

## IN THE CHILDREN'S COURT OF VICTORIA FAMILY DIVISION

APPLICANT: Department of Health and Human Services (DHHS)

CHILDREN: **ALIA, SADIQ & ABDO SAKIN** (pseudonyms)

MAGISTRATE: KIM PARKINSON

DATE OF JUDGMENT: 19 March 2020

CASE MAY BE CITED AS: DHHS and Sakin (a pseudonym) [2020] VChC 4

Catchwords: Child protection – protection applications pursuant to s162(1)(c) and (e) of the *Children, Youth and Families Act 2005* - three children aged 13, 6 and 4 years - DHHS seeking proof of the protection applications and upon proof, and family preservation orders with the children in the care of their mother - alleged risk posed by the father to the children - totality of the evidence - matters raised and relied upon by DHHS not proven - issues surrounding the children's best interests capable of being resolved by the Federal Circuit Court in its *Family Law Act 1975* (Cth) jurisdiction - protection applications dismissed - matter to return to the Federal Circuit Court.

Intervention order - associated application for family violence intervention order - application initially made by mother - variation to interim order subsequently sought by Victoria Police to include the three children - findings of fact in relation to allegations of family violence and alleged breaches by the father - applications in relation to the mother and children dismissed.

### REASONS FOR DECISION

(Names of family members and witnesses have all been changed)

1. The protection proceedings involve protection applications by the Department of Health and Human Services<sup>1</sup> pursuant to s162(1)(c) & (e) of the *Children, Youth and Families Act 2005*<sup>2</sup>. The DHHS alleges actual physical and emotional harm to the children and also a likelihood of physical and emotional harm to the children.
2. The children the subject of the applications are Alia 13 years, Sadiq 6 years and Abdo 4 years. The mother is Ms Mariam Deng ('the mother') and the father is Mr Mansour Sakin ('the father'). The mother and father were married in Sudan in 2004. The father came to Australia in 2004 from Egypt having been granted political asylum through the auspices of the United Nations. The mother came to Australia in 2006 when she obtained a spouse visa. Both parents are Australian Citizens.

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<sup>1</sup> Hereinafter 'the DHHS'.

<sup>2</sup> Hereinafter 'the Act' or 'CYFA'.

3. The marriage broke down in March 2018 when the father initiated a separation from the mother by leaving Australia for Sudan. The mother and father both describe the marriage as a marriage arranged under the auspices of their respective families in Sudan. However, they provide marginally different contexts in relation to the arrangements. Neither has described the marriage as a 'forced' marriage.
4. In March 2018 upon the relationship breakdown, the father left the country and returned to Sudan where he sought a divorce pursuant to local law. That divorce was apparently granted. In July 2018 the mother made application to the Federal Circuit Court of Australia for parenting orders pursuant to the Family Law Act 1975. The father returned to Australia in August 2018, from Khartoum via Thailand where he had been attending to his brother's health needs.
5. In October 2018 interim parenting orders were made by consent between the parties in the Federal Circuit Court. The financial dispute between the parties has not been resolved and remains outstanding. The matter returned to the Federal Circuit Court in December 2018 upon a Risk Notice being filed by the father.
6. In February 2019 further interim orders were made with the case adjourned to enable a family assessment to take place. The case has been adjourned until the outcome of the Children's Court proceeding. However a mention has been listed in the Federal Circuit Court for May 2020.
7. The DHHS seeks proof of the protection applications issued on 2 May 2019 pursuant to s162(1)(c) & (e). Upon proof of the applications the DHHS seeks that a family preservation order be made in relation to each of the children, with the children in the care of the mother. The DHHS does not contend there were or are protective issues relating to the mother. The applications were made on the basis of the alleged risk posed by the father to the children.
8. The DHHS applications are supported by the mother and also by the child Alia who is legally represented on an instructions model.

9. The father opposes proof of the protection applications and opposes the making of family preservation orders. He contends that there was no basis in evidence for proof of the protection applications. He contends that there was no actual or likelihood of harm of the type contemplated by the Act at the time the protection applications were issued and further that the matter is appropriately a matter for the Family Law Act jurisdiction and should be returned to the Federal Circuit Court for determination as that court had been seized of the matter previously.
10. This proceeding is also a hearing of an application for an intervention order<sup>3</sup>. It is associated with the Child Protection proceedings and was conducted together with that proceeding. The applicant for the IVO at first instance on 16 October 2018 was the mother. Subsequently in July 2019, arising from allegations that the father was trying to locate the children and their mother, application was made by Victoria Police to vary that interim order to include the children in the order. I consider the IVO application at the end of this judgment.
11. Victoria Police chose not to participate actively in this contested hearing.<sup>4</sup> However, evidence was called from Victoria Police officers as to the circumstances of the IVO applications and the alleged breaches by the father of the interim IVO.
12. The grounds of the mother's IVO application on 16 October 2018 included : That the father had attempted to have a child find passport and credit card details of the mother, have a child obtain the children's passports so that he could remove the children to Sudan, that he controlled the family finances when they resided together, that after the parties had separated he made the mother through his lawyer close a bank account and that he had taken all of the proceeds of the sale of a house. It was also alleged that at some time when together he threw a remote control at one of the children and broke the television. It was further alleged that the Family Court orders provided for contact only as agreed with the mother.

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<sup>3</sup> Hereinafter 'IVO'.

<sup>4</sup> Inquiry was made of VPOL on a number of occasions as to whether a police prosecutor was going to attend to prosecute the IVO variation application. Each time the Court or Registrar was told that Police were not in a position to participate in the contested hearing. On one occasion counsel for DHHS advised the Court that he had been informed by Mr Roth that VPOL had no capacity to participate actively in the proceedings, that it was understood that the Court would make a determination on the IVO based on the same evidence.

13. The grounds of the application by Victoria Police made on 14 May 2019 to vary the interim IVO to nominate the children as protected family members included: ‘As requested by DHHS. The respondent has been attempting to locate the AFM and the children.’ The allegation in the complaint and summons was that the father had been waiting at the child Alia’s school and that anonymous persons had advised the mother that the respondent had attempted to locate the mother and the children.
14. This contested hearing took place over 18 days on 16 – 20 September, 28 – 31 October 2019 and 3 – 18 February 2020. Submissions were heard on 28 February 2020. The following witnesses were called by DHHS to give evidence:
- Ms Helen East & Ms Mary White, DHHS Child Protection Practitioners;
  - Constable Marintelli & Detective Sergeant Mitch Eisenhower, Victoria Police;
  - Ms Dallas, Team Manager DHHS Child Protection;
  - Ms Caroline Ditchburn, psychologist;
  - Ms Higham, Family Consultant, Family Law Act;
  - Mr Grenda, Year 7 Co-ordinator at Alia’s current school;
  - Ms Alice (surname withheld), Family Violence support worker Co-health;
  - Ms Knight, School Counsellor;
  - Dr Tamiki, paediatrician for Sadiq;
  - Ms Huynh, psychologist for the mother;
  - Ms Reach, Speech Pathologist for Sadiq, Melbourne City Mission;
  - Ms Marks, Occupational therapist for Sadiq;
  - Ms Tina (surname withheld), Family Violence support worker Women’s Health West;
  - Dr Devlin, paediatrician for Sadiq;
  - Dr Chol, Family GP.

The mother and father each gave evidence in the proceeding.

15. The oral and written evidence in these proceedings is extensive. Whilst I do not repeat or refer to all of the evidentiary material in this decision, I have considered all of the evidence and submissions in coming to my decision in this matter. The Exhibit List is annexed to this judgment.<sup>5</sup>

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<sup>5</sup> Annexure 1.

16. In order to be seized of jurisdiction to make a protection order I must be satisfied that at the time the protection applications were made there existed protective concerns of the type set out in s162.<sup>6</sup> I may be informed of matters which arose subsequent to the issue of the protection applications where those matters inform issues such as actual and likelihood of harm.
17. If any of the protection applications are found proven the Court may make a protection order if it is satisfied that a child remains in need of protection and that the order sought is in the best interests of the child. I am required to be satisfied that there are continuing protective concerns in relation to the children and that it is in the best interests of the children for protection orders to be made.<sup>7</sup>
18. I am required by s 10 of the Act to take into account the best interests of the child in the making of any order. In particular in this case I have had regard to s 10(2) and paragraphs (a) (b) (d) (e) (f) (fa) (g) (h) (i) (j) (k) (o) & (q) of s 10(3).
19. In making findings of fact on contested issues in both the protection proceedings and the IVO proceedings, the standard of proof which I have applied is the balance of probabilities.<sup>8</sup>
20. I turn now to consider the question of proof of the applications.

### **Background to these applications**

21. The DHHS filed protection applications on 2 May 2019 pursuant to s162(1)(c) & (e) CYFA. Interim accommodation orders were made placing the children in the care of the mother. No contact condition was made for the father and the protection applications were adjourned for reserved submissions on 10 May 2019.
22. On 10 May 2019 the DHHS was opposed to any contact condition for the father on the basis that he was alleged to be a risk for homicide of the mother and filicide of the children. Based upon these serious allegations as to the father's conduct and with

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<sup>6</sup> See e.g. MS & BS v DOHS [County Court of Victoria, unreported, 18/10/2002] per Judge Cohen at p.18 {Application for judicial review pursuant to O.56 dismissed: Mr & Mrs X v Secretary to DOHS [2003] VSC 140 per Gillard J}.

<sup>7</sup> See e.g. ss 8,10,274(a) & 275 CYFA.

<sup>8</sup> See s 215A CYFA.

critical Family Violence risk factors being alleged, no variations to the interim accommodation orders were made. Thus the father was prevented from having any contact with the children or from having any knowledge of their whereabouts including school or housing or attendance upon any service. It was not until 14 November 2019 that the interim accommodation orders were varied to allow the father to have contact – albeit supervised contact – with the children.

23. The allegations made against the father at that time, said by the DHHS to found the protection applications and the applications that the father's contact be prohibited, were:

- That the father hits and assaults the children.
- That the father had arranged for men to attend the mother's family home in Khartoum and assault him with a knife to the neck causing him to be hospitalised.
- That the father sent males on three occasions to the mother's house to intimidate her and to take the child Alia.
- That the father tapped into the mother's mobile phone and had all of her calls diverted to himself so that he could track her activities.
- That the father intended and had made plans to abscond with the children from Australia to the Sudan.
- That the father's mother had made arrangements in Sudan for genital mutilation of one of the children.
- That the father had committed family violence by financial coercion in that he had not supported the mother in obtaining or upgrading her pharmacy qualifications to Australian standards so she could be registered as a pharmacist here.
- That the father had been locating or attempting to locate the mother and children's refuge residence and that she had to move housing many times as a result.
- That the father had left her without support including housing when they separated.
- That the father had hit the children with implements.
- That the father had attempted to drive his motor car at a tree with the children inside the vehicle.
- That the father had encouraged the younger children to defecate and urinate at or upon the mother.
- That the father had advised the children or they had overheard him say that he would run the mother over with a truck.

24. During the course of the proceeding additional allegations as to the father's conduct, including allegations of breach of an intervention order, were made by the mother. These included that he had attempted to alter the children's Medicare details to include himself as the notifiable parent as opposed to the mother, that he had attempted to contact the mother on 42 occasions from his mobile phone, that he had attended upon

the mother's housing service and attempted to locate her through that service, and that he had attempted to intimidate the mother's GP and his staff by attending at those premises. It was also alleged that he had urged members of the community to shun the mother and that he had been providing documents and information to members of the community in order to shame her.

25. I intend to consider each of the allegations in turn, including the allegations made during the course of the proceedings as, insofar as it is said that likelihood of harm is in issue, they may be relevant to that issue.
26. On 2 May 2019 and subsequently until September 2019 significant allegations were made by the DHHS that the mother and children were at risk of homicide and filicide and that the father should be prevented from seeing the children.<sup>9</sup> Prior to the start of this contested hearing, each of these allegations was assumed by the Court to have been at least the subject of a reasonable preliminary investigation, as it is assumed that an authority with investigative powers will undertake a proper investigation itself before making applications to the Court preventing a parent from having any contact with their children.
27. It was alleged that the DHHS had reliable information that father had committed a number of breaches of IVO, was tracking the mother and attempting to locate her and the children and as such that the risk had become extreme. The DHHS relied in this assessment also upon a Risk Assessment undertaken by a Family Violence Support service assisting the mother. That Risk Assessment tool<sup>10</sup> had concluded that the risk of fatality to the children and mother was extreme.<sup>11</sup>
28. In the course of the hearing of this matter in September 2019 DHHS advised that they no longer contended that the father was a risk of committing homicide or filicide. It was accepted that there is no evidence to support such a contention. In this regard DHHS does not now press any allegation that the father had interfered with the mother's mobile phone device and diverted calls or created a capacity to intervene in

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<sup>9</sup> See for example a letter dated 21 June 2019 from Ms Dallas seeking that certain categories from Court reports not be disclosed to the father.

<sup>10</sup> The Risk Assessment tool is known by the acronym CRAF.

<sup>11</sup> Exhibit 48 and Exhibit 70. Contain the Co-health CRAF and WHW notes re assessment. <sup>12</sup> Hereinafter 'WHW'.

communications from or to that device. This allegation was one of the matters which was significant in the Family Violence Service, Women's Health West<sup>12</sup>, advising the DHHS that the risk level for the mother and children was extreme and that they were at risk of fatality.

29. It is nevertheless appropriate to set out the matters which have not been pressed by the DHHS and my conclusions in relation to those matters, as they are relevant to the manner in which the investigation was undertaken by the DHHS and the approach taken to the DHHS' interactions with the father. They also continued to influence the approach taken by the DHHS to the proceedings, including as to issues of the father's contact until the end of the evidence in these proceedings.
30. There is no evidence of telecommunication interference or tracking or surveillance by the father of the mother and this has been conceded by the DHHS after inspection of the various telecommunication providers' records regarding the mother's and father's phone usage. No evidence was called from the relevant telecommunication provider and none of the phone records were tendered or relied upon. This allegation was not pressed by the DHHS in the hearing. The father was never asked about this matter by the DHHS despite this matter forming a significant element of the protective intervention and of the CRAF risk assessment.
31. It was also said that the father had answered a call made by police to the mother's phone, but this allegation was not supported by the evidence of Victoria Police as it was subsequently advised that the police officer may well have mistakenly dialled the incorrect number. No evidence was called from the relevant VPOL officer in relation to this error, despite this matter forming a significant element of the risk assessment. This allegation was also not pressed by the DHHS.
32. The evidence also established that the father had consented to a 'watch list' order in the Federal Circuit Court in October 2018, well before any protective intervention, that the children did not have Sudanese Passports as reported by the mother and that at least one of the children's passports had expired in November 2017.



33. I am satisfied that there was no objective evidentiary basis for an allegation that the father was likely to abscond with the children to the Sudan. The father was never asked about this matter despite this matter forming a significant element of the protective intervention and of the CRAF risk assessment. This matter does not appear to be pressed by the DHHS in these applications.
34. It was alleged that there was a risk of child being genitally mutilated if the child were taken to the Sudan. Aside from the mother's allegation that this was likely, there is no evidence that there had been any actual attempt by any member of the father's family. At its highest the allegation of the mother is that the paternal grandmother was advocating for this to occur when the family was last in Khartoum together, sometime in 2016.
35. It is not alleged in any of the materials that the father took any steps to further or support this proposal. I have also heard the father's evidence about this matter, which was compelling and which signalled his opposition to such a practice and also his evidence that this practice is unlawful in Khartoum/Sudan.
36. The father was never asked about this matter by DHHS despite this allegation forming a significant part of the protective intervention and the CRAF risk assessment. Again, this matter was not pressed by the DHHS in its final submissions.
37. No further reliance was placed upon these particular matters by the DHHS and they were not pressed in submissions as grounds for proof of the protection applications.
38. It is pertinent to note that the initial issue of family violence which gave rise to a notification to the DHHS by the Federal Circuit Court arose from a report made by the father in Federal Circuit Court affidavit material and in a 'Risk Notice' filed by him on 14 December 2018. This related to an event where the mother was alleged to have assaulted and verbally abused Alia at a family friend's home. The father's affidavit material and evidence, which I accept, is that the incident resulted in the paternal uncle being contacted by the mother and attending that home and collecting Alia. The child was taken to the police station and police made contact with the father to collect Alia from the station.

39. This was not an event initiated by the father nor was he present at the incident. In relation to this matter the DHHS investigated and closed the investigation after agreement with the mother that she would engage in parenting support. This matter did not continue to inform the DHHS in its approach to the investigation or its analysis of the allegations and was described by Ms East as not being relevant as it was historical material. The father was not asked about this matter by DHHS.
40. Evidence was given by the DHHS protective workers as to their approach to the investigation of this matter and the basis upon which they proceeded to bring the protection applications, press the protection applications and to seek the no contact orders against the father. That very concerning evidence was to the effect that the DHHS accepted as fact the information provided by the mother and that the DHHS proceeded on the basis that the information and risk assessment undertaken by Women's Health West was valid, that the mother's account of events was accurate and/or truthful and therefore they did not investigate the accuracy of the allegations that founded the outcome of the risk assessment any further. I consider this matter later in this decision.
41. Notwithstanding the abandonment during the course of the proceeding of many of the significant matters set out above, the matters set out in paragraph 43 below continue to be relied upon by the DHHS to establish proof of the protection applications on grounds (c) & (e).
42. The DHHS submits that each of these matters individually and/or cumulatively constitute a basis for proof of the applications. There are a large number of issues raised and some of those are repetitive in that they refer to a general issue relating to the child Alia and to emotional or physical risk. Whilst I have set out the matters alleged individually, I regard a number of them as appropriate to be dealt with together and that is the approach I take in my factual findings. I have also set out the submissions of the father as to these matters.
43. Matters relied on by DHHS to sustain proof of the protection applications:
  - i. The mother's complaint to VPOL about persistent contravention of family violence order. (Exhibit 5)

- ii. Alia disclosing her father had sought information about her residential address. (Exhibit 3)
- iii. Alia's disclosure that her father had become verbally aggressive in relation to her changing schools. (Exhibit 5)
- iv. Alia's refusal to see her father on 31 March and 6 April 2019 due to an anxious state of mind and not feeling safe. (Exhibit 5)
- v. The alleged assault of the maternal uncle in Khartoum Sudan on 4 May 2019. (Exhibits 10, 37 & 45)
- vi. Disclosures made by Alia to CPP in interview on 8 May 2019. (Exhibits 9, 15 & 19)
- vii. Alia's suicidal ideations disclosed to child protection (Exhibits 9 & 19) and concerns about Alia's mental health. (Exhibits 11 & 13)
- viii. Impact on Alia's mental health of frequent change of address and lack of stable housing. (Exhibit 13)
- ix. Father allegedly advising Sadiq and Abdo that Ms Deng was not their mother. (Exhibit 10)
- x. Abdo and Sadiq urinating and defecating around the house allegedly under instruction by the father (Exhibits 10 & 16)
- xi. Mother's report that Alia had tried to break her finger because the father had told Alia to harm her mother. (Exhibit 10)
- xii. Visit to the mother's house by a person unknown on 12 April 2019 wanting to remove Alia and take her to the father (Exhibits 10 & 14)
- xiii. Father's refusal to acknowledge Sadiq's developmental delay and resistance to therapeutic intervention (Exhibits 14 & 20) despite the clear recommendations of treating medical practitioners (Exhibits 51, 52 & 53)
- xiv. Disclosures made by Alia to CPP in interview on 12 April 2019 (Exhibits 14 & 17)
- xv. Father's control and influence over Alia. (Exhibit 20)
- xvi. Alia's disclosure of continuing concerns about her father in interview with child protection on 11 September 2019 (Exhibit 29) and subsequently confirmed in further interview with child protection on 12 September 2019 (Exhibit 30)
- xvii. Alia's disclosures of family violence made to Dr Chol during consultation on 7 June 2018. (Exhibit 76)
- xviii. Alia confirming on 23 October 2019 that she is still not wishing to have contact with the father expressing that he will get angry with her. Alia's allegation that father called her crazy for engaging with a psychologist.

- xix. Significant concerns raised by the Childcare Centre in relation to Abdo's recurrent disclosures or family violence as well as aggressive and violent behaviour to self and others at centre. (Exhibits 31 & 35)
- xx. The mother's isolation within her own Sudanese Australian Community (Exhibits 42, 43 & 47)
- xxi. Alia's expressed fear of father disclosed to Ms Knight and retraction of concerns previously raised in relation to the mother. (Exhibit 49)
- xxii. Father's alleged attempts to obtain information about the mother's whereabouts. (Exhibit 43) and financial information (Exhibit 87)
- xxiii. Mother's evidence of sexual and emotionally controlling behaviour by the father during the relationship.

44. In relation to the above matters I regard items ii, iii, iv, vi, xiv, xv, xvi, xvii, xviii and xxi as being appropriate to be considered together under the category of Alia's disclosures and concerns. They do not each form an individual protective concern and I take it that this is what is referred to by counsel for the DHHS when he submits that proof is open if the allegations are considered collectively.

45. Counsel for the father responded in relation to each of these grounds as follows:

- i. As to Family Violence raised by Exhibit 5, Constable Marintelli's evidence is based entirely upon the mother's account and is hearsay. The mother's own allegations to the police differ from what she told various services including Women's Health West. The witness from that service was not the worker at the time of the allegations and that the report to police by the mother on 10/4/19 alleged a breach of an IVO on a day where contact was not scheduled and did not occur. The allegation regarding 31/3/19 was a day when again contact did not occur. The Constable was relying upon information from the mother and that date was not a contact date.
- ii. The allegation that Alia refused to see her father due to anxious state is refuted by the evidence that Alia herself messaged her father indicating that she was unwell and loved him etc. (Exhibit 45 page 12)
- iii. The focus of the DHHS solely on what is recorded against her father in Alia's comments to her counsellor Ms Knight, without any reference to the mother, is troubling. Counsel submitted that there was a duality of allegations here and rather than being able to be relied upon as truth show a young girl in turmoil. Counsel referred to inappropriate interviews being conducted with the children in particular Alia. Two days in a row and following up because 'she didn't get enough the first time'. Exemplified how at the first interview the child Alia advised that her father didn't hurt her. By the end of the interview that story changed after extensive leading questions by the interviewer. Alia's versions of events relating to the car incident vary significantly.

- iv. The suggestion that the father did not have concern for his daughter's wellbeing and that he ignored or refused to act in relation to Alia's problem is unfounded and unfair.
- v. That the Court ruled that the Khartoum evidence was admissible only if the brother gave evidence in the proceedings. Substantial efforts were made to enable him to do so including Skype arrangements to give evidence and accommodating time zone difficulties for the witness. He declined to give evidence on the actual day of his scheduled attendance. The DHHS still rely upon that material notwithstanding the court's ruling as to admissibility of that matter. It was submitted that the Court ought to draw an adverse inference in relation to that evidence in light of that refusal to give evidence. Exhibits 37 and 45 should not be allowed to be relied upon as proof of facts. It is hearsay material and not proof. It was submitted however that the material does show that on the two occasions that the DHHS spoke to the uncle, his version of events differs and also differ from the accounts given by the mother to various support services and to the DHHS.
- vi. Alia's reported disclosures on 8/5/19.
- vii. Suicidal ideation – Alia denied that she was suicidal and Sunshine hospital did not diagnose her with mental health illness.
- viii. Frequent change of address and lack of stable housing was a matter largely brought about by the mother and the hysterical reactions made by WHW and a risk assessment and allegations upon which the DHHS no longer rely.
- ix. The allegation that the father told the children she was not their real mother and that she had killed their real mother is a scandalous allegation without any evidentiary foundation. This allegation was not put to the father in cross-examination and the mother did not give any evidence of this matter.
- x. Allegations of urinating and defecating are improperly put as the DHHS still maintains that both boys were the subject of this inducing by the father. The mother's evidence was that it was Abdo and only Abdo and that it occurred once only and when he was 2½ years old at a family friend's Christmas function. That was the evidence and to attempt to rely upon different versions recorded by various services, including DHHS and WHW, which are contrary to the direct evidence of the mother is not appropriate.
- xi. Statement made by the mother to DSC Eisenhower on 31 July 2019 that the mother alleges Alia was told by her father to hurt her mother. Allegation is not evidence of truth.
- xii. Visit to home by unknown male. There had been varying versions of this issue and the mother's evidence was on one incident only occurring at the family home. A video and photographs which the mother had said were taken at the event were never produced and an adverse inference ought to be drawn as to the reliability of this allegation.
- xiii. Allegation that father refused to acknowledge Sadiq's developmental delay does not take account of the father's evidence as to his attendances on treatment options, including to a GP for hearing issues. It ignores the evidence that the father attended at the audiologist and that he took Sadiq for appointments at the Point Cook clinic. The father was aware of the occupational therapist and speech pathologist

assessments and also that it had been considered that the family bi-lingual environment may impact language development. His acceptance of this possibility from an expert is not a refusal to acknowledge any developmental delay issue, rather it is the opposite.

- xiv. Disclosures by Alia: Counsel referred the Court again to her earlier submissions.
- xv. There is no evidence of the father having control and influence over Alia and the exhibit referred to Exhibit 20 is a snapshot as described by the author and does not represent a comprehensive authoritative assessment of the details of the relationship. In any event it was submitted that Alia was at that time saying she enjoyed seeing her father and wanted to have contact with him.
- xvi. Alleged disclosure by Alia arose in a context of multiple repeated interviews where no new allegations were made. In light of other therapists raising concerns re possible manipulation by the mother which was ignored by the DHHS, it is concerning that the conduct of DHHS in this regard has been harmful to Alia.
- xvii. Dr Chol: counsel referred the Court to cross-examination of this witness as to this matter.
- xviii. Counsel submitted that there was no evidence before the Court as to this matter.
- xix. Recurrent disclosures of family violence at the childcare centre are somehow sheeted home to the father who has not lived with the children since 7 March 2018. No mention is made of the disclosure by the child in February 2020 that he is being hit all the time by the mother. (Exhibits 31 & 35)
- xx. Mother's isolation from the community is not a matter about which the Court can speculate. There is no evidence from the Sudanese Community in Australia as to this matter. The mother's own evidence is she is still having contact with Ms Haja. There could be multiple explanations as to why the community do not wish to have contact with her if that is so. Court is being asked to conclude that the isolation is (1) true and (2) because of the father's conduct.
- xxi. As to the father seeking financial information or attempting to find out mother's whereabouts, the allegations were not put to the father. The mother did not give evidence about this, the CRAF is not being relied upon to sustain allegations of sexually and emotionally controlling behaviour. This is a case where the relationship has broken down and the father left the marriage. The matters which are said to sustain an allegation of financially controlling behaviour are not in the family violence realm. There is no evidence from the mother that could justify the conclusion that the father exercised emotional control in such a way that would justify protective intervention. Counsel submitted that the evidence was to the contrary having regard to the financial supports provided throughout the marriage, the support provided by the father for her educational needs.
- xxii. As to the allegation of sexually controlling behaviour, the mother's allegation was not particularised until she gave evidence. The allegations were that he smacked her on the buttocks during sexual activity and that he refused to allow her to use contraceptives. The father's evidence was that as to the first he did so in a playful context and that he did not refuse contraception and that in fact the mother was using contraception until she chose to cease doing so as the method caused her side effects.

46. It was submitted by counsel for the father that based on all of the DHHS' 23 points, whether individually or collectively considered, proof must fail.
47. I turn now to consider my findings as to the facts of each of the allegations made by the DHHS.

**Allegations as to the assaults on the maternal uncle in Khartoum**

48. During the course of the hearing I ruled upon the admissibility of documents sourced from Khartoum which were said to contain various allegations, none specifically in relation to the father or any actual participation in the events by him. A copy of that ruling is annexed to this decision.<sup>12</sup>
49. The maternal uncle who was described as the victim in the alleged assault was to give evidence in the proceedings. Arrangements were made for this to occur by way of Skype attendance and interpreter services. On the day of the scheduled hearing after the Skype connection was made with the proposed witness, he advised counsel for the DHHS that he was not prepared to give evidence. Consequently, the ruling I made in relation to the Khartoum documents stands. The question that arises is whether there is other admissible or relevant evidence as to this matter which might fairly be considered and which might assist the Court. Counsel for the father contends that the material should not be considered and does not constitute proof of the facts therein.
50. The DHHS presses the allegations made by the mother, and apparently by the maternal uncle, that the father arranged for thugs to attend at the maternal family home and assault the uncle with a knife and threaten him. The allegations are exhibited in the form of reports together with a note of a discussion said to have been held by the DHHS' counsel with the uncle and with an interpreter present.
51. At best the allegations are supposition. There is no evidence tying the father to the alleged offenders other than that the uncle says they made reference to the mother's legal proceedings. The accounts of what was said differed from time to time, both as between the mother's narration of her information and the uncle's narration and there is a fundamental lack of clarity of the allegation. There are varying narratives that the

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<sup>12</sup> Annexure 2.

uncle was hospitalised, that he was cut on the neck, or on the shoulder, that he wasn't cut at all by the knife. The fact that there is said to have been a reference to the mother in Australia, if that were so, does not reasonably lead to a conclusion that the father arranged with someone in Sudan to attack the uncle. The events said to have occurred clearly involved a robbery, items were stolen, and the material suggests that this was not the only occasion that there had been attack on the premises and in the local area.

52. The father denies any involvement in such matters. I accept his evidence. I could not reasonably conclude on the material before me that the father had any role to play in the events which were alleged to have occurred in Khartoum between unknown males and the mother's brother. I am not satisfied that this allegation is made out against the father or that it forms any basis for proof of any protection application.

**Allegations of men attending the mother's home to take Alia**

53. It was alleged that the father had sent persons on multiple occasions to the mother's home in order to locate and abscond with Alia or more generally in order to intimidate her. There are a number of versions of these events. In DHHS reports and in WHW reports, multiple attendances are recorded as having been advised by the mother and up to three men are alleged to have attended on one occasion. This matter formed part of the extreme risk assessment.
54. The DHHS in its opening submissions contended that the father had attempted to have others locate the mother and have Alia removed from her care. The evidence does not support this contention. The mother does not give evidence of multiple attendances, nor of multiple men attending the premises. She described the recording by DHHS and WHW as to her reporting multiple attendances as mistaken. Evidence was given by Ms White, the protective worker, that she spoke to other women who were at the home on the evening concerned. Her evidence was that they confirmed that the mother had reported a man had attended, that the mother had relayed to them an account, but were unable to say what the conversation was about and advised that the discussion was in English and so they were unable to understand. The evidence of Ms White was that the only substantiation of the events of the evening was as to the fact that someone 'knocked' on the door. Alia apparently reported to police that she believed only that her father had sent someone to her house to spy on her.



55. The DHHS reports note that the mother advised she had a video of the attendance, photographs of the man and the registration number of the vehicle driven by him. This evidence was not produced to the Court, nor apparently was it provided to the DHHS worker for the purposes of investigation of the allegations, although the mother said in evidence that she did provide some material to the DHHS. No explanation was provided to the Court by the DHHS as to why this material was not produced. I am asked to draw an adverse inference in relation to this failure as to this event and insofar as it is necessary, given my conclusions as to the nature of the evidence, I do so.
56. The evidence does not establish that a man attended at the home seeking to take Alia or any of the children. Nor does it establish that there was involvement of the father in any such attendance. The failure to produce material to the Court or indeed to police in relation to such a serious allegation is significant. I am not satisfied that this allegation is proven.

**Allegations that the father had been overheard to say he was going to run over the mother in a truck or that he told Alia to break the mother's finger**

57. I am not satisfied that there is sufficient or reliable evidence to establish this allegation. At its evidentiary best it was a telephone conversation reported to have been overheard by Alia although Ms East concedes that Alia has never reported this. The father denies that such a conversation occurred or that he made such a threat. There is no clarity about the nature of the conversation, its timing or the context in which it was said to have occurred. The DHHS did not call evidence or inquire of the person alleged to have been a participant in the conversation to ascertain further information. I am not satisfied that there is reliable evidence that such a conversation occurred and I accept the father's evidence as to this matter.
58. As to the allegation that Alia was told by her father to break her mother's finger, this was reported by the mother to DHHS. It occurred in the context of a dispute between Alia and her mother in relation to the purchase of or request to purchase an I-phone X. This request was being denied by the mother and also the father. This incident was the subject of some discussion in an unsatisfactory interview conducted by Ms East, where Alia reports that she hurt her mother because she was angry with her and when asked whether it was because she was angry and her father told her to do it, she replied

‘both’. The child’s acceptance of a proposition does not necessarily make it truthful and the opportunity to seize on an explanation which deflects responsibility from the child to another is one explanation for this allegation. The allegation is denied by the father. In a transcript of interview with Victoria Police on 14 August 2019<sup>13</sup> he responded to the allegation that he had told Alia to hurt her mother. He denied this was the case and denied that he had asked her to swear on the Quran and promised that if she did hurt her mother he would buy her an I-phone X. He responded that Alia already had an I-phone X that her mother had bought her. It is incongruent that on the one hand Alia was suggesting that if she did certain things to hurt her mother that her father would buy her an I-phone X, and on the other the dispute with her mother was about whether the mother was prepared to ask the father to purchase one. I accept the father’s evidence.

### **Allegations of breach of IVO**

59. There is no evidence to support any allegation of breaches of the interim IVO by the father. The father was charged with Breach of Intervention Order arising from allegations made by the mother that he had contacted and attempted to obtain information as to location from Alia. However, these charges were withdrawn by the police in November 2019 at the Werribee Magistrates’ Court. Whilst I accept that proof of such charges is at a higher standard than in these proceedings, I am not satisfied that there is any evidence in this proceeding of conduct on the part of the father which may constitute a breach of an IVO or conduct in the nature of stalking, following or attempting to locate the family and therefore identify a protective risk to the children. It is appropriate to identify the more substantial or concerning allegations said to found this claim of breach or conduct.

### **Allegation that the father breached the order by having contact with the children and agitating for information as to the mother’s and children’s whereabouts**

60. This was alleged to have occurred on 31 March 2019 and 6 April 2019. It was accepted by Constable Marintelli that 31 March 2019 was not a scheduled contact day and that the children were not present with the father that day. It was also accepted by

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<sup>13</sup> Exhibit 96.

Constable Marintelli that Alia denied in her police interview that the father had asked her for the mother's address. It was accepted that as to the alleged breach by the father in agitating to have contact with Alia on 6 April 2019, Alia had already advised her father by text message that she was not coming to contact as she was unwell and under homework pressure and that he had replied accepting this.<sup>14</sup>

61. Alia's interview with police in relation to the above matters did not occur until 20 August 2019, some 4 months after the allegations were made. In this interview there was no mention of the father attempting to drive into a pole or a tree during her narration of the events of the alleged tree/pole incident. Her description of what may be the event related to her father becoming 'verbally aggressive' after she asked him to change schools because of the distance she was travelling. It was also accepted that as to any alleged McDonalds' incident, that there was no CCTV of an alleged McDonalds' incident.
62. Alia does make reference to her father manipulating her and asking her questions about the mother's whereabouts however does so shortly after having expressly denied that the father had asked her such questions on that same date.
63. The mother's report to police as to the alleged high-risk motor vehicle incident is not supported by Alia's account to police. The father denies that the incident occurred. The genesis of the motor vehicle incident was in a report by WHW to the DHHS. The evidence of Ms East in this regard was that it was one of the allegations which informed the extreme risk assessment. It was initially reported on 5 April 2019 by a WHW worker as father had "Smashed into an electric pole" and altered to an allegation recorded on 12 April 2019 that the father had "purposely hit a tree".<sup>15</sup> Neither of these accounts or indeed the allegation itself in any terms is sustained on the evidence.
64. The father denies having pressured or agitated with his daughter to obtain location information. The material relied upon by the DHHS in relation to this matter is vague

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<sup>14</sup> See Exhibit 5.

<sup>15</sup> See Exhibit 17.

and uncertain and contains many inconsistencies. I accept the father's evidence as to these matters. I am not satisfied on balance that the allegation is made out.

**Allegation that father attended the school contrary to IVO or agreement with DHHS**

65. There is no evidence to support any allegation (such as made in some of the DHHS' and various support services' materials) that he attended at the school contrary to the IVO or contrary to any agreement with the DHHS, nor evidence of any type that he had attended or even been seen at any premises where the mother and children resided. A high-risk notification was made because a Sudanese community member of a refuge service suggested that the father had been inquiring of the children's whereabouts and therefore there was a risk that he would locate the children at the refuge. No evidence was called from this person and there is no objective evidence to that effect.

66. I accept that there has been some reluctance indicated by members of the Sudanese community to attend court or give evidence. The protective worker says that this is because they, particularly one woman, are concerned as to community or relationship consequences if they do so. However, in a contested case where the allegations recorded as having been made by the relevant persons are in issue, the father is entitled to test the evidence against him. I have considered the allegations recorded in the DHHS reports and have concluded that as to the allegations of attendance at the school, or attending a café meeting, there is no clarity or precision about what is being alleged. I have concluded this also more broadly in relation to the generalist allegations as to conduct about which no direct evidence has been called. In addition, the allegations are often times second- or third-hand hearsay and simply unreliable. For all of these reasons the material is not reliable or of assistance to the Court.

**Allegation that the father attended at the mother's housing service**

67. There is no evidence that the father attempted to contact the mother's housing workers to obtain their location. On the contrary, where it was alleged that he had attempted to obtain information from the Housing Service that service denied that they had ever had any contact with or attendance at their premises by the father. The father was not asked about this allegation at the time.

**Allegation that the father altered or attempted to alter the children's Medicare card status**

68. There is no evidence that this occurred. The evidence is that inquiries made of Medicare and the Medicare registrations for the family reveal that the children had always been registered on the father's Medicare card and that this occurred as the mother was not eligible for Medicare coverage for some time after her arrival in Australia. The materials disclose that there have been no attempts to alter any of the children's Medicare status, details or to locate them via Medicare, nor have there been any attempts by the father to alter or to change children's details at any of the medical services they attend.

**Allegation that the father attempted to obtain the children's passports or travel documents by arrangement with Alia**

69. The evidence is that the father was already overseas, he was aware of where the documents were, had copies of relevant materials and that he was also aware that one of the children's passports had expired in November 2017. The time frames within which this is said to have occurred are unclear other than it must have been between March 2018 when the father left for Sudan and August 2018 when he returned. By July 2018 the children had already been placed on an airport watchlist by the Federal Circuit Court.

70. It was suggested in one document that the intention was for Alia to go to the airport with the boys and arrangements would be made for her to board a flight to Dubai. It appears that it is inferred that this was to be facilitated by the children's uncle. No inquiries were made of the uncle as to this matter. No evidence was produced that suggested any tickets or travel arrangements were ever made. The evidence is that during the entire period of the father's absence in Sudan, the mother allowed the uncle/s to take the children out on weekends and on other occasions when the mother required assistance. This conduct is inconsistent with any legitimately held concern that the children may be abducted to Sudan.

71. It was also alleged that the father had sought or was seeking to obtain Sudanese passports for the children. The father himself does not hold a Sudanese passport.

There was no evidence of this matter, nor evidence of any inquiry being made by the DHHS of the Sudanese authorities in Australia. The father was overseas when the initial Family Law Act interim orders were made.

72. The evidence does not support a conclusion that the father intended or made plans to remove the children from Australia.

**Allegation that the father asked Alia to obtain banking information, Centrelink or other financial material of the mother and provide it to the father**

73. The evidence is that the father was privy to the bank accounts held by the couple, had made a number of deposits to the mother's banking account during the period of his absence, that he was making child support payments directly and through Centrelink to the mother during the relevant period and that there was on his evidence no basis for him to inquire into the mother's financial affairs. I accept his evidence as to this matter. In so concluding I refer in particular to my conclusions as to the reliability of the narrations of Alia in this matter.

**Allegation that the father was contacting Alia by way of her 'old' mobile phone**

74. It was alleged that the father had been making contact with Alia without the mother's knowledge. The evidence, including that of the mother, was that Alia had been voluntarily contacting her father and initiating the contact. The mother explained in her evidence that on at least one occasion this arose because Alia had asked her to contact her father and ask him for a new I-phone X for Alia. The mother refused and her evidence was that Alia then got upset with her and said: "I'm going to contact my dad to buy it for me". The timing of this incident is unclear, the evidence is that the contact was attempted by Alia.
75. There is no evidence that the father initiated any contact surreptitiously or otherwise. On the contrary, there is evidence that the father took steps to block his daughter from contacting him on his mobile phone and on Facebook when it became apparent that he was being accused of making inappropriate contact.<sup>16</sup>

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<sup>16</sup> See Exhibit 8.

**Allegation that the father was contacting the mother on her mobile phone contrary to the Intervention Order**

76. The mother alleged that the father had contacted her in excess of 40 times on her phone. The evidence of Detective Sergeant Eisenhower of Victoria Police was that it was the mother who was contacting the father and that the phone records confirmed that this was the case.

**Allegation that the boys Sadiq and Abdo were defecating and urinating around the house and on the mother under instruction of the father**

77. There is no objective evidence that the boys were defecating or urinating around the house generally, or on the mother. In at least one report the mother is reported to have made this allegation. She also reported that one of the children urinated in a bottle. It was reported by the mother that the children had told her their father told them to do so. The reporting varied from it being recorded that it was Sadiq who had done this and in another account it was alleged that it was Abdo. However, the mother did not give evidence of any such repetitive events or even of the allegations contained in the reports of Ms Dallas and Ms East of DHHS and also from Women's Health West.

78. None of the in-home family services, including Melbourne City Mission, nor the paediatricians or other medical practitioners were advised of, observed or reported any issue with the children Sadiq or Abdo urinating around the home. During the Child Inclusive Conference conducted by Ms Higham on 29 January 2019, mention was made by the mother of Abdo urinating in a bottle and in a bed and allegedly being told to do so by his father. But no mention was made of Abdo smearing faeces on a wall, notwithstanding that event was said to have occurred at a Christmas party on 25 December 2018.<sup>17</sup>

79. The mother's oral evidence was of one incident only when she and the children were present at a family friend's home on 25 December 2018 and that Abdo had smeared faeces on the wall at those premises. Abdo was 3 years old. The mother alleged that the child said his father had told him to do it. No evidence was called from those

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<sup>17</sup> See Exhibit 20.

present at the home that evening. No interview or inquiry was made of them as to the events. The allegation that the father encouraged the child or children to defecate or urinate is denied by the father. Ms East of DHHS confirmed in her evidence that Alia had never said that her father had told Sadiq and Abdo to urinate or defecate.

80. This incident of defecation stands alone despite the allegations of frequent conduct which in my view are not sustained on the evidence. I am not satisfied that Abdo's behaviour is established as being due to conduct or encouragement by the father. In view of the concerns in relation to Abdo's behavioural issues, particularly recently as discussed by the Childcare centre, this incident is likely to have been behavioural related as opposed to induced or encouraged by the other parent.

**Allegation that the father attended at the Medical Clinic of Dr Chol in the week prior to the most recent hearing date in order to intimidate him in anticipation of him giving evidence in these proceedings**

81. This allegation was made in the final stages of the proceedings. The DHHS received a report from the Clinic Manager of Dr Chol's surgery advising that the father Mr Sakin had attended at the clinic and had behaved in an intimidatory manner towards the Doctor. It was suggested that this was designed to discourage Dr Chol from giving evidence in this proceeding. This was said to have occurred on 12 November 2019. Dr Chol was said to have advised his manager that he had seen the father and suggested that his presence was untoward. The allegation was reported by the DHHS.<sup>18</sup> It was subsequently shown to be entirely false. The father was nowhere near the clinic on the relevant day and Dr Chol later advised the DHHS that he had mistaken another patient for the father.
82. Counsel for the DHHS nevertheless cross-examined the Doctor as to whether he might not have actually seen the father on that day but may have been intimidated enough to change his account of the incident. The Doctor denied that this was the case. His evidence was that he was not intimidated on that occasion, nor had he in any event ever felt threatened or intimidated by the father.

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<sup>18</sup> See Exhibit 56.



**The disclosures of family violence alleged to have been made by the boys Sadiq and Abdo**

83. There is no reliable evidence that the father has ever physically or emotionally harmed the boys. The DHHS relies upon disclosures the boys have been recorded as making in relation to their father assaulting their mother. The accounts relied upon from Sadiq and Abdo are inconsistent, unclear and do not identify particular events or instances.
84. It appears that they have been parroting matters that have been said to them and that they have knowledge of material which they would not independently have obtained, but rather must have been provided to them by an adult. An example of this occurring is Abdo's description at Childcare of the father killing his cousin in Khartoum. This does not have a context but is concerning given the allegations being made by the mother as to an incident with her brother in Khartoum. The events or even association with Khartoum do not readily present as likely to be matters about which the child would incidentally be informed. Abdo describing his father as a bad man has resonance of 'boogie man' characterisation.
85. Abdo has been reported by the Childcare centre as having alleged that his father has hit him and beaten him. These reports allegedly occurred when Abdo was not and had not been for some time in his father's care. No such allegations have been made in Family Law Act proceedings by the mother and no such disclosure is recorded by any of the other children.
86. Abdo is also reported to have made recent disclosures about his mother hitting him and beating him with a stick daily. These disclosures were reported by the Childcare centre to the DHHS worker in late January 2020. Information was also obtained that the child Sadiq had been hit with a telephone cord. This was explained by the mother as having occurred accidentally and when the child had been in the care of a neighbour. These matters did not feature in the most recent DHHS report to the Court. They were reported in a CRIS note produced subsequently. As at the time of hearing of this matter these issues had not been further investigated and it can only be concluded from the DHHS CRIS notes and evidence of the worker in relation to these events that the DHHS did not regard them as significant or, in relation to Abdo, reliable reports.

87. Similarly, there is a lack of clarity and consistency in Sadiq describing that his father ‘choked his mother’ and ‘punched her in the face’ in circumstances where the only choking allegation before the Court which might have been observed by Sadiq was that in relation to a contact handover at McDonalds. This allegation was recorded as made by the mother in Women’s Health West materials, but was never subsequently pressed in those terms by the mother. Nor was it reported by the mother to police in April 2019 when she reported breaches of the IVO relating to the same McDonalds’ attendances. The mother did not allege in her oral evidence in this proceeding that the father choked her at McDonalds. Her evidence was he started to reach into the car window. There has never been an allegation by the mother that the father punched her in the face.
88. As to the disclosures said to have been made by the boys on 12 September 2019, the narration is that the boys dramatize the father’s profile, alleged that the father had ‘killed their cousins’, had punched their mother and with language from Sadiq such as ‘what if he attacked them’. The worker reassures him not that it won’t happen but rather that she will be there to prevent it from happening. These notes of interview with each of the children, including Alia, are unhelpful and are not reliable as evidence of family violence having been committed by the father.
89. Ms White in her evidence agreed that at the time of Ms Higham’s assessment in January 2019, it was clear that the boys were wanting to go home with dad and were clearly not afraid of their father. She conceded that it was not until after the father’s contact was ceased and the mother had sole care of the boys for over five months, that they made any allegations about their father. The children were reported in this period to have gone from ‘no fear’ to reporting that their father wants to ‘kill their mother’ and ‘kill their cousins’. The boys were 3 years and 5 years old at the time when this interview took place on 12 September 2019.
90. Much of the narration of the children providing information to the DHHS occurred upon prompting by the DHHS workers in interviewing. The information was obtained from the children largely after they had been in the sole care of the mother for a period of time.

91. The interviewing of the children by protective workers was leading and suggestive of answers and was largely unsatisfactory in its approach. Much of the material obtained as ‘disclosures’ from the children is unreliable. Exhibit 17 and Exhibit 19 are examples of questioning of the child/ren which was suggestive of answers and leading the child/ren in a significant way.
92. Most of the allegations relied upon had not arisen in the Federal Circuit Court Child Inclusive conference in January 2019. That is, these allegations were not made by the mother or children.
93. It is troubling that some of allegations against the father reported by DHHS as being made by the boys appears to be parroting or reconstruction of allegations made by the mother as to events in Khartoum Sudan.
94. These are things the children could not have direct knowledge of and yet they are providing commentary upon the father as if they did. As the father was having no contact with the boys, information as to events such as Khartoum could only have come from the mother or Alia and if the latter she could only have received that information from the mother.
95. There is also a very strong possibility that these children are telling the audience what they perceive will please them, particularly as the questions asked of the little boys were not benign but leading in almost all aspects. I am not satisfied that there is any reliable evidence to support the allegation that the boys were hurt by the father or that the children witnessed their father be violent towards their mother. The father also denied that he had done this and I accept his evidence as to that.

**Alia’s reported disclosures relating to her father**

96. The DHHS seeks to make out its case by reference to the reports as to what Alia has said from time to time, much of it repetitive of the same allegation rather than raising any additional allegations. Each of DHHS items ii, iii, iv, vi, xiv, xv, xvi, xvii, xviii and xxi fall into this category. In this regard it is necessary to consider the likely accuracy of the recording and the veracity of the reports. The majority of Alia’s ‘disclosures’ particularly as to allegations in relation to her father and associated

family violence were provided by Alia, not in an independent therapeutic environment, but in an environment where I am satisfied that there was a clear interest in those interviewing in obtaining negative information about her father.

97. The evidence of the most recent protective worker was that Alia was being interviewed and re-interviewed in order to obtain ‘enough material’. This was because there was frequently a lack of clarity in Alia’s disclosures and there was little ability to identify actual incidents and timeframes associated with them and, insofar as I can ascertain from the materials, a real reluctance on her part to do so.
98. Alia has provided a number of varying accounts as to events. Her accounts of the alleged driving incident, which as discussed earlier was not an allegation made to police in an interview in August 2019, vary significantly from the reports made by the mother and the DHHS and other services – from driving at a tree to hitting a tree, that all the children were in the car to only she was in the car. Some of the material indicates that the other children were following in the uncle’s motor car. There has been no inquiry made of the uncle in relation to this allegation. There has been no police involvement or report or charges in relation to this allegation. It is unclear also, even from the DHHS reports, whether she was said to be alleging that he drove at a tree, whether it was that he was distracted and a tree came close or appeared to come close to the car. This allegation is not sustained on the evidence. I accept the father’s evidence that it did not occur.
99. Alia has also provided varying accounts as to whether her father has been physically violent with her or her mother. As to her father she is reported as saying that her father slapped her on the face and hit her with a belt ‘a long time ago’ ‘when my parents were together’.<sup>19</sup> She has on occasions denied this to be the case, then on occasions indicated that it had occurred. She has indicated her mother has been violent, then she has retracted these allegations. She has indicated that her father has been violent and then has independently, and with no prompting from the counsellor, retracted that allegation and described it as lies told because her mother told her to.

The extract from Ms Knight’s counselling notes dated 4 June 2018<sup>21</sup> reads:

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<sup>19</sup> See Exhibit 17. <sup>21</sup>  
Exhibit 49.

*During this session Alia said: "I'm sorry miss I lied to you when I asked her what do you mean she said you know all the things that my mum told you and I told you about dad my mum told me to say all those things she even made me lie to the police and say all these things about dad".*

100. It is appropriate to extract further elements of this counselling process as it reveals *starkly and cogently the conflict occurring for Alia and her struggle in this regard.*

*24/7/18 Today Alia came in saying that she realised she was wrong about missing her father and crying for him after he left her she said that she realises that her mother is the one who stayed and suffered after the divorce to look after them on her own real said that she appreciates what her mother has done and understands that she gets stressed and tired from having to manage a family on her home.*

*2/8/18 in today's session Alia made a number of comments: "we had a fight me and mum yesterday, she does not believe me she is always lying to everyone she said that I failed semester one and if I fail semester 2 she said she will send me to my dad but I don't care maybe she will realise how much I do for her like I bring her breakfast in bed. She never liked me since I was born she always liked my brother more."*

*8/8/18 today Alia spoke about her relationship with her mother again saying that her mother doesn't care about her and her siblings her brothers are in childcare during the day and Alia has to change them and look after them in the evening saying that her mother has not changed a nappy in months. Alia also said that when she takes funny selfies on her phone her mother calls her ugly or rubbish in her language.*

*20/8/18 Alia said she is having bad habits and memories again such as locking herself in her room. Alia said that she spoke with her father who told her about his relationship with her mother, explaining if her own parents can't handle her how can he? Alia now changed her mind and is hating her mother and wants her father back.*

*29/8/18 today Alia was very emotional and saying that things between her and her mother have gotten worse real said that her mother always hits her yells at her wishes that she dies and always puts her down. Alia also said that her mother forced her to lie to the police and make false confession.*

*6/9/18 Alia said that she saw her dad on the weekend we all said that she had fun and enjoyed her day with him real also said that she no longer dreams for the future because of everything that is happening.*

*15/10/18 Mother asked Alia if she had knowledge of DHS report, then accused Alia's father of making the report. 15/10/18. Alia said she has not been sleeping well and her anxiety has been playing up. Said she loves both parents. 9/11/18 relationship with mother has worsened again. That mother called her the f word and wished that she dies and called her an F idiot and I hate you. 12/11 Does not want to stay with mother and wants to move in with father.*

101. Further pertinent notes are that on 1 February 2019 Alia told her counsellor about nightmares she was having about her father burning her or cutting her with a

chainsaw. She advised that the relationship with mother had improved during the holidays. On 4 February 2019 Alia told the counsellor that she was upset to hear that her dad had appealed the court process and was upset with him for doing so. She also described various difficulty with friendships and a feeling of not having any.

102. By 23 April 2019 Alia was complaining of her father trying to constantly contact her and was recorded as being happy with mother having full custody. On 30 April 2019 Alia is recorded as being anxious about people knocking on her door for different reasons and thinking it is her father sending them to spy on her. She described being frustrated with father for trying to contact her on messenger and said she blocked him.
103. The notes also reveal that Alia advised the counsellor that her mother had shown her a text message from the father saying that she can keep the kids and that he doesn't want them anymore. The counsellor described this as disturbing that the child had been engaged in this information by the mother.
104. I consider the evidence of this witness, Ms Knight, to be the most balanced and helpful in identifying the conflict which was attenuating Alia's relationship with her parents, both mother and father, consequent upon their separation and ongoing Family Law Act dispute. It is also telling as to the stage at which the child's relationship with the father appears to have become problematic. It coincides with the receipt by the child of information about the father, which suggested he was being unfair or unreasonable and with the intervention of various services and the DHHS protection applications after the adjournment of the Family Law proceedings.
105. Alia's disclosure to various counsellors, and to Dr Chol, that her father had stolen her mother's money is only information that would come from an adult. As Ms Knight and Ms Higham agreed, it is very concerning that she is being involved in such disputes.
106. Dr Chol's evidence was that at a consultation on 7 June 2018 Alia had disclosed that her father had asked her to take the children's passports and to spy on her

mother regarding Centrelink and other financial matters. Alia presented with pain and distress. Dr Chol was concerned that a psychological issue was playing a part in her presentation. His evidence was that the child raised family issues and raised that there were money issues. She is reported to have informed the Doctor that the father stole her mother's money and only left \$20,000 and to have said that the father was trying to trick the rest of the family to go with him. She advised that the father was contacting her through Facebook when mother was not around.

107. In relation to the allegations that father was contacting Alia through Facebook there was no reliable material as to when this occurred. The father's evidence is that whilst away in Sudan he was having regular Facebook facetime contact with all of the children and with the mother.
108. Dr Chol's evidence was that, although there had been a fulsome discussion with Alia and the mother did not participate actively in the conversation, there was no mention by Alia of any physical violence on the part of the father.
109. The DHHS relies upon Alia's disclosures of continuing concerns about her father on 11 September 2019 and 12 September 2019.<sup>20</sup> These allegations are the same as those which are said to have been made previously and are included in Exhibits 17 & 19. These concerns are without any clarity as to time and place or date. As best as can be ascertained they relate to periods of time predating the Family Law Act proceedings and these Child Protection proceedings. They did not make their way into any of the mother's material in the Federal Circuit Court and did not feature in any of the information provided by Alia to the Family Court counsellor or to Ms Ditchburn or to Dr Chol.
110. Constable Marintelli also recorded Alia as stating that her father had on multiple occasions become verbally aggressive and that he hit her on the back and slaps her hard in the face. The police officer accepted in the course of her evidence that there was a possibility that the child was being influenced as to her account. She also conceded that at no time during the interview with the mother in April, of which

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<sup>20</sup> See Exhibits 29 & 30.

this was a follow-up interview, did the mother make any report that the father had physically or verbally threatened or assaulted her or the children.

111. In relation to the allegation which heightened the risk profile, 'that mother will be hit by a truck', Ms East conceded that Alia did not tell the DHHS this had happened in either her first or second interview with Alia and that Alia did not back up the mother's claim that this had been overheard. The father has denied that he made such statements or that he engaged in such conduct. I accept his evidence.
112. Having regard to the matters discussed above, I am not satisfied that the evidence before the Court as to Alia's disclosures establishes that the father has been physically violent or threatening towards Alia or that it is reliable evidence which establishes these allegations as factual.

**Allegation of inappropriate influence or control being exercised by the father in relation to Alia**

113. I am not satisfied that there is evidence of inappropriate influence or control being exercised by the father in relation to Alia. It is unclear if it is being said by the DHHS that it is inappropriate for a parent to express their views about their child's clothing choices, school behaviours or location or other day to day matters affecting family life. Other than appropriate parental inclination to influence or attempt to influence his children's choices, there is no evidence of conduct which could be described as oppressive or extreme being exercised by the father.
114. It is alleged in the material that an issue arose in relation to Burqa and the father demanding that Alia comply with this attire against her wishes. The evidence of the father, supported by other material including the photographic evidence of Alia's apparel when with her father socially, is that he did not dictate how Alia dressed outside of school and his only requirement was that she wear the required school uniform when at school. I accept his evidence.
115. The father's explained that his disagreement with the proposed change of school was because he did not want Alia to move schools in the middle of Year 7, an



assessment year, and wanted her to wait till the end of the year to do so. I accept this evidence.

116. There was nothing overbearing or unreasonable in the father's response to this issue. It is a common source of disagreement between parents as to school location and type. In my view this matter falls within that category and is not a protective concern. It is very concerning that after the involvement of a number of agencies and repeated interviews Alia begins to indicate a reluctance to see her father. I have earlier considered the allegation in relation to the motor vehicle and tree which was alleged to have arisen in the context of a discussion relating to school.

**Father's alleged refusal to allow the children to receive therapeutic supports or services including medical and allied health interventions**

117. It is alleged that the father has persistently refused to allow the children or to support the children receiving appropriate health interventions. The evidence does not support this allegation. The evidence is that the father has attended upon a number of services and supports with the children, has expressed concern to the family GP about Sadiq and his speech development and has driven the mother and the children to appointments including speech therapy appointments. It was suggested that the father denied developmental delay and was unwilling to allow the child to engage in therapy or treatment if required. It was apparent that the clinicians were struggling to identify the precise difficulties being experienced by Sadiq. There was no conclusive diagnosis of ADHD or Autism and indeed there was an express conclusion that he did not meet the criteria for an autism disorder. Further developmental oversight was sought by Dr Tamiki in order for any concluded diagnosis. No medication was recommended in this context. It was also considered that there may have been an element of developmental difficulty arising from the bi-lingual nature of the household. At one stage the father was also given to understand that hearing issues should be investigated and he pursued this matter with a GP.
118. Dr Chol conceded that father attended a number of consultations with the children, Alia, Sadiq and Abdo. He also conceded that on 6 September 2017 the father consulted a Dr Laurel at the clinic in relation to Sadiq's speech delay and that he

was noted to have brought the child in because he was 'worried'. This tells against the contention that there are protective concerns in relation to the children receiving proper medical or therapeutic care because it is said the father refuses to acknowledge health or developmental difficulties.

119. As to the father's reluctance to accept that Sadiq suffered a developmental delay, at its worst that evidence reveals a parent who is reluctant to accept that his child may have a delay or disability. It does not establish a pattern of behaviour or conduct that was or is likely to be or has been harmful to the obtaining of appropriate medical or therapeutic intervention.
120. In relation to Alia, the father denies advising her that 'Good Muslim's do not suffer with mental illness'. There is material before the Court that Alia understood him to be saying this and she has reported this to a number of persons. It is likely that there has been some problematic discussion in this regard. However, it is also clear that the father's view, whilst confusing for Alia, did not in fact prevent her from engaging in counselling and support. It is also clear that from the evidence that the father supported Alia continuing to see the school counsellor, that he was genuinely concerned and responsive when he was advised that he needed to attend the GP clinic urgently in relation to Alia and that he was genuinely distressed and concerned when information was ultimately revealed to him that his daughter had been identified as having suicidal ideation and that her anxiety was causing her great difficulty. He was supportive of ongoing mental health support for Alia.
121. The father's evidence in this proceeding satisfies me that he is not obstructive or likely to be obstructive of the provision of such care and supports to any of his children.

#### **School attendance issue – Sadiq**

122. The mother reported to DHHS that contrary to advice of the Kindergarten that Sadiq required a further year before commencing at Primary School in 2018, the father demanded that Sadiq commence school. The evidence does not establish that the father required that this occur or that he was behaving in an oppressive or emotionally controlling manner in relation to this issue. The father did not

participate in the practical enrolment process. The evidence was that the issue of which Primary School the child should attend was discussed between the parents, as the mother had a view for a particular school. The father did attend at a preparatory grade orientation day upon invitation by the mother. Shortly after Sadiq commenced primary school it became apparent that he was not managing. A decision was made for him to return to kindergarten after one month and that occurred. There was no obstruction by the father in this regard. This was not a matter which was agitated in the Family Law Act interim order proceedings in October 2018 or February 2019. Nor am I satisfied that it was a matter which did cause, or was likely to cause, emotional or psychological harm to Sadiq in a protective sense as contemplated by s162 of the Act.

#### **Father has not failed to protect any of the children**

123. I am not satisfied that the evidence produced by the DHHS establishes that the father has engaged in the conduct alleged against him and relied upon to sustain the grounds of the protection applications.

#### **Family Law Act affidavit content**

124. On 9 July 2018 the mother filed an application in the Federal Circuit Court of Australia. Her affidavit in support<sup>21</sup> outlined the circumstances in which the father had left Australia and the marriage. It sets out that the father left the country without advising the mother that he was leaving and without saying goodbye to the children. It sets out a number of matters relating to financial affairs of the parties and in particular in relation to the sale and proceeds of a property belonging to the couple. It also alleges that the father had been contacting the child Alia from Sudan via Facebook and encouraging her to leave the home with the other children and take their passports with her and travel to Melbourne airport and travel to Dubai. It refers to the mother consulting with WHW in relation to family violence and economic abuse, although the mother's evidence is that at that time there was no actual involvement by WHW.

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<sup>21</sup> This affidavit is Exhibit 80 in this proceeding.

125. A 'Notice of Risk' also filed by the mother on 9 July 2018, in particularising risk of abuse, refers to the allegations of contact with Alia on Facebook when the mother is not present and asking her to leave the property and collect the passports to travel to Sudan. It further states that the father has threatened to grab her from school and take her to Sudan and prevent her from returning to Australia. The Risk notice also says that Alia has informed the police and the family GP.
126. The application was heard on 11 July 2018. Ex parte orders were made re residence and contact and the children were placed on an airport watch list. The father was advised of the orders by the mother via What's App when overseas. On 4 October 2018 further interim parenting orders were made after the father returned from overseas. These were by consent between the parties and provided that the children live with the mother, remained on the watch list and the father's contact was to occur unsupervised each Saturday from 9:00am until 7:00pm. The orders also provided for other contact on significant dates. The contact was to be facilitated by the father's brothers.
127. A subsequent affidavit was filed by the mother on 19 December 2018 in response to a Risk Notice filed by the father on 18 December 2018. That affidavit reiterates the matters set out in her first affidavit, refers to a number of matters associated with the father's contact with the children and annexes an interim intervention order application made by the mother on 16 October 2018.
128. The narrative of the mother's 19 December affidavit is consistent with the narrative of her first and second Federal Circuit Court affidavits. That is, that there is a concern that the father will remove the children from the country, that he had sought that Alia obtain the passports and that he had financially controlled the mother. The narrative now also raises an allegation that some unspecified time previously, when the parents were together, the father had thrown a remote control at Alia which had not hit her but had damaged the television.
129. In none of the Federal Circuit Court affidavit material prior to the father's risk notification dated 18 December 2018 is there any allegation by the mother of physical violence being perpetrated by the father against her or against the children. Nor is there any allegation of sexual violence being perpetrated by the father against

the mother historically. The Risk notification form filed by the mother in the proceeding solely related to a risk of the children being removed from the jurisdiction and related to the issue of the financial control and appropriation she alleged against the father.

130. At no time during the Child Inclusive Conference with the Family Court counsellor Ms Higham was any allegation of this type made by the mother. The affidavit material filed by the mother was extensive and comprehensive. I do not accept the mother's explanation that her lawyer advised her not to include these matters because they were historical and not relevant. In any event the mother had opportunity to press these issues when speaking to the Family Law Act counsellor, Ms Higham. She did not do so.
131. A risk notification filed by the father in December 2018 related to risk that the mother had physically assaulted and abused Alia. This matter was apparently investigated by the Department at that time by discussion with the mother and arrangements that she undertake a parenting program. No further action was taken. The father was not interviewed in relation to this matter at any time.
132. The Child Inclusive Conference memorandum dated 21 January 2019<sup>22</sup> identifies that there are mutual and conflicting parental allegations of family violence including allegations of controlling and abusive behaviour and reports of ongoing emotional abuse towards the children. These are recorded by the report author as mutual allegations. There are no allegations made of the father being physically violent or threatening towards the mother or the children. There is concern expressed as to parenting approaches and attitudes but not so as to suggest that there are immediate protective concerns. Nor is there any suggestion in that material that there is a risk to the children by the father which is of a significant nature.
133. The absence of these very significant allegations or issues being raised by the mother in the Family Law Act proceedings is problematic and is relevant to take into account in assessing the veracity of evidence given by the parties in this matter.

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<sup>22</sup> Exhibit 20.

It is also relevant to assessing insofar as it is necessary for me to do so, the nature of the investigation undertaken and its adequacy.

134. It is also concerning that in informing itself of the protective risk associated with the father the DHHS accepted the veracity of the allegations made by the mother without any consideration of or inquiry into the nature of the dispute between the parties in the Family Law Act Court and whether in the context of the escalation of allegations being made against the father any assistance in assessing those allegations could be gained from an understanding of that dispute. The evidence of Ms East and Ms White was that they did not access or seek to access any of the Family Law Act affidavit material and this continued to be the case after those materials were made available by the father's solicitor in this Court at the Directions Hearing in July 2019.
135. Dr Chol conceded that Alia at the consultation in June 2018 had a great deal of knowledge as to the financial dispute between the parents and he conceded that 'in general' it is not in the best interests of a child to be subject to such information.

**Alia - Consideration of any Mental Health issues**

136. It appears from the Sunshine Hospital material that the incident of suicidal ideation was reported as being situational and that the clinic did not consider that Alia suffered from a mental illness requiring clinical intervention. She apparently suffers with anxiety, but this is observed in a situation of high family conflict and disruption, together with the frequent moving and dislocation to which the children were exposed during 2018 and 2019. I am satisfied that this is likely to be the basal cause of her anxiety. Alia also apparently has anxiety about seeing her father.
137. At the height of the activity in relation to moving housing and disruption of schooling and community, Alia was reporting anxiety and sleeplessness. None of the clinicians attending her, that is the GP Dr Chol or the Hospital or the psychologist Dr Ditchburn, identified this as unexpected in a young adolescent experiencing the type of disruption she was experiencing.

138. It is not surprising that this has settled somewhat since she has been located at more permanent housing and has settled into a new school environment. There is however no basis for attributing her struggles to the conduct of the father alone, but rather it is more likely as a result of the struggle she experienced being caught in the middle of her parents' dispute and its bitterness as the allegations escalated and the disruption to her routine and locations as frequent moves of home occurred. This latter matter, that is the frequent housing relocation, is not something that it could be said on the evidence was as a result of any conduct initiated by the father.
139. I am satisfied on the evidence of the clinicians, including Alia's counsellor, that Alia's struggles were situational and reflective of the type of emotional upset commonly found in children whose parents are engaged in Family Law Act proceedings.

#### **Conclusions as to the parents' evidence**

140. As a large amount of the evidence in this proceeding was hearsay and reliant upon the mother's information and accounts, the evidence of each of the mother and the father in this case is critical. It is necessary for me to form a view as to whose evidence I prefer where there is a difference in accounts.
141. I prefer the evidence of the father. He gave clear and full accounts of those events about which he was able to speak. He was consistent in his responses and was not evasive in his approach to questions.
142. In contrast the mother's evidence was guarded and was evidence which differed significantly and frequently from accounts she is said to have given to clinicians and support workers both during the course of the events leading up to these proceedings and during the proceedings.
143. I have set out above a number of instances where the mother's evidence is simply different to that which had allegedly been reported by her to support workers and also to DHHS workers.

144. When asked about inconsistencies in her evidence and previous accounts to either DHHS or support workers, Ms Deng's evidence was that she had been misquoted or had been misunderstood. She gave evidence that her Family Law Act lawyer had advised her not to put any of the allegations of physical family violence into her affidavit materials as it was unnecessary.
145. Examples of the mother giving inaccurate evidence included:
- that the father repeatedly breached the intervention order by contacting her on her mobile phone in excess of 40 times when the evidence shows that it was she who contacted the father on the multiple occasions;
  - that she was not provided with regular financial support when in Sudan studying, when the evidence establishes that multiple and regular money transfers were made by the father to her banking account during the relevant period; and
  - that the father had not provided the family with any support when he left her and went to the Sudan in 2018 when the evidence establishes that the father made payment for some months of rental on the property then being occupied by the family, that the father and mother had joint access to a bank account into which there had been made deposits of funds and that child support payments were also being made; further, in terms of familial support he had arranged for his brothers to assist Ms Deng as she required; the evidence is that this support and assistance in fact occurred during his absence.
146. Ms Deng also alleged that during the marriage the father had not supported and had actively worked against her achieving her pharmacy qualifications and was against her working outside the home. The evidence in this regard is that he supported her financially in paying for airfares to travel back to Sudan, that he agreed to her taking the child Alia from Australia to Sudan for the period she was studying, that since returning to Australia he has assisted in obtaining documents and has personally investigated with Pharmacy Regulators procedures on her behalf for obtaining Australian Registration and has paid fees for applications on her behalf.
147. Each of these matters was relied upon as supporting the allegation that the father had committed family violence by way of economic and emotional coercion.



148. These financial matters, whilst not established in terms of the proof of the protection applications insofar as disputes exist as to the actual amounts and shares appropriate, are largely matters relevant to the Family Law Act domain and to debate in that forum about contributions and support. However, they do present as significant in the assessment of the mother's credit in this proceeding.
149. I have earlier discussed the family violence allegations and that there is no allegation by the mother of physical or sexual violence in the police statements or in the Family Law Act affidavits or in the Child Centred family conference. The mother's own risk notification did not allege such matters.
150. The evidence of Dr Chol was that the mother saw another GP at his clinic who referred her for a mental health plan on 27 March 2018 which was noted as "due to father leaving mother for Sudan". His evidence was that there was no family violence referred to in that referral or note. Another letter from the same doctor sought a social worker for the mother as she was "low and irritable due to her husband having stolen all of her bank deposits". Again, it was evidenced that there was no family violence referred to in that note.
151. On 11 April 2018 at the request of the mother, Dr Chol wrote a letter supporting the mother in obtaining housing support. He conceded that the contents of the letter reflected what the mother requested he write on that day. In writing the letter he was not aware that the father was not even in Australia. He had not at that time seen the mother since 27 November 2017. His evidence was that he was not informed by the mother about any allegations or concerns in relation to family violence. He conceded that had he been previously told of this and had the mother alleged the father had harmed the children he would have noted this matter and reported it as a mandatory reporter.
152. Dr Chol gave evidence that he agreed to provide the mother with a letter of support to the Federal Circuit Court dated 27 June 2018 for use by the mother in the Federal Circuit Court proceedings.<sup>23</sup> However, his evidence was that at no time in his or other doctors' consultations at his clinic, did the mother disclose physical violence

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<sup>23</sup> 25 See the mother's affidavit.

directed at herself or the children or sexual violence against herself. His evidence was that had this been disclosed he would have noted it in the health records and that his colleagues would have also done so.

153. The first time any allegation was made to DHHS of sexual violence was in October 2019 at a time when the DHHS advised the mother that it was intending to arrange for the father to have supervised contact.
154. The mother's reports as to men attending at the family home which she said were instigated by the father, altered from the narrative in the DHHS documents in which three attendances were described, to describing one only. Her evidence about this matter was unconvincing. The failure to present to the Court the alleged video of the person attending, the registration number of the vehicle and photographs of the person compounded the issue with her evidence and this allegation.
155. The evidence in relation to the mother and the children moving house to Footscray, and engagement with the father is particularly significant. In March 2019 the mother was moving home to an address in Footscray. She contacted the father and asked him to have all the children for the day as she was moving and required assistance. This was supported. In addition, she asked the father to have the children 2 days per week from 7am to 7pm as at that time she was working. Her evidence was that this was not agreed to by the father and it appeared that she was displeased with this refusal. This is not conduct consistent with a concern that the father had previously or was likely to commit physical or emotional violence against the children as was shortly thereafter alleged.
156. Having regard to these and other inconsistencies in the mother's evidence and accounts and noting the father's evidence as being frank and forthright, I prefer the evidence of the father as to the issues in contest.

**The children's contact with their father and father's reluctance to re-engage in contact supervised by the DHHS – whether this constitutes a basis for proof**

157. The position is that the children have not seen their father for more than 10 months. The boys have always said they would like to see their father. They largely do not

provide negative commentary about their father unless they are pressed to do so and it is difficult even to understand, from the evidence, any rationality to the context in which their information or 'disclosures', as they are described, are actually made.

158. Alia has expressed a desire both to see her father and to not see her father. She has prevaricated in this view until April 2019 and it is unclear precisely what her concerns are in relation to her father. The allegations she has made against her father are unclear and imprecise as to timing. Her desire not to see her father appears to coincide with an awareness of what is being said about him and possibly an awareness that he may have become aware of allegations made by her or said to have been made by her against him and a concern that he will react angrily.
159. This reluctance could be motivated by a real concern as to his reaction or it could arise from a feeling of angst as a result of providing negative information about her father at the behest of the mother to the DHHS or other services. It may reflect a reluctance borne out of guilt of providing less than accurate information which has come to impact her father. The prospect that she might be seen by a parent to have taken sides might also trouble the child and result in a reluctance to face the father or be seen by the mother to have taken his side.
160. There are many and complicated factors affecting the children at this time. They are consistent with the type of conflictual reactions often seen in children who are caught between two parents in a Family Law Act dispute.
161. The DHHS proposes that the father's contact with the children should be supervised. Supervision of contact usually occurs because there is an imminent or immediate risk of harm to the child if it is not supervised. In this case there is no evidence that the father poses an immediate or direct risk of physical or emotional harm to the children. There is however an issue as to the need for reintroduction of the children, particularly Alia, to contact with their father. That is not disputed by him. This is because of the time in which there has been no contact and due to the mixed message the children have been receiving in relation to their father. This of itself is not a protective concern which would warrant either proof of the protection applications or the making of protection orders.

162. There is no reason for this Court to consider that the Federal Circuit Court is not a jurisdictionally competent and effective jurisdiction to consider the best interests of the children in the context of such a dispute and disruption, including the contact issue.
163. The fact of these impacts upon the children is not of itself sufficient for this Court to conclude that its protective jurisdiction is appropriately invoked.

**The DHHS' investigation**

164. Allegations do not convert to fact merely by dint of their repetition. Yet that is what appears to have occurred, at least insofar as the DHHS' investigation was concerned, in relation to the most significant and disturbing allegations made in this case. It was an approach then pursued in relation to the majority of allegations against the father.
165. The evidence of the protective workers responsible, together with their managers and supervisors, for investigating protection risks was that they accepted the truth of the allegations made against the father without question. Their evidence was also that they received advice of a CRAF risk assessment from a Family Violence Agency which identified an 'extreme risk that the father would kill the mother and the children' and that they accepted that material on its face, without question and without further investigation as to the accuracy of the information informing that risk assessment. Their evidence was also that they had not received a copy of that risk assessment at any time prior to these proceedings.
166. The proper approach to investigation is not merely one of compiling allegation upon allegation and relying upon their cumulation as establishing a fact. An allegation does not constitute evidence of a fact or make the allegation a fact. What is missing in this case from the inception, insofar as the risk by the father is concerned, is any analysis by the DHHS of inconsistencies in accounts, or any analysis of the lack of evidence or any accounting or consideration as to why it is said that the father's explanations could not be truthful.

167. The DHHS has a role in relation to the protection of children. It is required to act fairly in the investigation of a matter. In this case there has been little investigation of the veracity of the allegations made by the mother against the father, the father having been spoken to only twice about the allegations, once on 1 May 2019 by Ms East and once on 5 September 2019 by Ms White shortly before the commencement of the hearing in this Court. This is disturbing in circumstances where the background to the case is a bitter relationship breakdown and a Family Law Act proceeding. The use to which these interviews with the father were put and the analysis of his information was also problematic.
168. I accept that it is appropriate for a support service such as Women's Health West to accept the information provided to it by a client on its face and without interrogation. They are a support service, not an investigative agency. It is an entirely different matter for the DHHS to take such a position in relation to investigating allegations in protection proceedings.
169. The evidence of the following witnesses in the proceeding identifies the flaw in the approach taken by DHHS to this investigation. I have extracted some of the more pertinent matters.
170. Ms East was the protective worker allocated to the case between February 2019 and 27 June 2019. Initial intake for DHHS was 31 January 2019; however it was many months before the protection applications were brought. In that period the father continued to have unsupervised contact with the children pursuant to the Federal Circuit Court Orders. Ms East's evidence was that although a number of objective discrepancies existed in relation to some of the significant allegations, she did not advise those undertaking or reviewing the risk assessment of these discrepancies. When asked why she did not she answered: *"Because I didn't. Because we proceed on the basis that the allegations are true"*. Her evidence was that she had not seen the WHW CRAF nor had she at any time independently assessed the allegations being made against the father. When asked if there had been investigation of the allegations as to the children being abducted to Sudan, the witness said: *"Not specifically, I felt Ms Deng's word was sufficient"*.

171. Ms East accepted the proposition that she was not willing to accept the father's word that events had not happened but was willing to accept the mother's word that it had happened. She explained that this was because in her view the father had not "*engaged with her enough*" and that "*he disagreed, but he didn't provide me with evidence to disprove them*". This is a difficult proposition to accept in circumstances where there had been difficulty for the father in obtaining meetings with the DHHS and after a meeting in early May 2019 there was no further interview arranged with the father until September 2019 despite numerous allegations continuing to be made.
172. Ms East also stated that she had assessed that the father should not have contact with the children because: "*He had not been held accountable by the Criminal Courts*". She agreed with the Team Leader Ms Dallas's assessment in this regard. This was in relation to the alleged breaches of IVO, which the witness conceded in evidence, as did Ms Dallas, were not supported by the objective evidence. The IVO breach charges were ultimately withdrawn by Victoria Police in November 2019.
173. Ms East notified the father by telephone voicemail on 12 April 2019 that his contact was suspended on the basis of escalated risk and safety issues. The father rang DHHS on 13 April 2019 and asked to meet as he had been told that contact would not resume until there was a meeting. Two appointments were made with him and DHHS did not attend. Father called the office 6 times but did not get an appointment to meet until 1 May 2019.
174. Exhibit 15, tendered through Ms East, reported that there were additional allegations of family violence and escalation of risk between 1 May and 10 May 2019. When asked by counsel what the significant increase in risk or additional incidents of family violence were, the witness referred to the mother advising her on 7 May that men had attended the home on 4 May 2019. Otherwise the witness was unable to identify any specific incident of family violence escalation by the father. She referred to the mother having reported that the father had attended Alia's school at drop-off time but stated when she spoke to the school nurse it became apparent that the father had not attended the school. She conceded that there was no evidence that the father had ever attended contrary to any order or agreement.

175. Ms East accepted that the father had agreed to a voluntary suspension of contact in view of the risk concerns raised. She also accepted that the father had in this context attended upon a psychologist Dr Jenny Point on 8 May 2019 for risk assessment in an attempt to fulfil the DHHS requirements in order for contact to resume.
176. Dr Point reported:
- “Mr Sakin was well-presented, positive, rational, and articulate. He explained his family’s complex and difficult circumstances in a coherent manner, exhibiting appropriate emotionality. Mr Sakin expressed deep concern for his children’s well-being and that of his ex-wife. Mr Sakin described his approach to parenting, which involved age appropriate routines, activities, and guidance. He appeared to have mature insight regarding the developmental needs of an early teenage daughter. Mr Sakin exhibited warmth when describing his relationship with his children. From today's presentation, I found no indications or warning signs of abusive/ violent language, cognition intention or behaviour from Mr Sakin towards his children or ex-wife.”<sup>24</sup>
177. This was significant material for the investigation. Ms East conceded that she did not ask the father for information regarding this attendance and, because no further meeting was arranged, he didn’t have any opportunity to provide it to her.
178. Ms East also conceded that her observation in her report<sup>25</sup> that Sadiq was engaging with a speech pathologist ‘*despite Mansour*’ was not based on any inquiry of the speech pathologist or doctors as to the father’s involvement. It was based entirely on an acceptance of the mother’s account and the father’s response to this issue was entirely dismissed by the DHHS without any further inquiry being made.
179. Ms East was also unaware that in March 2019, at the same time allegations were being made by the mother that the father was violent towards the children, the mother had asked the father to look after the children on additional days. Nor was she aware that the father had refused at least one request because of concern that it might breach the IVO in place at the time.

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<sup>24</sup> Exhibit 23.

<sup>25</sup> Exhibit 18.

180. Ms Dallas' evidence was that as team manager she relied upon Ms East's reports. Her evidence was that a lot of the allegations have been supported by Family Violence experts and services and they informed her own assessment.
181. Ms Dallas's further evidence was that she was not aware that the first notification to Child Protection on 31 January 2019 was in relation to the mother assaulting Alia.<sup>26</sup> Her evidence was that in any event that inquiry line had been closed and, as it was historical, was not a matter considered by her to be relevant to this application.
182. Ms Dallas's evidence was that she had never seen the CRAF risk assessment which was relied upon to conclude that the father was an extreme risk of committing homicide and filicide. Her evidence was that she accepted WHW assessment as they are the Specialist Family Violence service. She did not directly speak to the WHW person. Ms Dallas' evidence was that she did not speak to police about what had been reported to them, did not inquire in relation to the Family Law Act proceedings and had no relevant information from WHW as to the risk assessment. Her evidence was that she accepted the allegations of the mother and the children on its face and did not consider it necessary to inquire further.
183. Ms White was the allocated protective practitioner from 27 June 2019 until the conclusion of the hearing. Ms White met with the father for the first time on 5 September 2019. Ms White's evidence was that she did not independently investigate the allegations against the father. The reasoning behind this appeared to be that she was proceeding on the basis that the allegations were true. When asked about the allegation of significant risk that the father would kill either his wife or the children, Ms White replied: *"That allegation was not made by me or someone from DHHS, but was made by WHW"* and that the DHHS were no longer seeking to rely upon that allegation or the events which were said to found it, in particular the allegations that the father was tracking the mother. She maintained however that she was not in a position to accept that the allegation was not truthful despite there being no evidence to support it. She said: *"I can't say that, I can just say that the*

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<sup>26</sup> See Exhibit 9.



*evidence does not support that allegation.*” She did however ultimately concede that in the face of independent evidence that establishes that what the mother says did not happen at all *“it does give cause to doubt the mother’s truthfulness”* and she later conceded that *“perhaps there was a chance the mother was delusional”*.

184. During the course of the hearing of this matter further allegations were made to the effect that the father was attending upon members of the community and agitating against the mother. In particular this was in relation to a community leader Dr Ibrahim. This matter was reported by the mother as having been relayed to her by a community member. Ms White had no case notes in relation to her conversation with the relevant community member. She did not speak to Dr Ibrahim who was the direct participant in the conversation. The father denied providing documents to Dr Ibrahim in this proceeding and was never asked by the DHHS about this matter either directly or through his solicitor. His evidence was that he met with Dr Ibrahim at Dr Ibrahim’s request and that he had limited discussions with him on that day relating to concerns being raised by Dr Ibrahim.
185. Further allegations were made by the mother in October 2019 that the father may have accessed the mother’s email and this was said to be based on a feeling the mother had. Ms White acknowledged that she had concerns about this allegation but, despite this concern, this did not for her translate into a concern as to the veracity of the wider allegations that had been made by the mother.
186. The evidence of the WHW worker and the Co-Health Worker was that they undertook a CRAF risk assessment. The assessments were based upon the information provided by the mother. It was not their role to interrogate or to investigate the information provided by their client. Their evidence was that they had not been informed of a number of matters such as that the mother had not reported some of the allegations as to breach of IVO to police. Ms Alice of Co-health was unaware that in the Federal Circuit Court on 3 February 2019 the mother requested that contact arrangements change from the paternal uncles transporting the children to the father transporting the children. She was unaware that the father had ended the relationship, that the separation had occurred over 12 months prior to

her involvement and that the father had financially supported the mother's studies and her registration efforts in Australia.

187. Ms Tina of Women's Health West gave evidence that she had been involved with the mother since June 2019 and that in that time there had been 385 contacts with the mother. Her evidence was that the mother had engaged well with ongoing risk assessment and safety planning and she attended appointments and was respectful and well mannered. She reported that her service had provided various referral, financial and other supports for the mother. She described her understanding of the mother's experience of family violence and in particular that her risk assessment was based on the evidence of risk due to Ms Deng's reports.
188. Her report was that there was a 'high likelihood of violence escalating again'. The current risk indicators were based on Ms Deng's reports of harm or threats to harm her, threats to kill her, threats to the children, stalking of Ms Deng, sexual assault of Ms Deng and obsessive jealousy in the father. This was notwithstanding the evidence that may exist to the contrary. She stated that her role is not an investigative role. She described her role as: *"not to say it's accurate or not, my role is to believe women."*
189. Her evidence as to the CRAF risk assessment which founded the fatality risk allegation in June 2019 was that it was based on historical allegations of violence perpetrated by the father against the children. This is notwithstanding that in the service's intake document in January 2019<sup>27</sup> the mother had reported that there was no physical risk. When challenged as to the veracity or accuracy of some of the allegations, including as to stalking or phone tracking, Ms Tina again stated that: *"it was not our role to assess whether an allegation is true or false"*.
190. The evidence of these witnesses is relevant to first reporting and I have taken it into account in this regard in assessing the evidence and in particular the mother's evidence where relevant. However, the above extracts identify the issue that plagued the DHHS' investigation. The above services are not investigators and notwithstanding the conclusions as to risk reached by these support services, they

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<sup>27</sup> 29 At page 14 of 18.

could not be relied upon to conclude that the allegations against the father had been proven and did not require investigation.

191. The flaw in the DHHS' investigation was threefold. Firstly, as a matter of policy the word of one parent over another was largely accepted without consideration of the objective circumstances. Secondly, it appears that the burden or responsibility was shifted from the DHHS to investigate to the father to disprove in relation to almost all matters. Thirdly, the DHHS also appears to have been driven in its approach by risk assessments made by third parties that did not have an independent investigative role, without any independent analysis by DHHS of their accuracy. This approach has had a seriously deleterious effect upon the quality of the material produced in reports and also upon the quality of the evidence before this Court.

#### **Proof of the protection applications**

192. Counsel for the father, in written final submissions, contended that the DHHS case was amorphous, commencing with the allegation that the father was likely to kill the mother and/or children. Counsel submitted:

“As the evidence eroded any good faith basis for this assertion, the DHHS has sought to reorientate its case, without clearly articulating that upon which it relies. The father has thus been subjected to a moving feast, where allegations that had been made were not substantiated by evidence have been abandoned by the DHHS and mother, only to be supplanted by new allegations.”

193. I agree with this construct and am satisfied that it reflects the nature of the case put by the DHHS against the father.
194. It is clear from the Family Law Act materials that there is a great deal of conflict between the parents. It is also clear that this conflict is affecting the children, in particular Alia. The varying parenting views, debate about schools and school attendance, issues regarding the involvement of therapists with the children and financial disputes are all common matters managed in a therapeutic manner by the Family Law Act Court in exercising its functions. They do not of themselves become child protection matters unless there is an extremity about their impact or effect which has caused or is likely to cause significant physical or emotional damage to the children.

195. I am not satisfied that the parental conduct of itself in this case is sufficient to found any of the protection applications. This is particularly so in light of my findings as to the allegations against the father. I do not consider that Alia has been assisted by the involvement of Child Protection in this matter. I am satisfied that the approach to this matter by the DHHS has resulted in Alia becoming a participant in the dispute between the parents and to some extent an advocate for one or other of her parents. This is the very sin which the Family Law Act process is designed to avoid and so too should it be avoided in Child Protection investigations and proceedings.
196. In this case I have determined that the matters raised and relied upon by the DHHS as establishing proof of the protection applications are not proven on the evidence before me. The fact that untrue or unsustainable allegations have been repeated on a number of occasions, or reported to a number of people, or pressed by a party or participant for a lengthy period of time (with consequential negative impact on the wellbeing of the children) does not, by lapse of time or by persistence, convert that circumstance into a valid protection issue.
197. In summary, the totality of the evidence I have heard – the most salient parts of which are detailed in the earlier parts of this judgment – has not satisfied me that any of the three children have suffered in the past, are suffering now or are likely to suffer in the future-
- significant harm as a result of physical injury; or
  - emotional or psychological harm of such a kind that their emotional development is or is likely to be significantly damaged.
- Nor has the evidence satisfied me that their parents are unlikely to protect them from such harm in the future.<sup>28</sup>

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<sup>28</sup> See ss 162(1)(c) & 162(1)(e) CYFA. In relation to the likelihood of such harm in the future see s 162(3) CYFA which imposes a burden of proof of future risk which is lower than the balance of probabilities and which accords with the dicta of Lord Nicholls of Birkenhead (with whom Lord Goff of Chifley and Lord Mustill agreed) that ‘likelihood’ in broadly similar English child protection legislation meant “a real possibility, a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case”: see *In re H. & Others (Minors)(Sexual Abuse: Standard of Proof)* [1996] AC 563 at 585. See also the judgments of the High Court to similar effect in *M v M* (1988) 166 CLR 69.

198. I am satisfied that the issues surrounding the children's best interests are capable of being resolved by the various interventions and powers exercised by the Federal Circuit Court in its Family Law Act jurisdiction.
199. There are real issues with the continued involvement of the DHHS in this matter as due to the nature of their investigation they were correctly seen by the father to be partisan and unfair in their approach. Father continued to be concerned that he would not be treated fairly by DHHS workers and that the information which had been maintained by the DHHS on its records would continue to taint any future protective worker or investigation. For this reason, he refused contact supervised by the DHHS in the adjournment periods. I accept that this was a valid concern.
200. This is also an additional reason why it is in the best interests of the children that the matter return to the Family Law Act Court for determination.
201. A number of issues between the parents remain to be determined and can only be determined in the Family Law Act Court as they relate to financial contribution and division of assets. I am satisfied that the resolution of these issues in the Family Court domain is likely to more effectively bring about the resolution of the parenting issues which remain between the parties in the best interests of the children.
202. For the reasons I have set out, I am not satisfied that the DHHS protection applications are proven for any of the three children. It follows that the protection applications must be dismissed. Consequently, there is no basis for the Court to consider the making of a protection order.<sup>29</sup>
203. The matter is to return to the Federal Circuit Court at the next available hearing date. The father has undertaken to this Court through his counsel that he will not seek to exercise the contact orders set out in the interim consent orders dated February 2019 until such time as the matter has returned to the Federal Circuit Court. I accept that undertaking. Otherwise I make no further orders in the protection proceedings.

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<sup>29</sup> See ss 274(a) & 275(1) CYFA.

**Intervention Order proceedings**

204. Before the Court can make a family violence intervention order against the father, I am required to be satisfied that he has committed family violence as defined in s.5 of the Family Violence Protection Act 2008.<sup>30</sup> I am also required to be satisfied that the alleged impugned conduct is likely to continue.<sup>31</sup>

205. Earlier in this decision I have set out my findings of fact in relation to-

- the allegations of family violence made by the mother and said to have been disclosed by the children; and
- the allegations of breach of IVO (which if proven would be relevant to the question of making a family violence intervention order).

206. There was extensive consideration in the protection proceedings as to allegations regarding stalking, phone tracking, emotional and financial and breach of interim orders and limited reliable material in relation to physical and sexual allegations. There was extensive examination and cross-examination about the reporting to police of the allegations made by Ms Deng. There was significant delay in reporting of allegations, a failure to report allegations, inconsistent reporting of allegations, inconsistency in reports made to police as they translated in reports made to others and evidence contradicting the allegations. I have set out these matters in some detail in this judgment. On the basis of my findings in the protection proceedings, I am not satisfied on the balance of probabilities that Mr Sakin has committed family violence either against Ms Deng or against any of the three children.

207. Accordingly, I am not satisfied that the evidence has established the grounds for the making of a family violence intervention order, either in relation to Ms Deng or in relation to the three children. I dismiss those applications.

208. Parties are directed to prepare minutes consistent with this decision.

Magistrate Parkinson 19 March 2019

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<sup>30</sup> Hereinafter 'the FVPA'.

<sup>31</sup> See s 74 FVPA.

## ANNEXURE 1

## LIST OF EXHIBITS

Court ref. 4770/2019 4771/2019 4772/2019
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Department of Human Services v. Sakin Siblings
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Designation	Description of Exhibit	Tendered By	Date
1	Chronology Case Outline dated: 16/09/2019	DHHS	16/09/2019
2	Chronology Case Outline dated: 13/06/2019	DHHS	16/09/2019
3	VPOL Statement of Ms Deng dated: 10/04/2019	DHHS	16/09/2019
4	VPOL Statement from Alia Sakin dated: 20/08/2019	DHHS	16/09/2019
5	VPOL Statement relating to breach of IVO dated: 13/09/2019	DHHS	16/09/2019
6	Interim IVO Applicant: Mariam Deng and Respondent: Mansour Sakin dated: 16/11/2018	Mo	16/09/2019
7	Document dated 22/06/2019 Interim IVO – Variation made at Applicant: Mariam Deng and Respondent: Mansour Sakin	Mo	16/09/2019
8	Text message from Alia’s phone dated: 06/04/2019 time 8:18am	Fa	16/09/2019
9	Disposition Report – Largely Authored by Ms Sarah Dallas dated: 20/06/2019	DHHS	16/09/2019

10	VPOL Statement made by Mariam Deng - Senior Detective Eisenhower dated: 31/07/2019	DHHS	16/09/2019
11	21.5.2019 5:26pm CRIS note regarding Mental Health Nurse	Fa	17/09/2019
12	CRIS note dated 14/2/2019 2:30pm- Attempted Family Home Visit	Fa	17/09/2019

13	Correspondence from Ms Ditchburn dated 14/7/2019	DHHS	17/09/2019
14	Protection Report authored by Hannah Westmore dated 19/6/2019	DHHS	18/09/2019
15	Addendum Report dated 10/5/2019, subject to amendment, authored by Hannah Westmore	DHHS	18/09/2019
16	First visit Case note dated 14/2/2019	DHHS	18/09/2019
17	Case Note visit to Mother dated 12/4/2109	DHHS	18/09/2019
18	Case note dated 1/5/2019 at 11.20am interview with Mr Sakin	DHHS	18/09/2019
19	Case note dated 8/5/2019 at 11.36am RE interview with Alia Sakin	DHHS	18/09/2019
20	Child inclusive conference memorandum dated 29/1/2019 authored by Ms Higham	DHHS	18/09/2019
21	2 page Letter dated: 07/05/2019 – Authored by Helen East RE: breach of IVO	Fa	19/09/2019
22	CRIS NOTE dated: 14/06/2019 5pm Authored by Sian Wise	Fa	19/09/2019



23	Correspondence from Crooks Counselling Service by Jenny Point dated: 08/05/2019	Fa	19/09/2019
24	Short Form Addendum Report Authored by Mary White dated: 31/07/2019	DHHS	20/09/2019
25	Letter addressed to Senior Registrar at the Melbourne Children's Court dated: 27/08/2018 Authored by Mary White	DHHS	20/09/2019
26	CRIS NOTE dated: 10/09/2019 at 10:30am – Email from Psychotherapist RE Father	DHHS	20/09/2019
27	CRIS NOTE dated: 05/09/2019 – Meeting with Father and Mary White	DHHS	20/09/2019
28	CRIS NOTE dated: 23/07/2019 at 1:30pm regarding visits to Police Station with attachment document described as 'Chronology: dated: 01/09/2018	DHHS	20/09/2019

29	CRIS NOTE dated: 11/09/2019 Home visit	DHHS	20/09/2019
30	CRIS NOTE dated: 12/09/2019 Home visit	DHHS	20/09/2019
31	Short form addendum report dated 27.10.2019	DHHS	28/10/2019
32	Case note dated 3.10.2019 at 1pm subject meeting with WHW & Mariam Deng	DHHS	28/10/2019
33	Case note dated 24/10/201 at 9.30am titled care team and professionals meeting	DHHS	28/10/2019
34	Case note dated 23/10/2019 client visit at 2.45pm	DHHS	28/10/2019
35	Case note dated 24/10/2019 12.17pm conversation with childcare	DHHS	28/10/2019

36	Exchange of emails dated 25/10/2019 in relation to Men's Behaviour Change program	DHHS	28/10/2019
37	Case note dated 23.10.2019 in relation to meeting and phone to Maternal Uncle in Sudan	DHHS	28/10/2019
38	Hand written tally of contacts to persons nominated by each parent	DHHS	28/10/2019
39	List of contacts provided to the Department by the Father's solicitor	DHHS	28/10/2019
40	Case note dated 21/10/2019 at 11am, titled PCF Mitch Eisenhower – updates regarding IVO breaches	DHHS	28/10/2019
41	Case note dated 23/10/2019 email from Mother regarding completion of our Kids Program	DHHS	28/10/2019
42	CRIS note of conversation between Father and Ibrahim dated: 11/10/2019 at 2.09pm authored by: Ms White	Fa	29/10/2019
43	Case note of email to Tina – Father asking Mother's friend about her whereabouts Dated: 08/10/2019 at 3.59pm (contains 4 pages)	Fa	29/10/2019
44	CRIS note 3 -age document with Email from Pathena Dated: 9/10/2019 at 10.31AM	Fa	29/10/2019

MFI 2	LEAP notes authored by: Constable Celesti dated: 08/05/2019	Fa	29/10/2019
45	Unredacted case note authored by: Ms White on 27/08/2019 at 8.15pm summary of 2-page document	Fa	30/10/2019
46	School file note dated: 18 July 2019 re: Alia (single page document)	Fa	30/10/2019
47	Covering letter from COhealth Authored by: Ms Alice re: Mariam Deng, Dated: 18/09/2019	DHHS	30/10/2019

48	Progress notes 20 pages Authored originally by: Ms Alice	DHHS	30/10/2019
49	Bundle of notes authored by: Ms Knight containing 14 pages	DHHS	31/10/2019
<u>50</u>	Letter from Dr Choy to Dr Misso dated 09/05/2017	DHHS	03/02/2020
51	Paediatric Report dated 09/06/2017 regarding Sadiq authored by Dr Misso	DHHS	03/02/2020
52	Paediatric Report dated 19/06/2017 regarding Sadiq authored by Dr Misso	DHHS	03/02/2020
53	Paediatric Report dated 17/08/2017 regarding Sadiq (Final) authored by Dr Misso	DHHS	03/02/2020
54	Addendum Report dated 28/01/2020 authored by Monique White	DHHS	03/02/2020
55	Bundle of 3 case notes dated 30/01/2020 and 31/01/2020 entered by Mary White	DHHS	03/02/2020
56	Email with a course of correspondence dated 13/11/2019 2:41pm between 2 parties sent from CPLO regarding Dr Chol	Fa	03/02/2020
57	Bundle of 'Notice of Orders' dated 13/11/2019 from Werribee Magistrates Court	Fa	03/02/2020
58	Screenshot of a text message from Father's phone dated 13/11/2019	Fa	03/02/2020
59	Case Note regarding Intake Report dated 14/09/2018	Fa	03/02/2020
60	Case Note dated 25/10/2019 at 5:12pm created by Ms White	Fa	04/02/2020

61	Passport extract expired 11/09/2017	Fa	04/02/2020
62	Report by Ms Reach dated 16/10/2019	DHHS	04/02/2020
63	Report 13/01/2020 authored by Ms Reach	DHHS	04/02/2020
64	First steps to prep notes dated 20-21/01/2020	DHHS	04/02/2020
65	Report in relation to Sadiq by Ms Marks dated 10/09/2019	DHHS	04/02/2020
66	Report by Ms Marks Occupational therapist dated 30/01/2020	DHHS	04/02/2020
67	Mother's My Health psychologist referral dated 25/7/2019	DHHS	05/02/2020
68	Schedule of Mother's sessions with psychologist Ms Huynh	DHHS	05/02/2020
69	Clinical notes by Psychologist RE Mo (dated to 31/01/2020; 26-pages)	DHHS	05/02/2020
70	Family Violence Risk Assessment dated 28/01/2020 authored by Ms Tina	DHHS	05/02/2020
71	Report authored by Dr Devlin (consulting paediatrician) dated 12/02/2019 RE: educational support	DHHS	05/02/2020
72	Report authored by Dr Devlin (consulting paediatrician) to Dr Awaba (general practitioner) dated 12/02/2019	DHHS	05/02/2020
73	Report authored by Dr Devlin (consulting paediatrician) to Dr Awaba (general practitioner) dated 15/11/2019	DHHS	05/02/2020
74	Bundle of consultation notes of Dr Chol (General Practitioner) RE Alia	DHHS	06/02/2020
75	Letter from Dr Chol (General Practitioner) to Dept. of Housing dated 11/04/2018	DHHS	06/02/2020

76	CRIS Note dated 10/09/2019 @4:06pm authored by Ms White RE discussion with Dr Chol (General Practitioner)	DHHS	06/02/2020
77	Psychologist referral from Dr Chol (General Practitioner) dated 19/03/2018	Fa	06/02/2020
78	Letter dated 19/03/2018 from Dr Jasmus to IPC Health	Fa	06/02/2020
79	ICP Health proforma dated 22/03/2018 from IPC Health to Dr Jasmus	Fa	06/02/2020
80	Federal Circuit Court Affidavit sworn by Mother dated 04/07/2018	Mo	07/02/2020
81	Federal Circuit Court Orders dated 13/02/2019	Mo	07/02/2020
82	Tenancy receipts of True Value Real Estate	Fa	10/02/2020
83	Notice to tenant of rented premises dated 23/08/2018	Fa	10/02/2020
84	Child support assessment notice issue date 10/10/2018	Fa	10/02/2020
85	Federal Circuit Court Affidavit sworn by Mother dated 19/12/2018	Fa	10/02/2020
86	Letter on VICLAW Letterhead dated 10/12/2018 RE Federal Circuit Court	Fa	10/02/2020
87	Notice of Risk for Federal Circuit Court signed by Mother dated 09/07/2018	Fa	10/02/2020
88	Letter from Western Health addressed to Family General Practitioner Forsyth Medical dated 23/05/2019	Fa	10/02/2020
89	BAKAL worldwide Money Transfer 6 pages long	Fa	14/02/2020
90	New Patient registration forms Palmers Medical Centre (4 pages)	Fa	14/02/2020

91	NAB Classic Banking Statement extract (2 Pages)	Fa	14/02/2020
92	Bangkok medical appointment card 18/03/2018	Fa	14/02/2020
93	Affidavit dated 13/09/2018 from Federal Court	Fa	14/02/2020
94	Affidavit of Father's Brother dated 13/12/2018 From Federal Court	Fa	14/02/2020
95	Affidavit 19/12/2018 From Federal Court	Fa	14/02/2020
96	Document described as recorded interview between Mansour Sakin and VPOL	Fa	14/02/2020
97	Email RE prep orientation Sadiq	Fa	14/02/2020
98	Australian Pharmacy Council Payment receipt	Fa	14/02/2020
99	Certificate of Completion Men's Behavioural Change Program dated 28/10/2019	Fa	14/02/2020
100	Screenshot of the Father's phone dated 11/09/2019	Fa	14/02/2020
101	My Mob App screenshots from Father's phone from January 2019	Fa	14/02/2020
102	Photo album produced by Father	Fa	17/02/2020
103	CRIS Note dated 13/9/2019 at 2:06pm	DHHS	17/02/2020
104	Bundle of transcribed text messaged dated from 20/3/2018 (Arabic to English; Screenshots and translations)	DHHS	17/02/2020
105	Notice of Risk for Federal Circuit Court signed by Father dated 14/12/2018	Fa	18/02/2020

106	Federal Circuit Court 20/12/2018 Interim Order	Fa	18/02/2020
107	Federal Circuit Court 04/10/2018 Interim Order	Fa	18/02/2020
108	Federal Circuit Court 03/02/2019 Interim Order	Fa	18/02/2020
109	Federal Circuit Court 11/07/2019 Interim Order	Fa	18/02/2020





## ANNEXURE 2

**RULING – SAKIN SIBLINGS**

1. This is an application made by the DHHS to admit into evidence three documents, in relation to two of which it is clear that no opportunity will be available to the other parties to cross-examine upon and in relation to one it is not proposed that the author be called, but there is a possibility that they may be able to be called for cross examination.
2. This court is not bound by the rules of evidence and by S215(1)(d) ‘may inform itself in such manner as it thinks fit, despite any rules of evidence to the contrary’.
3. The information before the court can only form the proper basis for the decision if it is ‘logically probative, reliable and relevant’, and parties have been afforded the opportunity to comment on it’ - *Secretary DHHS v Sanding* 2011 VSC. In that decision Bell J stated:

Hearsay evidence is admissible if it is fairly reliable, although the weight to be given to it will need to be considered. Evidence which is not the best evidence may be admitted, but if it is challenged and the issue is important it is the best evidence which may be required. The court or tribunal may act on written submissions containing assertions of fact, and statements made from the bar table, by the parties or their legal representatives, but if the asserted facts are in serious dispute and concern important issues, it may be necessary to insist on much more.
4. It is apparent from the authorities that the words ‘inform itself in such manner as it sees fit’ are subject to the requirement to accord procedural fairness. *Weinstein V Medical Practitioners Board* [2008] VSCA.
5. I am grateful to Counsel for the DHHS for provision of a number of authorities to which I have referred.
6. I have also had regard to the observations of Mason J in *Kioa v West* (1985) 159 CLR 550 (582) that a party is entitled to know the case sought to be made against him and be given the opportunity of replying to it.
7. In *Sanding’s Case* Justice Bell stated:

“In a jurisdiction where the interests of the child are paramount, the “particular content and application of the rules of natural justice will reflect the nature of that jurisdiction”. In some custody proceedings, some qualifications on the principles of natural justice may be necessary to ensure paramountcy of the welfare of the child, but only

‘so far as is necessary to avoid frustration of the purpose for which the jurisdiction is conferred’.

8. In determining this aspect of the proceeding I have had regard to these decisions.
9. The documents about which I am ruling are:
  - A document described by the DHHS in a CRIS case note as: ‘Translated Police Medical Reports’ dated 4 May 2019; (An earlier criminal examination document dated 20/11/2018 is no longer relied upon as relevant to the proceeding).
  - A document also attached to the above CRIS case note which is dated 4/5/19 and appears to be correspondence relating to a passport control issue and:
  - A document which is described as an email from the mother’s brother.
10. The first two documents are electronic version only, there is no original or hard copy document provided and the images appear to be photographs of documents, not documents transmitted by any official agency. There is no capacity to examine the original documents and the translation agency did not apparently have originals before it but rather the transferred images.
11. It is submitted by counsel for the father that there is difficulty with the translation and its accuracy and no capacity to test this issue. It is submitted that the documents which have been transcribed by a translator service are not attested to as true and correct in any formal sense.
12. There is no identification of the translator, their NATI rating or otherwise their qualifications. The documents from which they have been translated, that is the original have not been sighted, nor attested to as true copies in any form. On this basis counsel submits that the translation cannot be accepted. I am informed that the agency is an accredited agency. I do not believe that this issue of itself is sufficient to prevent the admission of the documents. It could be remedied by evidence easily able to be called and relates to weight.
13. In this ruling it is necessary to consider the nature of the documents and in this case to consider the detail of their contents. It is open to this court to receive hearsay evidence and it does so regularly, including in this current proceeding through witnesses and documents. It is however necessary that the material received as hearsay be logically probative of the issues in the proceeding, reliable and relevant.
14. The police documents, if they may be described as that, are vague and imprecise as to their origin, purpose.

## 15. Document 1

Is translated as a 'Criminal Examination Form'.

There are a number of headings on the document: By the police; Examination Required; By the Doctor; Doctor Decision.

## 16. Counsel for the DHHS submits that the document is relevant to an allegation made by the mother that the father has arranged for persons to attend upon her brother's home in Khartoum Sudan and to threaten and assault him for her involvement in legal proceedings in Australia.

## 17. There are a number of issues as to the probative value of the document:

- The document purports to identify a victim of what may be an assault, although this is not stated on the document.
- It further refers to injury sustained by that person. That person is described as [M.. M..] and I have been informed he is the brother of the mother in these proceedings.
- In the section headed 'Doctor's decision' the form filler is requested: "In case of harm, describe the condition and the possible cause". The injury is addressed in the text and treatment provided addressed, but there is no reference in that material apparently provided by the doctor, to any possible cause.
- The allegation is that the father in this proceeding instructed or co-opted persons in the Sudan to assault and threaten the mother's brother. Nowhere in the document is there a narrative as to the events, any allegation made in relation to the father in this proceeding.
- Nor is there any information under the title 'examination required' as to the nature of the police inquiry or investigation. There is a silence in the document as to any particular allegation against the father in these proceedings.
- Nor is there any information identifying the investigating police officer.
- No material therein allows the court to reach any conclusion as to any fact in issue in this proceeding without having to resort to interpolation and extrapolation.

## 18. Document 2 - The passport management Document

A further document which appears to be an internal form advising as to passport management and intervention. Interpreted as:

Dated 4 May 2019 from Head of Local Police East of the Nile, Hillat Koko Police Station. Records Division.

This document is interpreted as: Subject: Prohibition of the accused: Mansour Sakin [illegible]'. There is no explanation as to what was illegible.

It asks that the above mentioned person be prohibited. That it relates to a report under the criminal law and the investigating officer is named.

19. There are a number of issues as to the probative value of this document:
- This document does not on its face relate to the former medical examination document;
  - It is not apparently authored from the same police officer or police station;
  - No material therein allows the court to reach any conclusion as to any fact in issue in this proceeding without having to resort to interpolation and extrapolation;
  - There is no person available to the court to provide any official context to this material and there is contest as to its purpose and its provenance.
20. Mr Halfpenny submitted that because the Sudan is not a structurally or technologically advanced country that I ought admit the material into evidence and accept the material on its face.
21. There are two difficulties with that proposition. The first relates to the capacity to understand from the face of the materials just what they do represent. The second is that this country has a system of common law and statute based court proceedings. The rules of natural justice prevail over the difficulties which might be experienced in calling evidence or dealing with evidence from other jurisdictions. I do not accept that there ought be a reduction in the standard of treatment of evidence on the basis that the other jurisdiction is not technically or structurally at one with our own.
22. However I accept that the question is whether the evidence is so lacking in probative value or relevance to the proceeding that it ought be excluded. I am satisfied as to the Police documents medical examination and passport control that they are not probative of any issue in this proceedings, that they are unlikely to advance the court's knowledge or understanding of the facts in issue and that there would be significant unfairness to the father if they were admitted as he would be unable to examine in any serious manner any of the contentions sought to be made by the DHHS in relation to those documents. I rule those documents as inadmissible.
23. Document 3 - In relation to the email document described as an email from Mr [M.. M..], the mother's brother who resides in Khartoum. That document contains a number of allegations, but it does not appear to be an official record of a police statement.
24. Its provenance and how it came to be produced and when, is not clear from the document. The document contains allegations that the brother had been assaulted and threatened by reference to his sister conducting court proceedings in Australia. This material on its face appears relevant to the allegations made against the father in these proceedings.

25. The allegations being made in this proceeding that the father arranged or facilitated this alleged assault and threatening behaviour, is a significant allegation in this proceeding and relied upon by the DHHS to draw conclusions as to his risk profile as a parent. The father is entitled to cross examine upon such allegations and should not be faced with a situation where he is not able to test these allegations being made against him directly with the person making the allegations. It is insufficient in a fairness sense to simply allow another person to relate information as to the circumstances of the alleged incident when they were not present and when they have a clear interest in the outcome of the proceedings which differs from that of the subject of the allegations.
26. I am satisfied that the material is relevant to the proceedings. I am not satisfied that there is insufficient technology or capacity to be able to call the witness to give evidence. There are mobile phone numbers provided by him, the potential witness has access to emails and other technology.
27. I have considered whether I should admit this material and resolve the matter by indicating it would be a question of weight to be accorded it. I am satisfied in this case the document contains allegations against a party which are too serious to be resolved in this manner. In deciding in this way, I have considered whether the best interests of the children in relation to the protective concerns require the dilution of the principles of natural justice. I am not satisfied that they do.
28. My ruling is that this document, the email document is admissible only if the author of the email is called to give evidence in the proceedings.
29. I have earlier ruled that the other documents are not to be admitted in evidence in the proceeding.

Magistrate K.M Parkinson.

20 September 2019