gave evidence that this episode was caused by anxiety rather than drugs, and that she was diagnosed around this time with Post Traumatic Stress Disorder. The court also heard evidence from NV, a psychologist who has been treating MM since September 2016. She told the court that she was aware of MM's earlier diagnosis of PTSD, and that she was treating MM for depression, moderate anxiety and stress.

Substance abuse and criminal offending

14. Both parents have a significant history of substance abuse and criminal offending. In his evidence to the court, FR conceded that he began using drugs recreationally in around 2012 and that he used ice and cocaine. The court heard evidence from FR's brother that FR

¹⁹ The maternal grandmother Mrs M details several episodes of the parents having loud abusive arguments in or around September 2015 (exhibit 52) page 15

²⁰ Evidence of FR and exhibit 52, page 16

admitted methamphetamine use to him in 2012 or 2013. FR denies that he became addicted to drugs until after the removal of CMR in September 2016. When questioned as to the reason why he committed crimes of theft and dishonesty in 2015, he stated that he was suffering from extreme anxiety, was going backwards financially and was 'trying to make ends meet'.

15. It is difficult for me to determine the extent of FR's drug use prior to the removal of CMR. The Department alleges that FR was found passed out and drug affected in a car park on 7 October 2012 while his daughter KR was in his care. The police reported to the Department that drug paraphernalia was found in the car, and the attending paramedics reported that he appeared drug affected. FR maintains that the episode was caused by a heart defect²¹ which can cause loss of consciousness. As there was no direct evidence before me regarding the medical cause of FR's loss of consciousness, I cannot make any findings about these events.
16. MM gave evidence that she commenced using methamphetamines recreationally in or around May 2014. The mother disputes the report²² by Mr BJ, the father of CMR's half-sibling CXM, that he found ice bags and an ice pipe in her room in July 2014. Mr BJ did not give evidence in this hearing so I am unable to make a finding in relation to that allegation. But it seems likely to me that the parents were engaging in drug use in or around late 2014. By mid-2014 the parents were in a relationship and quickly began spending significant amounts of time together. MM said she first used drugs recreationally with FR in or around October 2014. In addition, according to the maternal grandparents, one or both of the parents stole a cheque from them and attempted to fraudulently cash it at the ANZ bank in North Melbourne in August 2014. I accept the evidence of the maternal grandfather, Mr M, that he identified MM in CCTV footage as the person attempting to present the cheque, and that he identified FR as present in the bank at the time.²³ MM conceded using ice daily over a two week period in December 2014, and she was eventually found incoherent and lying on the bedroom floor in the presence of CXM.²⁴

²¹ FR has been diagnosed with Wolf Parkinsons White Syndrome

²² This was reported by Mr BJ to the maternal grandmother, and is referred to in exhibit 52, page 8

²³ The parents both stated that they were unable to recall this event

²⁴ Exhibit 52, page 11

17. By mid-2015 one or both of the parents were engaged in a series of offences involving dishonesty in the [location removed] area. This offending included thefts of motor vehicles and horse floats, incurring credit card debt using fraudulent cards, impersonating an ANZ staff member to gain access to \$10,000, presenting fraudulent driver licences, stealing petrol and handling stolen cheques.²⁵ MM disputed involvement in much of this offending, and gave evidence that the only offence she was directly involved in at this time was the fraudulent use of a credit card. FR gave evidence that this offending related to his declining mental health and financial difficulties. The parents were evicted from their rental property in or around July 2015, leaving significant rental arrears and the property in a state of disrepair.²⁶ Both parents denied drug use at this time.
18. Shortly after, the parents move to a house in [location removed]. The maternal grandparents continued to hold concerns around the care being provided to CXM. Mrs M recalls being concerned about the dirty state of the house and the lack of adequate food for CXM²⁷, something MM conceded in evidence.
19. The extent of drug use by the parents when they were living in [location removed] is disputed. The maternal grandparents allege that they found three ice pipes in the main bathroom of the parents' house in March 2016.²⁸ The parents deny this allegation, and MM gave evidence that she did not use drugs again until October 2016, after the removal of CMR. Nevertheless, protective concerns continue to arise, predominantly in relation to family violence and erratic behaviour by either or both of the parents. These include the following incidents:
- CXM (who was around 8 years of age at the time), reported to his maternal grandparents that in or around April 2016, he was left alone with CMR, who was approximately five months old. He reports trying to feed his sister and taking her to a neighbour's house when she cried too much. MM conceded in evidence that CXM was left alone with CMR on one occasion when she went out for what was meant to be five or so minutes to take something to FR, but which turned out to be for approximately thirty minutes when she got a flat tyre. Under questioning from

²⁵ Exhibit 52, page 13 - 14

²⁶ Exhibit 52, page 13

²⁷ Exhibit 52, page 14

²⁸ Exhibit 52, page 18. The maternal grandfather, who gave evidence, said that this was reported to him by his wife, Mrs M.

myself, MM conceded that it was totally inappropriate to leave CXM alone with baby CMR for even a minute.

- On one occasion in or around June 2016 when Mrs M was staying overnight with her daughter due to FR being absent, the police came to the door at 2am to inform them that FR had been arrested for driving without a licence. MM left Mrs M in the house with the children to accompany the police to the police station to see FR. On their return around 6am, Mrs M confronted FR about his behaviour, at which time FR allegedly flew into a rage and screamed abuse and obscenities at Mrs M.²⁹ While both FR and MM say that Mrs M's account is exaggerated – and I did not hear direct evidence about this event from Mrs M – Mr M gave evidence that when he saw his wife after this confrontation, he has never before seen his wife so shaken and distressed. Soon after this incident, CXM's father refused to return CXM to MM's care after a visit, and CXM from this point resides in the full-time care of his father.
- Dr NK, a general practitioner who saw FR on 4 August 2016 told the court that FR acknowledged that he was using amphetamines around this time.
- Mr M also gave evidence of a confrontation with FR in August 2016, when FR punched him to the face. FR gave evidence that Mr M asked him to leave the property and when he refused, Mr M pushed him numerous times and then swung a punch at him, a version of events which MM corroborates. FR said he punched Mr M in self-defence. Mr M conceded that he pushed FR a number of times³⁰ but denies swinging a punch at him. While I cannot be certain of the exact circumstances in which the assault to Mr M occurred, it is nevertheless a concerning episode.

20. On 8 September 2016, CMR was removed from her parents' care. The parents acknowledge that things deteriorated for them after this time, and that they soon became addicted to methamphetamines. In October 2016, FR stole \$5399 worth of jewellery from a Goldmark jewellery store, and he and MM presented the jewellery to a Cash Converters store, where they sold the jewellery for \$610. By January 2017, the parents had left their [location removed] property in a filthy state and MM concedes drug use around this time.³¹

²⁹ Exhibit 52, p 19

³⁰ This was initially denied by Mr M under cross-examination by FR's counsel, but was later conceded by Mr M to be true.

³¹ Exhibit 52, pages 26 and 27

21. In January 2017, MM completed a 28-day private residential rehabilitation program arranged and paid for by the maternal grandparents. After its completion, she went to reside with the maternal grandparents and CMR. The grandparents allege that MM relapsed into drug use a short time later, and she was asked to move out in or around April 2017. While MM disputes drug use at this time, she acknowledges that her mental state was not good, and it is not disputed that she had relapsed into drug use by May 2017. From mid-2017, the parents were engaging in criminal offending that was highly suggestive of drug use. In June 2017, FR admitted the theft of three number plates from vehicles parked at the Southern Cross Railway Station, and both parents collaborated in the theft of goods from Big W at Watergardens Shopping Centre. I heard evidence from Senior Constable HS that when MM was arrested in relation to the Big W thefts, she was found with stolen goods, two driver licences, two bank cards and a Medicare card in different names.
22. Most significantly, a search warrant was executed at the parents' address in [location removed] in August 2017 in relation to fraud charges arising from the operation of a business known as [name removed]. The business, which was set up by FR in 2013, invited people to register by paying a fee, in exchange for being assisted to find employment in the racing industry. The business was particularly targeted at overseas people, who were also promised assistance with migration applications. Senior Constable HS gave evidence that the police had identified approximately ten to twelve victims who were defrauded by the business. Both parents were involved in the running of the business, although charges against MM were withdrawn as a result of FR's plea of guilty to a number of dishonesty offences arising from the operation of the business. According to Senior Constable HS, at the time the search warrant was executed, the police seized:
- a fraudulent driver licence in the father's wallet
 - false employment summary documents in a mobile phone which had been used to apply for credit cards
 - three online applications for mobile phones and an application for a home phone service in the name on the fraudulent driver licence
 - four credit card applications to different banks in a false name
 - an account for Energy Australia in the name of a person who had had his wallet stolen in [location removed] some years earlier.

23. Senior Constable HS also gave evidence that, while the father maintained throughout questioning that it was a legitimate business, the police had not found any legitimate business records, and the father was unable to point to an example of a successful placement. Having heard evidence from both of the parents about the business operations of [name removed], and from Mr C, a horse trainer who did business with FR, I am satisfied that [name removed] was a legitimate business enterprise which operated successfully for a period of time. FR acknowledged that the deterioration in his mental health meant that he was unable to provide the services which he had promised to potential employees. MM gave evidence that the fraudulent documents seized were unrelated to the operations of the business. She conceded she was aware that FR was in possession of the false documents and that she knew it was not really okay.
24. In October 2017, FR was found slumped over a steering wheel in Port Melbourne. The police found an ice pipe, methamphetamine in clear ziplock bags, and an assortment of cards in another person's name. FR admitted ice use and informed the arresting officer that he found ice to be 'helpful'.
25. A significant amount of criminal offending was committed by FR and, to a lesser extent, MM over the ensuing period. It should be noted that FR was disqualified from driving for the entirety of this offending:
- in January 2018, FR stole a car from Thrifty rental and attached stolen plates to it. FR then committed a burglary at Nightingale Electronics where he stole equipment. MM was located asleep in the stolen car, and the police seized a stolen backpack, a false licence bearing MM's photograph but with a different name and methamphetamines in the glove box
 - in January 2018 FR stole a television, car fridge and trolley from a storage cage at a Docklands apartment complex, and stole sunglasses from a car
 - in March 2018, FR tried to fraudulently return items to Bunnings to claim a refund on goods he had not purchased. He was found with a backpack containing methamphetamines
 - on 12 February 2018, FR stole goods from a carpark in the Docklands area
 - on 26 February 2018, FR drove in a car with stolen plates and stole fuel

- on 16 March 2018, FR stole store keys from the Good Guys store in Essendon
- on 25 March 2018 FR stole a \$25,000 Mercedes from Thrifty Rentals at Melbourne Airport
- on 25 March 2018, FR returned to the Good Guys in a stolen car and used the stolen keys to access a storage cupboard, from which he stole mobile phones
- on either 10 or 11 May 2018, FR entered a secure carpark in the Docklands area and stole an electronic mountain bike
- on 15 May 2018, FR stole a bike from a car park at the Docklands area
- on either 18 or 19 May 2018, FR stole a bike from a secure garage in St Kilda
- on 21 May 2018, FR presented two stolen bikes at a bicycle store in Knoxfield (at which time he was remanded in custody³²)
- on 11 December 2018, the police attended the home of MM and found a stolen Volkswagen Passat in the car port, and stolen number plates from a Holden Barina. MM told the court that they were left at her house by an associate known by her to be a drug user
- on or around 28 December 2018, the police attended the home of MM and located stolen number plates on a Ford Fairmont in the carport
- on or around 30 December 2018, a stolen trailer was located at MM's address, although charges in relation to this matter were withdrawn
- on 13 January 2019, MM was a passenger in a stolen car. An unknown male was driving. Constable MN gave evidence that a backpack containing a loaded sawn-off shotgun, ammunition, a face mask and an ice pipe was located in the front footwell of the passenger seat where MM had been sitting. Constable MN gave evidence that the shotgun was clearly visible. The police also located four stolen blank cheques in MM's bag, as well as various bankcards belonging to other people. The police located a Molotov cocktail in the car as well as altered number plates on the back seat.³³ MM gave evidence that she did not know the car was stolen, and was unaware of the illicit items in the car. She acknowledged possession of the blank cheques and bank cards
- on 24 April 2019, MM stole beauty products from Coles in Melton South

³² On 10 April 2019, the County Court of Victoria (hearing an appeal on sentence from the Magistrates' Court of Victoria) sentenced FR to 9 months imprisonment and a Community Corrections Order for two years

³³ MM was charged with dishonesty offences in relation to this offending, but charges in relation to the firearm and ammunition were withdrawn.

- on 29 July 2019, MM was located driving a motor vehicle despite being unlicensed. She gave the police a false name. She was in the company of a male who had a black canvas bag containing liquid GHB, cannabis, methamphetamines and cards bearing MM's name.

26. Both parents have spent time in custody in relation to the above offending.³⁴

27. FR has also been found guilty of crimes against the person. On 5 April 2017³⁵, he was sentenced for offences which included:

- a charge of contravening a family violence intervention order
- four charges of unlawful assault
- a charge of recklessly cause injury

FR's driving record

28. FR's driving record can fairly be described as horrendous. On 2 September 2013, he was disqualified from driving for four years for offences which include:

- refusal to undergo a breath test
- driving while in excess of the prescribed concentration of a blood alcohol
- exceeding the speed limit in a 100km zone by between 35 and 45 km per hour.

29. Between 28 September 2015 and 9 September 2016, FR incurred 62 traffic infringements while driving a car owned by Mrs M.

30. On 29 November 2016, FR was sentenced for charges which include:

- exceeding the limit in a 100km zone by 45 km per hour or more
- driving with illicit drugs in his system
- seven charges of driving while disqualified
- driving at a speed dangerous.

31. On 5 April 2017, FR was sentenced for charges which include careless driving and further speed offences.

³⁴ The parents' criminal records were tendered in evidence (exhibits 15 and 16)

³⁵ The sentence imposed by the County Court of Victoria was an appeal from a sentence imposed by the Magistrates' Court of Victoria

32. On 10 April 2019, FR was sentenced for three charges of driving while disqualified and a charge of unlicensed driving.

Parents' progress during the Family Reunification Order

33. A Family Reunification Order was made by this court on 12 December 2016 and extended on 12 October 2017. The court heard evidence from Ms TS, who was the allocated child protection worker between 24 July 2017 and 17 October 2017, who gave evidence that there were delays in transferring the case from the [location removed] office to the [location removed] region, which was closer to the parents' residence at the time. Accordingly, the Department sought an extension of the Family Reunification Order to give the parents a further opportunity to engage with services and address the protective concerns. There was some disagreement between the parents and the Department over the extent of the parents' engagement during the first year of the Family Reunification Order. The parents gave evidence that they were not referred to any services and were rarely asked to do screens. I note that MM was placed on a Community Corrections Order on 6 December 2016 and FR was placed on Community Corrections Orders on 29 November 2016 and 5 April 2017. Both of these orders included conditions designed to assist the parents in their treatment and rehabilitation, and both parents were offered opportunities to engage in mental health support and drug treatment. In addition, MM completed a 28-day inpatient drug and alcohol rehabilitation program at the [location removed] Clinic in January 2017, which was funded by her parents. Unfortunately, both parents relapsed into drug use and offending behaviour at various times during the Family Reunification Order.
34. There is also evidence before me that MM and FR often minimised or denied the protective concerns. For example, on 30 August 2017, FR wrote a long email to the then allocated child protection worker, Ms TS, complaining of the Department's handling of CMR's case. He stated that he had never used or condoned violence and further stated 'my record is beyond repute'³⁶. In fact, when that email was sent FR had without doubt used violence against MM, consumed illicit substances and committed crimes of dishonesty.

³⁶ Email FR to TS, 30 August 2017 (exhibit 3)

Evidence that the protective concerns have been addressed

35. It was crucial in my view to provide a detailed outline of the protective concerns surrounding the parents in order to convey an accurate picture of the risks to CMR. In some ways, the enormity of those protective concerns highlights even more starkly the extraordinary efforts the parents have now made to turn their lives around and address the protective concerns. The changes are dramatic.

Drug Use

36. FR gave evidence that he ceased drug use once he was remanded on 21 May 2018. He was released from custody on 30 August 2019, and since then he has consistently produced supervised drug screens which are clear of illicit substances. MM was released from custody on 3 September 2019, and she has also consistently provided clean screens since that date. The parents have been testing three times a week for over a year and have demonstrated an unflinching commitment to the provision of screens. FR gave evidence that he decided to turn his life around when he was in custody, and that he became a peer educator in the prison. I accept that FR has been abstinent from illicit drug use since 21 May 2018. I accept MM's evidence that she has been abstinent from illicit drug use since 28 July 2019.

37. FR has completed alcohol and drug treatment as part of a Community Corrections Order, which commenced on 30 January 2020. As at 19 October 2020, FR had attended 19 sessions with Ms TR, a drug and alcohol counsellor with [details removed] Community Health. Ms TR reports that FR engages positively and that his focus remains on relapse prevention and stress management. As at 15 October 2020, MM had attended 14 sessions with Ms RT, a drug and alcohol counsellor with [details removed] Community Health.³⁷ Ms RT reported that MM was also focused on relapse prevention strategies in accordance with her triggers.

Criminal offending

38. Since their release from custody in 2019 the parents have not committed any criminal offences.

³⁷ Letter dated 19 October 2020 (exhibit 46)

Family Violence

39. There have been no reports of family violence by FR against MM since CMR was removed in September 2016. FR has completed the Men's Behaviour Change Program,³⁸ and is now doing [a further] program where he is able to assist other men who are addressing the issues around family violence.

Mental Health

40. The court heard evidence and received two reports³⁹ from Mr CN, a psychologist from [details removed], who has been treating FR since late 2019. As at 14 October 2020, FR had attended 21 sessions with Mr CN. Mr CN stated that FR was motivated to change and was doing well. When asked to comment on FR's risk of relapse, he first stated that he was unable to comment, and said that the risk of relapse would be reduced if FR continued to address counselling. He then stated that the risk of relapse was 'not high.' Mr CN conceded, though, that he had limited information about FR's offending history.

41. Since 26 September 2019, MM has attended 19 sessions with Ms NV, a psychologist at [details removed].⁴⁰ She gave evidence that MM has demonstrated a good level of insight into her mental health issues, and that her mood is positive and stable. Ms NV states that MM is focussed on future goals in relation to study, work and family relationships.

Housing

42. The parents have obtained stable housing, and no concerns have been raised about the suitability of this housing.

CMR's special needs

43. I heard evidence from a psychologist, Dr DS, who assessed CMR on four occasions between 23 January 2019 and 7 August 2019. The assessments were carried out pursuant to a mental health care plan obtained by the maternal grandparents due to their concerns regarding some of CMR's behaviours, including an aversion to loud noises, her difficulties in transferring to childcare and her apparent distress after contact with her parents. Dr DS

³⁸ Attendance letter from [details removed] Family Violence Program (exhibit 46)

³⁹ Exhibit 40 and exhibit 46

⁴⁰ Exhibit 46

observed that CMR presented as slightly disinhibited, consistent with likely attachment disturbances in the context of the protective concerns. She further observed a strong attachment between CMR and her carers. Dr DS expressed concerns around the impact of contact with the parents on CMR, based on her understanding that CMR is hysterical after every contact. Ultimately, while Dr DS's evidence highlighted the importance of attachment based care for CMR, her recommendations were of limited assistance to me given the age of the assessments and the limited sources of information available to Dr DS, particularly around CMR's experience of contact with her parents.

44. CMR has also been referred for a speech therapy assessment to investigate the possibility of an Autism Spectrum Disorder. This was prompted by concerns held by the maternal grandparents and CMR's kindergarten teacher around CMR's behaviour, including screaming for attention when she first went into her grandparents' care, her dislike of loud noises and busy environments, her difficulties with social interaction and social learning skills and concerns around her sensory regulation.⁴¹ The assessment found that her overall language skills are within the average range when compared to same age peers, but that moderate deficiencies in her reciprocal social behaviour are indicated, leading to substantial interference in everyday social interactions.⁴²
45. CMR underwent an assessment of her cognitive and adaptive functioning skills on 9 June 2020.⁴³ That assessment concluded that CMR exhibits developmental delays in a number of areas, including cognitive, social, emotional and adaptive functioning, and that she will benefit from additional support, including ongoing psychological support, speech pathology and occupational therapy, particularly as she transitions to primary school.⁴⁴
46. A Sensory Profile Report was also tendered in evidence which summarises an assessment carried out on CMR on 9 July 2020.⁴⁵ The report states that CMR is particularly sensitive to loud noises, visual cues, touch and movement. She exhibits social emotional challenges more than other children and more attentional responses than her peers. The report offers numerous recommendations to assist CMR in coping with these sensitivities.

⁴¹ Speech Pathology Assessment Report, UUU (exhibit 48)

⁴² Speech Pathology Assessment Report, UUU (exhibit 48) p5

⁴³ Psychological Report, VVV (exhibit 49)

⁴⁴ Psychological Report, VVV (exhibit 49) pp 11-12

⁴⁵ Pearson, Sensory Profile Report (exhibit 50)

47. The court heard evidence from Ms WH, CMR's early childhood teacher from [details removed] Kindergarten. Ms H told the court that CMR has special needs with respect to her emotional regulation and cognitive functioning. In particular, CMR:

- can scream and become hysterical when dealing with change or unexpected events, or when called upon to share with other children
- requires a calm and a consistent approach
- requires the help of an adult in regulating her emotions
- is assisted by speaking to her maternal grandmother by phone when she is struggling to regulate her emotions at kindergarten
- is behind her peers educationally, and struggles to process new information, or apply herself to learning independently.

48. Ms H stated that CMR has improved in her emotional regulation since July 2020, and that she is able to calm down more quickly, but that it is her recommendation that CMR repeat her year at kindergarten due to being behind educationally.

49. Dr LS from the Children's Court Clinic, who assessed CMR, her parents and her maternal grandparents in June 2020, states in his report dated 27 August 2020, that CMR's behaviour is congruent with an Autism Spectrum Disorder but was unable to offer a definitive diagnosis. He concluded that CMR's development and care needs will likely be more demanding than would be expected for a typical pre-schooler⁴⁶, an opinion I accept. I accept that the maternal grandparents have been proactive in seeking support for CMR, accessing speech pathology, occupational therapy, and psychological support. However, I also accept the evidence of the parents that they will do everything necessary to ensure that CMR receives the services that she needs.

Contact between CMR and her parents

50. The parents have had irregular contact with CMR throughout the term of the Family Reunification Order until more regular contact commenced in 2019.⁴⁷ Contact was again interrupted due to the Covid-19 pandemic throughout much of 2020 and took place via

⁴⁶ Report para 26

⁴⁷ There were periods of time when the parents had little contact with CMR. For example, MM had few contacts with CMR in the first half of 2019, but this was partly due to her being remanded in custody on 18 January 2019. There was some dispute between the parties as to the reasons why contact had not been more frequent during the course of the family reunification order. The parents deny they did not seek greater contact with CMR.

Skype until regular face to face contact resumed later in the year. CMR's parents are currently entitled to have face to face contact with CMR every fortnight for four hours.⁴⁸

51. The evidence regarding contact between CMR and her parents indicates that it generally goes well and that the parents interact appropriately with CMR. Case notes were tendered which demonstrate that CMR is happy to see her parents and enjoys having contact with them.⁴⁹ The court heard evidence from Mr GP, the current allocated child protection worker, who said that he supervised a number of Skype and in-person contacts this year. He said that the parents behaved appropriately, but that during the Skype contacts, CMR occasionally appeared anxious or confused and was sometimes reluctant to participate or wanted to finish contact early. However, the court also heard evidence from Ms MS from the [details removed] Centre where contact sometimes occurred this year. In relation to two contacts she supervised on 1 January 2020 and 16 January 2020, Ms MS gave evidence that contact went well and that CMR was happy to see her parents. She also stated that on 1 January 2020 on the way home, CMR said that she missed her 'mummy and daddy' and did not want to get out of the car. CMR was also apparently reluctant to return home from contact on 2 June 2020.⁵⁰

52. The maternal grandparents have expressed concerns on the impact of parental contact on CMR, as they have observed CMR being distressed and tearful around contact.⁵¹ CMR's kindergarten teacher, Ms H, also expressed concerns about the impact of contact on CMR, particularly given CMR's difficulties with emotional regulation in the context of change. The Children's Court clinician, Dr LS, expressed the view that contact with her parents causes CMR to experience clinically significant anxiety and stress in the context of uncertainty about her living arrangements.⁵² However, he also acknowledged under cross-examination that this does not mean that contact with her parents is not in her best interests. He expressed the view that CMR could suffer emotional distress if contact with her parents diminishes,

⁴⁸ The first two hours are supervised and the second two hours are monitored

⁴⁹ See for example case notes from contact between CMR and MM on 8 November 2018, 25 October 2018, 13 September 2018, 2 August 2018 and 9 July 2018 (exhibit 14). In the updated report filed by the Department dated 21 October 2019, two 2-hour contacts on 4 and 21 October 2019 are summarised. CMR is described as eager and excited to see her parents and cried on separation from her parents on 4 October 2019.

⁵⁰ Mr GP confirmed that this was written in a case note

⁵¹ See for example, 18 January 2018 entry (exhibit 52) pa 33. CMR's kindergarten teacher Ms H gave evidence that Mrs M informed her that CMR was sometimes heightened before contact.

⁵² Exhibit 51, page 18 -19

and that CMR should have sufficient contact with her parents to enable her relationship with them to develop.

CMR's siblings

53. MM also has a son CXM, whose father is Mr BJ. CXM resided in the full-time care of MM until approximately June 2016 when he went to live with his father.⁵³ Since then, MM has had little contact with CXM. The lack of contact between CXM and his mother appears to have resulted from a combination of MM's mental health difficulties and drug use, and Mr BJ's reluctance to allow CXM to spend time with his mother, no doubt in some part due to her drug use.⁵⁴ While MM has certainly made attempts to see CXM and provide gifts to him, and she is now formally pursuing contact with him through the Federal Circuit Court, there are also many times when she did not adequately prioritise CXM's best interests. For example, in or around August 2014, MM decided to essentially move in with FR into his unit in [location removed]. She still had CXM in her primary care at this time and the decision to move in with FR, a man that she had only known a few months and who was almost certainly known by her to be a recreational drug user, indicates her preparedness to put her own wishes and desires above CXM's best interests. It also wasn't long before FR's mental health began to impact on the quality of care which MM was able to provide to CXM. In my view, MM failed to adequately protect CXM from the damaging effects of FR's poor mental health, including the domestic violence which CXM was exposed to. When giving evidence, MM described FR as a 'fantastic' stepparent to CXM. While I am prepared to accept that FR did some nice things for CXM – such as taking him to sporting events and taking an interest in his schooling – MM's assessment appeared quite unrealistic to me, particularly given CXM's view that FR 'was not a nice person', that he was 'very abusive' and that he (CXM) 'used to be scared to go home'.⁵⁵
54. FR is father to four adult children⁵⁶, whose mother is FR's first wife SR. FR separated from their mother in or around 2004. He visited his children regularly for approximately eight or nine years, at which point he and SR had a falling out. He then remained in contact with them by phone until what he described as 'his breakdown'. FR is attempting to rebuild his relationship with his older children.

⁵³ Exhibit 52, page 11. I understand that CXM was eight years of age at this time

⁵⁴ I did not hear evidence from Mr BJ in this hearing

⁵⁵ Children's Court Clinic Report, para [27] (exhibit 51)

⁵⁶ HX was born in 1996, TX in 1998, CX in 2000 and MX in 2002

55. FR is also father to KR,⁵⁷ whose mother is Ms RK. FR and Ms RK broke up in approximately 2009 when KR was two years old. FR then saw KR on weekends until 2012 when she decided to end the arrangement for a while. Ms RK gave evidence that around this time FR did not seem himself, and she then discovered that FR had been found unconscious while KR was in his care. Ms RK said she was told by police that it was an overdose but that she did not know if that was correct,⁵⁸ and she had not known FR to use drugs. She allowed FR to have unsupervised visits again in 2013 and 2014, but that this stopped in 2015 when KR reported arguments at her father's house which made her uncomfortable. Ms RK told the court that she knows what arguments with FR can be like, and that when he is trying to get his point across 'his communication skills are not great'. FR then wrote to Ms RK in 2018 from prison, expressing a desire to rebuild his relationship with KR. Since then, he and KR have been in regular contact, and will begin in-person contact again soon.⁵⁹ Ms RK said that FR has done 'an amazing job' since being released, and that she has no hesitation at all in allowing KR to spend time with FR and MM.
56. FR is also father to MR⁶⁰ whose mother is Ms KC. FR and Ms KC only met a couple of times before MR was conceived.⁶¹ FR at first told Ms KC that he wished to have continual contact with MR but did not follow through and did not see MR for nearly five years. In February 2020, FR reached out to Ms KC via Facebook with a view to establishing a relationship with MR. FR met MR earlier this year, and the connection between them was, according to Ms KC, instantaneous. MR now sleeps over at the home of FR and MM one night a fortnight, but this is expected to increase soon. Ms KC described some frustration with FR providing MR with too much processed food, and she told the court that his communication style can be 'arrogant' and that he likes to talk over people and constantly explain himself. However, she was extremely supportive of FR being an active father to MR. Describing the relationship between FR and MR, she said:

Long term, MR is much better for having met her Dad and being able to spend so much time together. There is a deep connection developing that has been beneficial on emotional, mental, spiritual levels and so a few negatives is not enough to outweigh the positives.

⁵⁷ KR was born in 2007

⁵⁸ FR gave evidence that the episode resulted from a cardiac episode

⁵⁹ The Covid-19 pandemic has led to delays in contact resuming

⁶⁰ Born 2015

⁶¹ Ms KC described the relationship as a 'fling'. Letter from Ms KC (exhibit 57)

Contact between CMR and family

57. In her current placement, CMR regularly has contact with her half-brother CXM. At the time of this decision, MM was not having contact with CXM, so would not be in a position to provide CMR with this sibling contact. However, MM has filed an application in the Federal Circuit Court for parenting orders which will enable her to have contact with CXM again. Accordingly, I am proceeding on the basis that it is likely that MM will soon be in a position to facilitate contact between CMR and CXM.
58. CMR has a number of paternal half-siblings, and extended paternal family, including a grandfather, an uncle and some cousins. The paternal family is from [details removed], and FR gave evidence that his connection to [details removed] culture is important to his identity. CMR has not yet met these family members. The parents submit that the maternal grandparents will not facilitate this contact, as they have not done so up to now. The maternal grandparents informed the court that they are happy to facilitate contact between CMR and her paternal family members in future. They informed the court that, prior to this point, they did not have contact details for many of the family members. I have taken into account the importance of CMR meeting her paternal family, and I do accept that it is more likely to occur if she is in the care of her parents. However, I also accept the maternal grandparents' assurance that they will do their best to facilitate this contact for CMR.

Assessment by the Children's Court Clinic

59. Dr LS of the Children's Court Clinic assessed CMR, her parents and her maternal grandparents in June 2020. Dr LS observed that CMR was initially hesitant when meeting with her parents and expressed a desire to 'stay with nan', although she also expressed excitement at getting to see 'mumma L', a reference to her mother. When CMR attended the clinic for the assessment on 22 June 2020, she asked if she would be seeing her parents and, according to Dr LS, visibly relaxed when told she would not be. She later expressed that she was happy seeing 'mumma L' but that 'dadda P' made her scared when he talked about her having a room in the parents' home, stating that 'I already have my room', in an apparent reference to her room in the home of the maternal grandparents.
60. Dr LS observed that, in relation to the parents, there are several factors that are associated with an increased likelihood of child maltreatment. These are that:

- the parents are in the early stages of remission from substance dependence
- that notwithstanding the admirable progress made by the parents this year, given the extent of their substance abuse and associated criminal behaviour over many years, it would be important to see sustained improvement before considering this risk factor mitigated
- while it is positive that the parents are attempting to rebuild their relationships with their other children, the parents have a history of struggling to be parents to their children dating back more than five years
- until recently, the parents have struggled to make use of services to address the protective concerns
- the parents have a tendency to downplay their role in and responsibility for child protection involvement, although this is in some part due to a need to self-protect.

61. Dr LS concluded that, in light of CMR's vulnerabilities and the risk factors in this case, CMR would still be vulnerable to maltreatment if she was in the full-time care of the parents. He states as follows:

While positive progress has been made since late last year, demonstrated improvements would need to be observed for a sustained period before full-time reunification should be considered. Importantly, the court should give serious consideration to the justifiability of any potential disruption to CMR's current care arrangements, as her existing attachment relationships mean that any removal from Mr and Mrs M would psychologically constitute a second forced removal for CMR.

62. In his evidence to the court, Dr LS stated that drug dependence is often seen as being in remission after 12 months of abstinence, and that cessation of use for 14 months or more 'sounds good.'

Decision-making principles

63. The Act requires the court to have regard to a number of important decision-making principles. In particular, section 10(3) sets out the matters to consider when determining the best interests of the child. I have had regard to each of the relevant principles, including:

- the need to give the widest possible protection and assistance to the parent and child as the fundamental group unit of society and to ensure that intervention into that relationship is limited to that necessary to secure the safety and wellbeing of the child (s10(3)(a)),
- the need to strengthen, preserve and promote positive relationships between the child and the child's parent, family members and persons significant to the child (s10(3)(b)),
- the desirability of continuity and permanency in the child's care (s10(3)(f)), and
- the desirability, when a child is removed from the care of his or her parent, to plan the reunification of the child with his or her parent (s10(3)(i)).

64. I have also had regard to section 276A of the Act which requires me to take into account the Case Plan prepared by the Department, the care arrangements for CMR's siblings and the amount of time that CMR has been out of her parents' care, which is over four years. In addition, under section 276A(2), in determining whether to make an order conferring parental responsibility for a child on the Secretary, I must have regard to advice from the Department regarding a range of matters, including the likelihood of the parents permanently resuming care of the child during the protection order, and the desirability of making a permanent care order if the child is placed with a person who is intended to have permanent care of the child. These provisions were introduced to assist the Court in making decisions that promote timely resolution of permanent care arrangements for children in out-of-home care.

Should the Applications be Adjourned?

65. It is not, in my view, appropriate to adjourn the proceedings any further. Section 10(3)(fa) of the Act emphasises the need to make decisions as expeditiously as possible, and section 530(9) states that adjournments of Family Division proceedings should be avoided to the maximum extent possible. While I acknowledge that proceedings can be adjourned if it is in the best interests of the child (s530(10)(a)), this hearing has already been adjourned several times over the course of a year, and the application for a Permanent Care Order has been on foot for over two years. In my view, it is appropriate that the applications before the court be adjudicated.

Should the Court make a Family Preservation Order to the Parents?

66. I have given due regard to the 'best interests' principle which emphasises the parent and child as the fundamental group unit of society (s10(3)(a) of the Act). However, I also have to give careful consideration to the protective concerns, and to CMR's emotional wellbeing, especially in the context of her special needs.
67. The protective concerns relating to the parents were extremely serious and spanned a considerable period of time. It is also my view that those protective concerns when they were at their worst, fundamentally impacted on the parents' ability to provide adequate care to their children. While there was substantial evidence before me that those concerns have been addressed by the parents and that they would currently be able to provide good care to CMR, any relapse by them could have a most serious impact on CMR's wellbeing. FR has experienced mental health concerns and substance use issues intermittently for a significant part of his adult life. I also think he has more work to do on his emotional regulation and communication skills. Both of his former partners who gave evidence⁶² commented on his domineering and somewhat arrogant persona. Indeed, in this hearing I noticed FR become visibly agitated a number of times, and on one occasion his demeanour became quite aggressive and I had to stop the hearing and ask that he compose himself. Even making allowances for the distress FR was feeling about the evidence in the contest, his inability to remain composed during the hearing concerned me. While the evidence before me indicates that he is currently able to regulate himself perfectly well when he is around loved ones, and I am not of the view that the risks are so great that they would stand in the way of him having unsupervised contact with his children, including CMR, I do think that he has more work to do to address the domineering side of his personality.
68. Further, the evidence before me establishes that CMR's primary attachment is to the maternal grandparents. Dr LS gave evidence that, at the current time, CMR's relationship with the maternal grandparents is her 'main relationship'. He stated that, while the parents are not emotional strangers completely, any transition to the care of the parents would have to be gradual.

⁶² Ms KC and Ms RK

69. At this present time, the relationship between CMR and her parents is only beginning to develop. While I accept the evidence that CMR enjoys contact with her parents and there is considerable affection between them, CMR has only had limited contact with her parents. It is as yet unclear whether CMR's primary attachment will shift from the grandparents to the parents. In those circumstances it would not be in CMR's best interests to disturb the current care arrangements. Given CMR's vulnerabilities and the difficulty she experiences in coping with change or transitions, my view is that her best interests currently require stability and a settled placement with her primary attachment figures, the maternal grandparents.

Should the Court make a Permanent Care Order?

70. The Act was amended in 2014 to introduce a raft of changes designed to improve the timeliness of decision-making with respect to children in care, and to promote the permanency of arrangements as well as stability for children.⁶³ Essentially, the permanency amendments enacted a time-limited approach to reunification. The court, in my view, must give a high priority to the value of permanency when children have been out of their parents' care for an extended period of time.⁶⁴ Section 276A(2)(e) of the Act directs the court to consider the desirability of making a permanent care order, if a child is placed with a person who is intended to have permanent care of the child.

71. Section 319(1) of the Act relevantly provides that the court may make a permanent care order in respect of a child if the statutory requirements set out therein are satisfied. In my view, the requirement that the order be in the child's best interests is a primary consideration.

72. Counsel for the parents submitted that I cannot be satisfied as to the matters set out in section 319 of the Act. For example, Mr RB from the Department conceded in evidence that there had been insufficient observations of CMR in the care of the maternal grandparents. In addition, it was submitted that the grandparents will not facilitate adequate contact

⁶³ Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014, second reading speech, Ms Mary Woolridge, 7 August 2014

⁶⁴ Section 10(3)(f)

between CMR and her parents, or progress contact with CMR's paternal siblings/extended paternal family or facilitate CMR's connection to her [details removed] cultural heritage.⁶⁵

73. In relation to the need for further observations of CMR with her maternal grandparents, there is sufficient evidence before me that CMR is provided with an abundance of love and good care in her placement. Dr LS of the Children's Court Clinic is of the view that the grandparents are her primary caregivers, the base of her security and represent her psychological parents.⁶⁶ Secondly, while I accept that CMR will be more closely linked to paternal family and culture should she be in the care of her parents, I accept the evidence of the grandparents that they are willing to increase CMR's connection to paternal relations.
74. However, while I accept that the maternal grandparents would provide CMR with a loving and stable home, and that they will provide her with the structure, routine and calm that she needs to thrive, I am concerned that it is not in CMR's best interests to determine her care arrangements for the next fifteen years. CMR's relationship with her parents is just starting to develop, and her feelings about contact with her parents will be made known over time. CMR is only five years old. I accept that the maternal grandparents are her psychological parents at the moment, but I am unsure if that situation will endure until her adulthood - there are just too many uncertainties ahead. I have, therefore, determined that a Permanent Care Order is not in CMR's best interests.

Should the Court Make a Family Preservation Order to the Maternal Grandparents?

75. The parents submit that the maternal grandparents are the psychological parents of CMR, and that I could therefore make a Family Preservation Order in their favour. Such an order would have the benefit of allowing the court to include a condition providing for contact between CMR and her parents.
76. A Family Preservation Order is designed to preserve or maintain the relationship between a parent (or parental figure) and their child. In this case, CMR came into the care of the grandparents by virtue of the protective intervention and has remained in their care by virtue of court orders. The Act anticipates that, in such a case, the carer will become a long-term carer for a child under either a Long Term Care Order or a Permanent Care Order.

⁶⁵ These matters are required to be considered by virtue of regulations 18(f) and 18(g) of the *Children, Youth and Families Regulations 2017*

⁶⁶ Clinic report (exhibit 51) para [53]

There is little indication in the Act that a Family Preservation Order is an alternative order which can be made in favour of a suitable person who has become a parental figure over the course of a protective intervention. In any event, my view is that the reunification of CMR into the care of her parents remains a possibility, and that contact between CMR and her parents should be progressed over the coming years. In light of these considerations, an order which is focused primarily on the preservation of CMR's relationship with her grandparents does not have the correct focus. As such, I have decided not to make a Family Preservation Order to the maternal grandparents, and will not express an opinion on whether the grandparents are 'parents' under the Act.

Should the Court Make a Care By Secretary Order?

77. A Care by Secretary Order (**CBSO**) confers parental responsibility for a child on the Secretary of the Department to the exclusion of all other persons. A CBSO is generally made where the objective is to make arrangements for the permanent or long-term care of the child when reunification is not possible.⁶⁷ During the term of a Care by Secretary Order, it is intended that all efforts will be made to identify and match an alternate permanent or long-term carer for the child.⁶⁸
78. However, there is nothing in the Act which precludes the making of a CBSO in circumstances where the child is in the care of suitable persons who have been assessed to be appropriate permanent carers, but where reunification with the parents remains a possibility, and where the child's best interests would not be served by a Permanent Care Order. Indeed, section 289(1)(d) of the Act enables the Secretary to direct that a parent resume parental responsibility for a child during the term of the order.
79. I wish to emphasise that this is a highly unusual case. I do not think a CBSO should ordinarily be made when a child has been out of their parents' care for four years, and where suitable permanent carers have been identified. The factors that make the case so unusual are the parents' extraordinary progress over the last eighteen months, combined with CMR's young age.

⁶⁷ *AA v DHHS & Ors* [2020] VSC 400 at [82]-[83] per Inceri J

⁶⁸ *Ibid*

80. I am mindful of the fact that a CBSO does not enable conditions to be made, so that the amount of contact between CMR and her parents will be left in the hands of the Department. Notwithstanding this limitation, in my view a CBSO is the order which is most likely to promote CMR's best interests, as it will enable her care arrangements to be reviewed again in twenty-four months when she is a little older, and when more is known about her ability to manage contact with her parents. I am aware that the Department has a non-reunification case plan, and that there is a risk that contact between CMR and her parents will be reduced in accordance with that case plan. My view is that CMR needs to have regular contact with her parents to enable that relationship to develop more fully. I accept Dr LS's opinion that a frequency of four times a year is insufficient to allow CMR's relationship with her parents to develop. I acknowledge that CMR suffers from anxiety due to the uncertainties in her living arrangements. It is my hope that CMR will manage regular contact with her parents once it settles into a more predictable routine. I make the following recommendations based on the evidence before me:

- that CMR have contact with her parents a minimum of fortnightly, and that the contact progress to overnights when the Department assesses that CMR is able to manage it
- that a paediatric psychologist be consulted to help determine the future contact arrangements which are in CMR's best interests.