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[SQUARE BRACKETS].

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**IN THE FAMILY COURT  
AT AUCKLAND**

**I TE KŌTI WHĀNAU  
KI TĀMAKI MAKĀURAU**

**FAM 2015-090-000655  
[2020] NZFC 11292**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[RACHEL HUGHES] Applicant
AND	[DOMINIC TRASK] Respondent

Hearing:	14-16 July 2020 17 September 2020 (teleconference)
Appearances:	I Blackford and N Davies for the Applicant S Waapu & A Castle for the Respondent J Surgenor Lawyer for Child
Judgment:	17 December 2020

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**RESERVED DECISION OF JUDGE A M MANUEL**

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[1] [Jade Trask-Hughes] is five years old.<sup>1</sup> Her mother Ms [Hughes] and her father Mr [Trask] have asked the Court to decide two questions:

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<sup>1</sup> [Jade] was born on [date deleted] 2015.

- (i) should Ms [Hughes] be allowed to relocate to [the UK] with [Jade]?
- (ii) if relocation is allowed, what contact arrangements should be put in place for [Jade] and Mr [Trask]?<sup>2</sup>

## **Background**

[2] [Jade] was born in New Zealand and has lived here all her life. She started school at [name of school deleted] [in Auckland] on [date deleted] 2015. She is the parties' only child.

[3] Ms [Hughes] is 38 years old. She is renting [in Auckland] and working as a [profession deleted]. She is of British extraction. She grew up in [the UK] and moved to New Zealand in her mid-20s. Her parents, [Ellie and Brian Hughes], are living in [the UK] and Ms [Hughes] is their only child.

[4] Mr [Trask] is 33 years old. He works as a [profession deleted]. He was living [in Auckland] at the time of the hearing but has since moved to [location 1]. He is the [number deleted] of seven children. His parents, [Ralph and Manaia Trask], are living in [the Bay of Plenty area]. So are his sisters [Mariam] and [Joanna]. Another sister [Leah] is living in [Auckland]. He has three brothers, [Abraam], [Nathan] and [Peter].

[5] Mr [Trask] has Māori, Scottish and Irish ancestry. His iwi are [iwi deleted – iwi 1] and [iwi deleted – iwi 2]. The family connect to [iwi 2] through [marae name deleted] Marae which is [in the central North Island]. The [Trask] family (with one or two exceptions) are all practising Jehovah's Witnesses.

[6] The parties began a relationship in early 2014. They moved in together in August that year. [Jade] was born on [date deleted] 2015.

[7] On 9 October 2015 Mr [Trask] was arrested on a charge of male assaults female and assault on a person with a blunt instrument. Ms [Hughes] was the victim. Mr [Trask] had struck her lip and chin with a glass bottle and stomped on her feet twice

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<sup>2</sup> Interim contact orders were made on 14 July 2020 and were to be reviewed in six months time. If relocation is declined no reconsideration of contact is currently needed.

in steel capped sneakers while she was holding three month old [Jade].<sup>3</sup> She had a sore lip and foot as a result. The assault happened after Ms [Hughes] had dropped Mr [Trask] off at work at about 8 on a Friday morning. Mr [Trask] spent time in custody before he was bailed to his employer's address on the condition that he did not associate with Ms [Hughes].

[8] Despite this the parties continued their relationship. The details are in dispute. Mr [Trask] says that they were "more on than off" until they finally separated in February 2017. Ms [Hughes] says they were "more off than on" after October 2015. The parties agree that although they had happy times together, their relationship was marred by family violence and Mr [Trask]'s gambling, drug and alcohol use.

[9] On 22 October 2015 Ms [Hughes] applied without notice for a temporary protection order against Mr [Trask] and an interim parenting order granting her day to day care of [Jade]. Both orders were granted. The parenting order provided for Mr [Trask] to have contact with [Jade], supervised either by Ms [Hughes] or a person approved by her. Mr [Trask] took no steps in the Court proceedings and by May 2016 both orders had been made final.

[10] By early 2017 Ms [Hughes] was no longer willing to supervise Mr [Trask]'s contact with [Jade]. She insisted that contact take place at Barnardos, a supervised contact centre. In June 2017 Mr [Trask] started having contact there for one hour every fortnight. This arrangement continued for about 18 months. The reports from Barnardos were all positive.

[11] On 2 August 2016, 9 and 16 March 2017 and 27 June 2017 Mr [Trask] sent text messages to Ms [Hughes] in breach of the protection order. Charges were laid and he spent more time in custody. On 21 July 2017 he appeared for sentencing on a total of 10 charges:

- (a) assault with a weapon x 1;
- (b) male assaults female x 1;
- (c) breach of protection order x 4;
- (d) breach of community work x 1;

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<sup>3</sup> Bundle 2, pg 369.

(e) failing to attend court (breach of bail) x 3.<sup>4</sup>

[12] The outcome was that Mr [Trask] was sentenced to six months home detention and 80 hours community work. The home detention was completed at his sister [Leah]’s home in West Auckland. The sentences were satisfactorily completed and Mr [Trask] has not been charged or convicted of any offences since.

[13] In May 2018 Mr [Trask] applied without notice for unsupervised contact with [Jade]. His application was placed on notice.

[14] By then Mr [Trask] had taken a number of steps (some Court-ordered and some voluntary) to address his problems and show he was a safe parent. He completed two parenting programmes and an anger management course.<sup>5</sup> He reconnected with his faith and took weekly one-on-one lessons with [witness A], an elder in his church. In August 2018 he provided a clear six month hair follicle drug test.

[15] In May 2018 Ms [Hughes] replied to Mr [Trask]’s applications and made her cross-application to relocate. Ms [Hughes] alleged a history of serious family violence and substance abuse on Mr [Trask]’s part, including psychological abuse of [Jade]. She maintained that Mr [Trask] had a “dogged and dangerous lack of insight into his own behaviour and a lack of impulse control, especially when under the influence of substances.”<sup>6</sup>

[16] Ms [Hughes] alleged that the [Trask] family were “dysfunctional” and had a “history of violence.”<sup>7</sup> They were “unhealthily obsessed” with [Jade] and believed “she belonged to them.” Because Ms [Hughes] did not share their faith they took the view that she “was governed by the Devil” and that [Jade] “must practice as a Jehovah’s witness or she would not go to the “new order” when Armageddon comes.”<sup>8</sup>

[17] Ms [Hughes] claimed [Manaia] was the subject of a protection order regarding two of her grandchildren. [Leah] and her husband had an abusive relationship. [Ralph] was an ex-Mongrel mob member and had been physically abusive to his

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<sup>4</sup> Charges (a) and (b) related to the October 2015 incident. Charge (d) related to a 2014 sentence for obtaining by deception. There was an application before the Court to cancel the sentence for the earlier conviction and impose a substituted sentence. Otherwise, Mr [Trask] had no prior convictions.

<sup>5</sup> A parenting information programme and The Early Years programme.

<sup>6</sup> Opening Submissions of Counsel for Ms [Hughes], 7 July 2020 at [30].

<sup>7</sup> Bundle 1, pg 97 at [31].

<sup>8</sup> Bundle 1, pgs 97-98 at [33].

family when the children were growing up. [Nathan] and [Peter] were “on methamphetamine and in and out of prison.” [Nathan] was under witness protection and [Peter] was a gang member. The [Trask] family enabled Mr [Trask]’s bad behaviour and would “support him no matter what.” This evidence was a departure from her 2015 evidence when she had described [Manaia] and [Ralph] as “good” and “supportive” and suggested them as suitable contact supervisors.<sup>9</sup> Her new evidence produced a flurry of denials in affidavits from Mr [Trask], [Manaia] and [Leah].

[18] On 15 November 2018 a Court directed s 132 COCA<sup>10</sup> social worker’s report arrived and did not identify any care or protection concerns for [Jade] in her father’s care.

[19] Mr [Trask]’s application for unsupervised contact was due to be heard on 23 November 2018. Just before the hearing took place the parties reached agreement that Mr [Trask] would have unsupervised contact every second weekend from 9am to noon on Saturday and Sunday and on Wednesday in the week in between from 4.30pm to 6pm. Provided contact went satisfactorily for 12 weeks the parties were to consult in early 2019 about extending weekend contact from 1pm – 6pm.

[20] There were specific conditions of contact agreed including that:

- A. unsupervised contact would commence once Mr [Trask] provided a further clean hair follicle test (three months);
- B. Mr [Trask] would not use any illicit substance or alcohol during the time [Jade] was in his care or in the 24 hour period prior to her coming into his care;
- C. Mr [Trask] would attend a drug and alcohol assessment at CADS [a community drug and alcohol agency] and would undertake any recommended therapy programme;
- D. members of Mr [Trask]’s family would not be present at contact unless agreed.

[21] Before long Ms [Hughes] suspected that Mr [Trask] was breaching the condition about not using any alcohol for 24 hours prior to contact. Private

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<sup>9</sup> Bundle 1, pg 12.

<sup>10</sup> Care of Children Act 2004.

investigators were engaged. They reported that Mr [Trask] had breached the condition on 26 January 2019 and 23 February 2019.<sup>11</sup> Without letting on what the private investigators reported Ms [Hughes]’s lawyer asked Mr [Trask]’s lawyer whether he had breached the condition. He denied it. When the private investigator’s reports were provided he was caught out. He apologised. He maintained he had attended a CADS assessment but no programme had been recommended.

[22] In 8 October 2019 a Court-directed s 133 COCA psychologist’s report arrived which stated that<sup>12</sup>:

9.13. [Jade] appears to be settled and coping well with the current care and contact arrangements. In early 2019 Mr [Trask] was found to be in breach of his contact condition of no-alcohol consumption 24 hours prior to contact, which is of concern, particularly given his history of problem drinking. Additional concerns have also been raised by Ms [Hughes] about Mr [Trask]’s ability to parent [Jade], especially for longer periods of time, his commitment to contact, and the paternal family’s role. [Jade] appears to have been appropriately protected from being directly impacted by these issues so far ...

...

12.51 [Jade] has established a bond with her father and she appears to be comfortable in the current contact regime of regular time with him. The parenting relationship is however still in the formative stages, and is yet to extend beyond play/fun activities to more realistic and broader responsibilities of parenting. While the short duration of contact is understandably a constraint, Mr [Trask]’s parenting skills have still some way to go for [Jade]’s best interests to be met. It is to Mr [Trask]’s credit that he appears to have made progress in maintaining abstinence from problem habits such as illegal substance use, binge drinking and gambling. No further incidents of violence have been reported in the last 2-3 yrs. However, the nature of the no-alcohol breach earlier this year is of concern and suggests caution, particularly given the historic breaches of the protection order. The extent of attitudinal change and remedial skills acquired in relation to areas such as parenting skills, impulse control, management of stressful situations remains questionable. These are critical factors from a relapse prevention point of view and need to be an important consideration given the back drop of violence, alcohol and substance abuse.

[23] As for [Jade]’s paternal family, the report writer stated that:

11.9 [Jade] has a large paternal whanau consisting of grandparents, aunts and uncles, and cousins whom she has not had contact with since being a toddler. [Jade] therefore does not have an ongoing relationship with them, beyond being shown photographs by her father and possibly some interaction via video calls. The paternal grandparents expressed a strong desire to reconnect with [Jade] and build a relationship with her.

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<sup>11</sup> On Saturday 26 January 2019 at 1.14pm, after dropping [Jade] off at Ms [Hughes]’s home, Mr [Trask] was seen buying alcohol and at 2.07pm “drinking from a beer-shaped bottle.” On Saturday 23 February 2019 he was seen buying alcohol. Between 12.42 and 1.18pm he was seen drinking three bottles of Corona beer. At 1.53pm he was seen driving, holding a fourth bottle of beer.

<sup>12</sup> Section 133 Report, 8 October 2019.

...

12.9 Ms [Hughes]'s views regarding the need for safety provisions in the paternal context are not unreasonable given the historical context. There is no indication at this stage of [Jade] being inappropriately influenced/impacted by her mother's concerns about the paternal family, and Ms [Hughes] appears to be maintaining a positive and supportive approach to [Jade]'s contact with her father. How this will progress when it comes to increase in the duration of contact and inclusion of the paternal whanau remains to be seen. The challenge for Ms [Hughes] will be managing her own fears and anxiety in this context so that they do not unduly impact on [Jade]'s relationship with her father and paternal whanau.

14.26 Like all children, [Jade] has a right to have a relationship and contact with her paternal whanau.

[24] The report writer made a number of suggestions for contact with the paternal family "to manage risk and promote [Jade]'s best interests."

14.27 ...

- a. Given the backdrop of family violence allegations and concerns regarding religious factors, and that [Jade] does not know her paternal whanau, it seems appropriate that they be introduced gradually. Hence, this could begin with the paternal grandparents in the first instance.
- b. The introduction of paternal grandparents is recommended to be supervised. One option being to have this occur in the maternal home as offered by the mother ... Another option being for this to occur when [Jade] is in her father's care with a professional supervisor present, such as from Therativity. Or a third option, where the first visit occurs at the mother's home, followed by the next two with Therativity's supervision.....
- c. Clear conditions and undertakings be made by paternal whanau that ensures [Jade]'s safety, which includes refraining from religious references that evoke confusion and/or distress for [Jade].

[25] If relocation was allowed by the Court, the report writer recommended that there should be:

14.42 ...

2. [An] opportunity to have reasonable time with her father as well as some of the important whanau members prior to leaving, such as grandparents, so that she can hold them better in her memory, and provide a platform to sustain these relationships long-distance.

...

[26] On 30 November 2019 Mr [Trask] breached the conditions of the parenting order by taking [Jade] to see his parents, who were visiting Auckland at the time. The contact was not agreed to by Ms [Hughes].

[27] In January 2020 the private investigators, who had been engaged again, reported that Mr [Trask] had breached the condition about not using alcohol in the 24 hour period on 10 and 11 January 2020.<sup>13</sup> By then Mr [Trask] had been having unsupervised contact with [Jade] for about 12 months.

[28] Ms [Hughes] then suspended unsupervised contact. The parties and their lawyers tried to start contact up again but reached an impasse over breath-testing procedures and drug-testing. Meanwhile intermittent video contact took place. Ms [Hughes] blamed the intermittence on Mr [Trask]’s lack of commitment.

[29] On 15 June 2020 Mr [Trask] applied without notice for a warrant to enforce the existing parenting orders. His application was placed on notice.

[30] A submissions only hearing took place on 19 June 2020. By then Mr [Trask] had not had face to face contact with [Jade] for over six months. Except for the unauthorised November 2019 visit [Jade] had not had any contact with her paternal family since about September 2016.

[31] A decision was given on 14 July 2020.<sup>14</sup> Contact was to resume once Mr [Trask] provided a clean hair follicle drug test and on the basis he used the “U mobile personal breathalysing technology” before contact went ahead. If the test was not clear, contact would not take place.

[32] After the hearing concluded<sup>15</sup> the parties attended [Jade]’s first day of school together. Mr [Trask] provided a clear hair follicle drug test. In August 2020 unsupervised contact started up again. Video contact with [Jade]’s paternal

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<sup>13</sup> On Friday 10 January 2020 at about 5.30pm Mr [Trask] was seen in a golf club car park. There was an open Corona beer bottle in the console of his van, a box of beer in the rear seat, and an open box of

Steinlager beer in the back of the van. At 6.30pm he returned to his van, placed a bottle in his bag and carried his bag at the south side of the golf course. On Saturday 11 January 2020 Mr [Trask] was seen at 1.50pm with an open box of Corona beer in his van. Mr [Trask] bought alcohol at about 1.57pm. He drove to the beach with two friends and fished off the rocks. Between 3.12 pm and 3.58pm he was seen drinking two beers. At about 5.42 he was seen holding a third Corona bottle. At about 7.36 he was seen leaving a bottle shop carrying a six pack of APA beers to his van.

<sup>14</sup> This coincided with the first day of the relocation hearing.

<sup>15</sup> Further evidence was adduced by consent.



grandparents also started. Mr [Trask] moved to [location 1]. He said he could be in [location 1] for the next 12 months but would keep up his contact with [Jade]. Ms [Hughes] saw the move to [location 1] as confirmation that Mr [Trask] was unreliable.

### **The parties' positions on relocation**

[33] Ms [Hughes]'s position on the relocation was that [Jade] would have a "rich, safe, stable, happy and fulfilling life"<sup>16</sup> if relocation was allowed. Pre-Covid-19 her parents had travelled regularly to New Zealand and she and [Jade] had travelled regularly to [the UK], but for the most part she was a working solo parent in New Zealand without daily support from family. The cost of living in urban New Zealand was high. She was receiving financial support from her parents to meet her living expenses and fund her legal costs. The cost of living in rural [the UK] would be lower. She had employment prospects in [the UK] and there were good schooling options for [Jade] there. Her parents, who ran a successful business and were comfortably off, were willing to fund private schooling. She had supportive extended family and childhood friends in [the UK]. Ms [Hughes] proposed to maintain and support [Jade]'s relationship with Mr [Trask] by making an annual trip to New Zealand for three to four weeks for daily contact. Regular phone and video contact was also proposed.

[34] Ms [Hughes] maintained that while she supported Mr [Trask]'s relationship with [Jade], he continued to be inconsistent and untrustworthy. There was a history of family violence and a protection order in place. He was non-compliant with Court orders. Her current safety concerns concerned his use of alcohol and (possibly) drugs.

[35] Mr [Trask]'s position was that New Zealand was [Jade]'s home and she had been born and raised here. His fear was that if the relocation was permitted, he would not have any meaningful relationship with her. He did not accept that Ms [Hughes] was supportive or committed to maintaining his relationship with [Jade], despite what she had said throughout her evidence. Mr [Trask] acknowledged his breaches of the conditions of the parenting order but "Ms [Hughes]'s inability to be flexible and reasonable [had] left no room for any error on his part."<sup>17</sup> She was hyper-vigilant and he would never be able to measure up to her standards.

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<sup>16</sup> Bundle 1, pg 108 at [59].

<sup>17</sup> Opening Submissions of Counsel for Mr [Trask], 8 July 2020 at [41].

[36] Mr [Trask] said he did not have the financial means or ability to travel to [the UK] for any length of time. At times he struggled to afford aspects of his contact in New Zealand.<sup>18</sup> His criminal convictions would make travel abroad difficult or impossible. The Covid-19 situation was making travel harder and more uncertain.

[37] Mr [Trask] was seeking to establish a relationship between [Jade] and his whānau, especially his parents. Ms [Hughes] had not supported [Jade]’s relationship with her paternal family despite this being recommended in the October 2019 s 133 report. Consequently at five years of age she had no relationship or connection with her whānau, hapū or iwi. Although she was a child with Māori whakapapa she had very little knowledge and experience of this crucial part of her identity. Ms [Hughes] was not in a position to advance or support [Jade]’s Māori whakapapa.

### **The law**

[38] The two questions to be decided fall under ss 46R and 56 COCA.

[39] The COCA provides that the Court’s “first and paramount consideration” must be [Jade]’s welfare and best interests in her particular circumstances.<sup>19</sup> In considering her welfare and best interests the Court must take into account:

- (a) the principles that decisions affecting her should be made and implemented in a timeframe that is appropriate to her sense of time; and

- (b) the six principles set out in s 5, including:

- (a) her safety must be protected and in particular she must be protected from all forms of violence;

- (b) her care, development and upbringing should be primarily the responsibility of her parents and guardians;

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<sup>18</sup> Mr [Trask] had been ordered to pay reparation of over \$12,000 in relation to the 2014 sentence, which he was still paying off over time.

<sup>19</sup> COCA, s 4(1).

- (c) her care, development and upbringing should be facilitated by ongoing consultation and co-operation between her parents;
- (d) she should have continuity in her care, development and upbringing;
- (e) she should continue to have a relationship with both her parents and her relationship with her family group, whānau, hapū or iwi should be preserved and strengthened; and
- (f) her identity (including without limitation her culture, language and religious denomination and practice) should be preserved and strengthened.

[40] The conduct of a person seeking to have a role in [Jade]’s upbringing may be taken into account to the extent that it is relevant to her welfare and best interests.<sup>20</sup>

[41] The Court must take into account whether there is any protection order in force, the fact that it is still in force, the circumstances in which it was made and any written reasons given by the Judge who made it.<sup>21</sup>

[42] [Jade] must be given reasonable opportunities to express views on matters affecting her and any views she expresses must be taken into account.<sup>22</sup>

[43] The leading case concerning relocation is the Supreme Court decision *K v B*<sup>23</sup> in which the question of relocation was described thus:

At the highest level of generality, competition in a relocation case is likely to be between declining the application for relocation because the children’s interests are best served by promoting stability, continuity and preservation of certain relationships against allowing it on the ground that the children’s best interests are thereby better served. Put in that way, it is difficult to see how any presumptive weight can properly be given to either side of those competing but necessarily abstract contentions. To do so would risk begging the very question involved in what is necessarily a fact-specific enquiry.

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<sup>20</sup> COCA, s 4(2)(b).

<sup>21</sup> COCA, s 5A(2).

<sup>22</sup> COCA, s 6.

<sup>23</sup> *K v B* [2010] NZSC 112, [2011] 2 NZLR 1 at [23].

[44] *K v B* is also authority for the propositions that:

- (a) an application for relocation is a fact-specific enquiry;
- (b) there is no presumption in favour of relocation or the status quo;
- (c) neither party bears an onus of proof;
- (d) rather than exercising a discretion the Court is making an assessment and decision based on an evaluation of the evidence; and;
- (e) At [35]:

It is trite but perhaps necessary to say that judges are required to exercise judgment. The difficulties which are said to beset the field are not conceptual or legal difficulties; they are inherent in the nature of the assessments which the Courts must make. The judge's task is to determine and evaluate the facts, considering all relevant as five principles and other factors, and then to make a judgment about what course of action will best reflect the welfare and best interests of the children. While that judgment may be difficult on the facts of individual cases, its making is not assisted by imposing a gloss on the statutory scheme.

[45] Each of the principles in s 5 must be considered. Although there is no particular weighting between the principles, the changes to s 5 which were made in 2014 and the inclusion of the word “must” in s 5(a) (as compared to “should” in ss5(b) to (f)) indicate that safety is mandatory and prioritised.

### **The evidence and its relevance to this decision**

[46] The evidence was extensive. Ms [Hughes] made eight affidavits<sup>24</sup> and produced affidavits from nine witnesses in support.<sup>25</sup> Ms [Hughes], her mother [Ellie] and her friends [witness B] and [witness C] were cross-examined.<sup>26</sup>

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<sup>24</sup> Dated 22 October 2015; 29 May, 8 & 14 June, 17 August and 28 September 2018; 23 January and 17 June 2020. A further affidavit dated 29 September 2020 was made after the hearing.

<sup>25</sup> [Witness C] (14 August 2018); [witness D] (15 August 2018); [witness E] (15 August 2018); [witness F] (16 August 2018); [Ellie Hughes] (17 August 2018); [witness B] (17 August 2018); [witness G] (17 August 2018); [witness H] (20 August 2018) and [witness I] (2 May 2019 and 22 January 2020).

<sup>26</sup> [Witness D] was required for cross-examination but did not attend and so counsel invited the Court to put such weight on her evidence as thought fit.

[47] Mr [Trask] made seven affidavits.<sup>27</sup> Five witnesses made affidavits in his support.<sup>28</sup> Mr [Trask] and his mother [Manaia] attended the hearing and were cross-examined.<sup>29</sup>

[48] There were also Court-directed reports from [report writer A], (the 132 COCA report) and [report writer B] (the s 133 COCA report). [Report writer B] was cross-examined.

[49] Much of the evidence was concerned with family violence. In her 2015 family violence affidavit and the police reports Ms [Hughes] had given a relatively brief account of the incidents of family violence compared to the evidence in her affidavits in support of relocation. She also made negative allegations about the [Trask] family in her relocation affidavits. It was suggested that she had exaggerated or embellished her evidence to make Mr [Trask] and his family look as bad as possible to help her chances of relocation.

[50] Mr [Trask] had not defended the 2015 applications but in his affidavits he denied or minimised most of Ms [Hughes]’s allegations. By way of example, he denied striking Ms [Hughes] in the mouth or stomping on her feet in the October 2015 incident. This was unrealistic because he had accepted this in an agreed summary of facts in the criminal case. As the proceedings progressed he made more and more concessions. Ms [Hughes] attributed this to being confronted with undeniable evidence and it was suggested that he was prone to being dishonest unless he was caught out or pinned down.

[51] By the end of the hearing, there was little the parties disagreed on concerning family violence, drugs, alcohol or gambling. Reaching this result was a difficult process as they were forced to revisit a painful past. It was clear that the parties had loved each other and their relationship caused them anguish. Neither had repartnered.

[52] I have no criticism of Ms [Hughes] for divulging the details of the family violence in the way that she did. It is not uncommon for victims of family violence to

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<sup>27</sup> Dated 12 June; 17 July; 24 September and 12 October 2018; 18 December 2019 and 15 June 2020.

A further affidavit was made after the hearing.

<sup>28</sup> [Witness A] (16 July 2018); [Leah] (16 July and 15 October 2018); [Manaia Trask] 16 July 2018); [witness J] (27 July 2018) and [witness K] (28 July 2018).

<sup>29</sup> [Leah] was required for cross-examination but did not attend. Again the Court was invited to put such weight on her evidence as thought fit.

reveal details gradually. When she made her 2015 affidavit she was still hoping that the relationship could be repaired. She claimed she had been afraid CYFS<sup>30</sup> might become involved if she opened up. When she made her relocation affidavits however she knew the relationship was over. As for Mr [Trask], admitting the allegations made against him appeared to be too much for him to face for some time. He was deeply ashamed of his actions. This is not uncommon for perpetrators of family violence.

[53] What remained was an abiding sense of mistrust between the parties. Mr [Trask] feared (correctly to some extent) that Ms [Hughes] tended to put the worst possible construction on anything he said or did. Ms [Hughes] feared (also correctly to some extent) that Mr [Trask] could not always be trusted to provide consistent, safe care for [Jade] and would not admit any failings unless he was forced to.

[54] While findings about the family violence are important they have limited relevance to the question of relocation. This is because there is a final protection order in place. There have been no breaches of the protection order since June 2017. Unsupervised contact was agreed to in November 2018, when everyone was satisfied that [Jade] would be safe from family violence in her father's care.<sup>31</sup> Unsupervised contact took place for over a year and was suspended because of concerns about alcohol, not family violence. Ms [Hughes] was willing to reinstate unsupervised contact if she could be assured that Mr [Trask] was drug and alcohol free. It follows that any findings about family violence are somewhat belated. They would be relevant to the making of a protection order but that is not at issue. They may be relevant to any review of the contact arrangements.

[55] The allegations of substance abuse are more relevant but with the conditions on contact imposed by the Court in July 2020, any risk is contained.

[56] The allegations about the risks posed by the [Trask] family are relevant to ss 5(e) and (f) COCA considerations and will be relevant to s 5(a) COCA if and when the contact orders are broadened to include the paternal family.

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<sup>30</sup> The Ministry for Vulnerable Children (as it was then known).

<sup>31</sup> The parties, their lawyer and Lawyer for Child all signed a memorandum of consent.

## Family violence

[57] Family violence includes physical, sexual and psychological abuse.<sup>32</sup> Psychological abuse can include threats, intimidation or harassment (such as following a person about or stopping or accosting them), damage to property and financial or economic abuse.<sup>33</sup> A child such as [Jade] is psychologically abused if she is allowed to see or hear abuse of her mother or is put at risk of seeing or hearing the abuse occurring. The standard of proof for allegations of family violence is the balance of probabilities.<sup>34</sup>

[58] I find the following allegations of family violence are proven to the requisite standard:

- (a) the October 2015 incident (proved beyond reasonable doubt in the criminal case and confirmed by Mr [Trask] under cross-examination)<sup>35</sup>;
- (b) manhandling Ms [Hughes] while she was pregnant resulting in bruising on her arms and legs (admitted by Mr [Trask] under cross-examination);<sup>36</sup>
- (c) throwing a large dressing table onto the ground “out of anger” while Ms [Hughes] was pregnant (admitted by Mr [Trask] under cross-examination)<sup>37</sup>;
- (d) throwing a cushion at Ms [Hughes] while she was pregnant (also admitted)<sup>38</sup>;
- (e) crashing the car into a bed base stored in the garage with Ms [Hughes] and [Jade] in the car “out of impulse” (admitted by Mr [Trask] under cross-examination)<sup>39</sup>;

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<sup>32</sup> Family Violence Act 2018, ss 5(a) and 9(2) [FVA].

<sup>33</sup> FVA, s 11.

<sup>34</sup> FVA, s 171.

<sup>35</sup> Notes of Evidence, pg 142.

<sup>36</sup> Notes of Evidence, pg 145.

<sup>37</sup> Notes of Evidence, pg 146.

<sup>38</sup> Notes of Evidence, pg 153.

<sup>39</sup> Notes of Evidence, pg 146.

- (f) smashing cups and punching walls in anger (admitted by Mr [Trask] under cross-examination and confirmed by a text from his brother [Abraam] to Ms [Hughes] when [Abraam] acknowledged that her rental property needed repairs because Mr [Trask] had punched holes in the walls)<sup>40</sup>;
- (g) abusing Ms [Hughes] by calling her names such as “crazy mental paranoid bitch” and “paranoid white bitch”<sup>41</sup> (tentatively admitted by Mr [Trask] under cross-examination)<sup>42</sup>;
- (h) pushing Ms [Hughes] into a corner with both hands while she was crying and distraught in about April 2015 (Ms [Hughes]’s mother [Ellie] confirmed she had seen this when she was staying with the parties)<sup>43</sup>;
- (i) causing bruising on Ms [Hughes]’s arms in March 2015, calling her a bitch and a whore and being aggressive over the telephone (Ms [Hughes]’s friend [witness B] confirmed this)<sup>44</sup>;
- (j) various instances of physical and psychological abuse over 2015-2017 (confirmed in evidence by Ms [Hughes]’s friend [witness C], who received text messages from Ms [Hughes] that she was “covered in bruises again”<sup>45</sup>, “he’s starting to get angry ... I feel like crying”<sup>46</sup>, “I’ve ring (sic) police he’s getting nasty ... They’re on their way. I feel sick. He’s in the room with me shit ... He got her out of her cot and he slammed the door in my face ... he’s been arrested”)<sup>47</sup>;
- (k) abusing Ms [Hughes] while she was visiting [the UK] in late 2015 with [Jade] (a text message was produced saying “go and bang your head against a wall bitch”)<sup>48</sup>;

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<sup>40</sup> Bundle 1, pg 135, third screenshot.

<sup>41</sup> Notes of Evidence, pg 122 and pg 153.

<sup>42</sup> Notes of Evidence pg 122 and pg 153.

<sup>43</sup> Bundle 2, pg 415.

<sup>44</sup> Notes of Evidence, pg 84.

<sup>45</sup> Bundle 2, pg 306.

<sup>46</sup> Bundle 2, pg 312

<sup>47</sup> Bundle 2, pg 318.

<sup>48</sup> Bundle 2, pg 405.



- (l) sending texts threatening suicide in February 2016 (text messages were produced stating “I’m about to take my life” and “I’m about to crash this thing off the cliff”<sup>49</sup>;
- (m) sending texts implying or threatening suicide in January 2017 (a text message was produced stating “I don’t want to go on anymore”<sup>50</sup>);
- (n) following Ms [Hughes] in her car after a chance encounter, beeping his horn at her, calling her on the phone and becoming abusive in March 2017 (admitted under cross-examination)<sup>51</sup>;
- (o) sending Ms [Hughes] a text which was at best manipulative and at worst threatening in March 2017 (a text message was produced stating “I’m scared and don’t want to face the world ... I need help”<sup>52</sup>; and
- (p) using family funds earmarked for other purposes for gambling.

[59] The incidents referred to at [58] are not exhaustive but merely constitute examples of family violence in the parties’ relationship.

[60] In summary Mr [Trask] used physical, psychological and economic abuse towards Ms [Hughes] from about the time she fell pregnant to June 2017 when the last text message in breach of the protection order was sent. At times the abuse took place in [Jade]’s presence, which constitutes psychological abuse of [Jade].

### **The [Trask] family**

[61] While there was some basis for the allegations made by Ms [Hughes], the picture she painted of the [Trask] family was not borne out by the evidence. [Manaia], a community service co-ordinator for the Plunket Society and the grandmother of seven mokopuna, impressed as a kindly and thoughtful witness when she gave evidence.

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<sup>49</sup> Bundle 2, pg 378 to 380.

<sup>50</sup> Bundle 2, pg 404.

<sup>51</sup> Notes of Evidence, pg 160.

<sup>52</sup> Bundle 2, pg 381.

[62] I find the following allegations about the [Trask] family to be either proved to the requisite standard, or not, as the case may be:

- (a) that [Manaia] had a protection order against her – [Manaia] denied this and other than Ms [Hughes]’s allegation there was no evidence in support. I find this to be unproven;
- (b) that the [Trask] family was “unhealthily obsessed with [Jade] and believe she belongs to them.” Ms [Hughes] alleged, for example, that she had been bombarded with contact when she was in [the UK] with [Jade] in late 2015. Her evidence was confirmed to some extent by her mother [Ellie], who had overheard some of the conversations. [Manaia] denied that the level of contact was excessive and that the family was obsessed with [Jade]. There is insufficient evidence for any finding to be made that the [Trask] family is either obsessive or possessive about [Jade];
- (c) that [Peter] sexually abused [Mariam] when they were younger. The [Trask] family admitted that the allegation had been made. It was highly sensitive for them. No findings can be made other than that the allegation was made;
- (d) that the Jehovah’s Witness faith involved fear and excess, that the family were negative towards Ms [Hughes] because she was not an adherent, and that pressure was placed on [Jade] to become an adherent. Ms [Hughes]’s evidence was that songs had been sung, books read and conversations had with [Jade] which reflected the Jehovah’s Witness faith. [Jade] had come back from contact with her father asking questions about Jehovah. The evidence suggested that those incidents may have happened but the family was not negative towards Ms [Hughes] because she was not a believer. Nor was there any undue pressure placed on [Jade]. There was no independent evidence before the Court that the faith involved fear or excess or had any negative influence on its adherents. Just as Ms [Hughes] is entitled to her views of Jehovahs Witnesses, the [Trask]s are entitled to hold contrary views and to practice their

faith under s 15 of the Bill of Rights Act 1990. In any event, the family undertook to respect Ms [Hughes]'s views on religion regarding [Jade]. These allegations were not proven;

- (e) that [Peter] and [Nathan] were involved with methamphetamine, gangs and prison. All these allegations were admitted and the [Trask] family were estranged from [Peter] and [Nathan] as a result;
- (f) that there had been family violence in [Leah]'s marriage. [Leah] denied this in her affidavit evidence but did not come to court to be cross-examined. Ms [Hughes]'s allegation is hearsay and without more I decline to make any finding;
- (g) that [Leah] had abused Ms [Hughes] in an unsupportive phone call in mid-2017. [Leah] denied this. She admitted that a police safety order had been issued against her immediately afterwards but said it was because the police only heard one side of the story. As stated [Leah] did not come to court and the phone call took place at about the time Mr [Trask] was being held in custody for the second time when tensions were running high. I find this allegation to be proven;
- (h) that [Ralph] had gang associations and used physical violence towards [Manaia] when their children were growing up. Mr [Trask] told the s 132 report writer that his father may have had gang associations many years ago but he had abandoned them, when he married and found his faith. He suggested his father may have used physical violence towards his mother although he had not seen any. [Manaia] denied it. If true, these allegations date back 20 to 30 years ago. I find that [Ralph] may have had gang associations as a young man but any allegation of family violence towards his wife is not proven;
- (i) that [Ralph] used physical violence towards his children when they were growing up. Mr [Trask] admitted that his father had physically disciplined them but said that it was not illegal at the time;

(j) that the [Trask] family enabled Mr [Trask]’s poor behaviour and would “support him no matter what.” Ms [Hughes] pointed to letters of support written by the family at Mr [Trask]’s sentencing which were so glowing that the Judge was moved to describe Mr [Trask] as a “Jekyll and Hyde” character. She claimed that the family minimised or denied the extent of his poor behaviour. [Manaia]’s evidence contradicted this because she claimed that the family had been estranged from Mr [Trask] for some time over his behaviour during the parties’ relationship. I find this allegation to be unproven;

(k) that the Jehovah’s Witness faith was at odds with Māori culture hence the [Trask] family were limited in the extent to which they could support [Jade]. Mr [Trask] and [Manaia]’s evidence was that while this may have been the case in days gone by, it was no longer so. Neither were speakers of Te Reo Māori, but they were learning. [Ralph] had spent time growing up on [marae name deleted] Marae and so had Mr [Trask] over 2020. I find this allegation unproven.

[63] Despite these findings I do not accept the suggestion that Ms [Hughes] deliberately exaggerated or embellished her evidence about the [Trask] family. Her evidence was sincere but her fears were more perceived than real. The [Trask] family are culturally and socio-economically different to the [Hughes] family and they are members of a faith which is anathema to Ms [Hughes], but they do not pose a risk to [Jade]’s safety. The fact that [Jade]’s maternal and paternal families are diverse has the potential to enrich her life.

#### **Mr [Trask]’s commitment and consistency (or lack thereof)**

[64] Mr [Trask]’s commitment to contact with [Jade] and more generally to making changes in his life was in dispute. The s 133 report writer stated that he had made “significant progress” and “encouraged him to continue consolidating his change.” [Jade] had “established a bond with her father and enjoy[ed] her time with him but for the relationship to grow beyond the fun and play of weekend activities required Mr [Trask] to maintain his abstinence which would depend on “his level of commitment

and skill development.” The writer questioned whether the remedial support available was “sufficiently robust and effective from a relapse prevention perspective.”<sup>53</sup>

[65] Mr [Trask]’s commitment to contact during the 18 month Barnardos period was not questioned but Ms [Hughes] doubted his commitment over the 12 months of unsupervised contact. This involved three contact sessions each fortnight. She said at times he cancelled for flimsy reasons such as social or sporting activities or failed to keep to set times. In November 2019 he missed an appointment with [Jade]’s ear, nose and throat specialist. Ms [Hughes] was critical of his commitment over the six months of informal video contact after contact was suspended. This started with contact every day, then reduced to two or three times a week, and then petered out. Mr [Trask]’s response was that he was unable to keep this up partly because he was overwhelmed by his own emotions. He felt that Ms [Hughes] was “against him” and that video contact was no substitute for face to face contact.

[66] Ms [Hughes] was also sceptical about Mr [Trask]’s ability to address his drug and alcohol issues. His sessions with [witness A] and the assessment at CADS had been insufficient to prevent the breaches in the 24 hour alcohol condition.<sup>54</sup> Mr [Trask] had had five years to make the changes needed in his life. He had not addressed his problems with alcohol and [Jade] was growing up.

[67] Mr [Trask] replied that he had been successful in dealing with his drug problems. While under cross-examination he admitted using marijuana in 2019, his drug test results had been clear. To put the alcohol breaches in context, there was no evidence that he had been drink-driving. Nor was there any evidence that he was intoxicated when [Jade] was in his care. It was only because of his history of drug and alcohol abuse that the breaches had assumed significance. He had also demonstrated his commitment to his daughter through his persistence in the court proceedings. It was unlikely he would have continued with them unless he was genuinely committed to having a relationship with [Jade].

[68] I find that from Ms [Hughes]’s perspective, Mr [Trask]’s commitment is unsatisfactory, leaving her responsible for [Jade]’s day to day care and policing his contact. But from [Jade]’s perspective, Mr [Trask]’s level of consistency to date has

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<sup>53</sup> Bundle 3, pg 532.

<sup>54</sup> While Mr [Trask] claimed he had attended CADS he had not provided any written confirmation.

been sufficient for her to know her father and have a positive, albeit limited, relationship with him. If relocation is declined this is likely to continue and be valuable to her. Whether the relationship grows depends on Mr [Trask]'s commitment to recovery and maintaining sufficient supports. Until he does this he may well maintain regular contact with his daughter as is happening now but it is unlikely the relationship will grow beyond its current confines. It will also be difficult if he remains in [location 1].

### **Section 5(a) and s 5A safety**

[69] Safety issues were addressed when contact orders were made by consent in 2018, and reviewed in July 2020, and do not need to be revisited. The current contact arrangements are sufficient to keep [Jade] safe and if the relocation is permitted, similar safeguards can be put in place.

[70] Although supervised contact was recommended by [report writer B] to introduce [Jade] to her paternal grandparents<sup>55</sup> there is insufficient evidence of risk to suggest that supervision is necessary (although it may help assuage Ms [Hughes]'s concerns).

### **Section 5(b) parental responsibility**

[71] To date the burden of [Jade]'s care, development and upbringing has fallen almost solely on Ms [Hughes]. If the move goes ahead some of the burden would be taken up by the maternal grandparents. They would provide Ms [Hughes] with day to day practical and emotional support. So would her [the UK] family and friends. Her parents' financial support will continue regardless of whether the relocation is permitted or not.

[72] Such responsibility as has been assumed by Mr [Trask] would reduce if the move goes ahead. He would have less parental responsibility and little or no opportunity to increase his responsibility in future.

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<sup>55</sup> And may have already commenced by the time this decision is released.

### **Section 5(c) parental co-operation and consultation**

[73] While there is no overt conflict there is limited co-operation and consultation between the parties. Possibly this is constrained by the final protection order. The proceedings have been polarising but once they are over co-operation and communication may improve. There was a glimmer of hope after the hearing when the parties attended [Jade]’s first day of school together and communicated directly rather than through their lawyers. Whether this will continue, particularly after Mr [Trask]’s move to [location 1], is uncertain. There was irony in a situation where Mr [Trask] was at liberty to move to suit himself, but Ms [Hughes] was not able to move with [Jade] to suit herself.

[74] Ms [Hughes] was presented by her lawyer as a conscientious and supportive parent. This was illustrated by her adhering scrupulously to the terms of the contact order, discussing schooling options for [Jade] with Mr [Trask] and inviting him to attend the appointment with the medical specialist. However in other ways she has been less supportive, such as not prioritising contact with the paternal grandparents after October 2019 despite [report writer B]’s recommendation that this should start.

### **Section 5(d) continuity**

[75] As Mr [Trask] submitted, [Jade] was born in New Zealand and has been raised here. It is her home. Her formative years have been spent in an urban setting. She has begun school locally. She was looking forward to starting it. She had friends who would be attending her new school. Ms [Hughes] has residency in New Zealand. She arrived in New Zealand at the age of 26 and has made her life here since. She has friends and supporters, a number of whom gave evidence in her support.

### **Section 5(e) relationship with parents and family group**

[76] Mr [Trask] was convinced that relocation would be detrimental to the relationship with his daughter and her paternal whanau. He frankly doubted that the contact proposed would happen when contact in New Zealand had been difficult for him and impossible for his family.

[77] Under cross-examination [report writer B] referred to the difficulties as follows<sup>56</sup>:

- A. Yes, I think all around and as I was saying before that you know, I don't doubt it's proposed whatever the access contact has been proposed in the relocation scenario of returning in three weeks is similar chunks of time with Mr [Trask] and family, but it hasn't happened while all parties in New Zealand. So the question therefore is, how is it going – what needs to happen or how can it be ensured that it's going to happen when [Jade] is returning from England to New Zealand. So it's not that the spirit in which it's been offered is to be doubted but in terms of how it's going to actually be in reality. How is that going to work or be made to work or work effectively or smoothly needs some thought?

[78] Mr [Trask] submitted that the significant trust issues were likely to impact on Ms [Hughes]'s ability to co-parent with him. In cross-examination Ms [Hughes] confirmed that trust (of Mr [Trask]) was still a live issue<sup>57</sup>:

- Q. What do you think it's going to take for you to be able to move on from having those concerns?
- A. For [Dominic] to adhere to orders, to not come to visits, picking [Jade] up smelling of alcohol, appearing hungover. Not to videocall his daughter under the influence of drugs or alcohol. To stop breaching my trust. I've tried my hardest to try and put everything to the side and move forward for [Jade] and unfortunately [Dominic] keeps breaching the orders.
- Q. So the trust factor is a huge issue for you, isn't it?
- A. Currently, yeah, it's huge.

[79] Mr [Trask] pointed out that while Ms [Hughes] had promised to keep Mr [Trask] up to date with [Jade]'s schooling in [the UK] via an app if she was allowed to move, in New Zealand she had never had Mr [Trask] on [Jade]'s day care contact or communication list.

[80] He feared that the one-off annual visit proposed by Ms [Hughes], although well-intentioned, was likely to run into ongoing difficulties with the Covid-19 pandemic and regular video and phone contact would be no substitute for face to face contact.

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<sup>56</sup> Notes of Evidence, pg 240, line 14.

<sup>57</sup> Notes of Evidence, pg 19, lines 8-16.



[81] Ms [Hughes] had strong reservations about the relationship between [Jade] and her paternal whānau. In evidence she stated<sup>58</sup>:

A. I'm saying it gives me anxiety but I – it makes me feel anxious to think that I've got to facilitate the contact between [Jade] and her grandparents but I'm saying that I would do it because I know that [Jade] has to have a relationship with them. But I'm not saying "oh I do it if can go home" type of thing I'm saying it because she needs to build a relationship with them but it does give me anxiety.

[82] There was also this exchange between counsel and Ms [Hughes] during cross-examination about [Manaia]<sup>59</sup>:

Q. Yet you said [to Mr [Trask]] I can't stand your mother?

A. I mean, there is truth in that. I can't stand his mum but that's not to do that's to do with their actions to me nothing to do with [Jade]. I'm supportive of [Jade] seeing her whanau in a controlled environment to begin with, like [report writer B] suggested.

Q. Your attitude, that attitude though is having an impact on that relationship progressing?

A. That's what the psychologist recommended.

### **S5(f) child's identity**

[83] Ms [Hughes] submitted that [Jade]'s relationship with her maternal grandparents, which was her closest relationship apart from her relationship with her mother, would blossom in [the UK] and that she would conscientiously maintain contact with Mr [Trask] and his family.

[84] Mr [Trask] referred to the decision in *Barton-Prescott v D-G SW* which discussed (inter alia) the Treaty of Waitangi and the place of Maori children in the whanau and iwi with the Court stating<sup>60</sup>:

The welfare of the child can never be considered in isolation. We accept the contentions of the appellant that the cultural background of the child is significant and that, in addition the special position of the child within the Maori whanau, importing as it does not only the cultural concepts but also concepts which are spiritual and which relate to ancestral relationships in the position of the child, must be kept at the forefront of the mind of those persons charged with the obligation of making decisions as to the future of the child.

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<sup>58</sup> Notes of Evidence, pg 75, line 17.

<sup>59</sup> Notes of Evidence, pg 32, line 17.

<sup>60</sup> *Barton-Prescott v Director-General of Social Welfare* [1997] 15 FRNZ 501 (HC) at 507.

[85] He submitted that [Jade]’s relationship or connection to her whānau, hapū or iwi and her identity could best and perhaps only be addressed if she remained in New Zealand. In New Zealand children were exposed to Te Reo Māori and the Māori culture incidentally via the education system, advertising, social media and the community in general. [Jade] had learned Te Reo at her daycare and would learn Te Reo and join a Kapa haka group at her school. This exposure to Māori culture and language was specific to New Zealand.

[86] Ms [Hughes] had taken some steps (learning Te Reo with [Jade], reading her books and singing her waiata) for which she was to be commended. She had made contact with Ngāti Rānana London Māori Club. But she was not Māori and for that reason Mr [Trask] claimed she was unable to fully address that part of [Jade]’s identity.

[87] [Manaia]’s words about maintaining [Jade]’s whakapapa and being Māori in New Zealand bear repeating:

Q. Mrs [Trask], there has been some discussion around keeping [Jade] connected to her whakapapa and you heard some of the steps that Ms [Hughes] is taking with regards to her moko, and I know that your, I think you said that that’s beautiful. You’ve also talked about this being detrimental if she relocates to the UK. You’ve used words like, disengaging her from her identity. What do you mean exactly? Are you able to expand on that?

A. This is where she was born. How can a picture or a TV programme or whatever it is going to be, teach her about her whakapapa? How are we going to be able to associate her with her marae, through (inaudible 11:18:23), through her whanau? She’s got a big whanau? To her hapu. How are we going to that through Zoom? That’s what I asked.

Q. Can she not do it if she came for the three to four weeks once a year?

A. Whakapapa is her identity. And you don’t just pick up your identity at the end of the year or four weeks. It’s ongoing, it’s a working document, really. It’s something that’s in your blood, your identity, it can’t be separated. That’s how I feel and it’s unique to her. We all have an identity. We want to know where we come from. OK we can read it in books we can see it in history, we can see it in photos, we can watch it on historical-history, we can research. But it doesn’t mean anything until you can actually engage physically with your land and with your marae and with your people. We can’t all go over to the UK. That’s what I mean. Perhaps, maybe in the future, as she gets older that she would be able to further her culture. I don’t know I the European culture I don’t know. But one thing I’ve learnt, my oldest moko, she’s 20, she was separated from our family for whatever situations occurred between her father and mother, but you know she comes back to me and she says to me, “Nan, what’s my pepeha, where am I from?” And that really stung. So we’re at the stage now trying.

[88] The [Trask] position was that [Jade]’s identity would be preserved and strengthened in a visceral and organic way if she grew up in New Zealand with face to face contact with her paternal and extended family, and a connection with the whenua. There was no real substitute.

### **[Jade]’s views**

[89] Lawyer for child’s report of July 2020 addressed [Jade]’s views on relocation. The possibility of relocation had not been canvassed with her and at four (nearly five) years of age she did not have a clear concept of what moving to live permanently in [the UK] might involve.

[90] It was clear from Lawyer for child’s reports that [Jade] had a positive view of her father. The Barnardos reports confirmed this. So did [Jade]’s day care teacher. She had missed seeing him after contact stopped. In July 2020 she told her lawyer that she sometimes met with her father and had a little play with him but did not see him often because he had lots of work. The s 133 report writer described the father/daughter relationship as “affectionate” and “warm.”<sup>61</sup>

### **Maternal health and well-being**

[91] Ms [Hughes]’s application was not premised on the basis of mental or emotional struggle backed up by expert’ psychological evidence.<sup>62</sup> By her own account and that of others, Ms [Hughes] to her credit had coped well and [Jade] was thriving. If relocation was declined she was resolved to continue to cope.<sup>63</sup>

[92] [Report writer B]’s evidence was that whilst there was no indication that [Jade]’s care was being placed at risk, there was nevertheless the question of secondary impact on [Jade] of maternal fatigue and strain if the situation were to continue long term. In other words, this was a possible future outcome, not a present reality.

[93] While Ms [Hughes]’s situation was described as “extremely difficult” by her lawyer and she received inadequate child support from Mr [Trask], she had access to counselling and was being financially assisted by her parents. It was not suggested

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<sup>61</sup> Bundle 3, pg 526.

<sup>62</sup> *B v VB [relocation]* [2008] NZFLR 1083 (HC) is the authority to the proposition that where an applicant wishes to relocate for wellbeing there should be expert evidence about her psychological state.

<sup>63</sup> Notes of Evidence, pg 10.

that relocation would improve her income nor that she would be financially independent in [the UK] because whether she moved or not her parents proposed to continue to provide financial help.

[94] In New Zealand Ms [Hughes] was able to afford to rent a three-bedroom house without flatmates. She and [Jade] had travelled to the United Kingdom three times since [Jade] was born. She lacked assistance with practicalities such as the school run or sick days. Her resources were said to be stretched to the limit. Her closest friend in New Zealand was set to relocate to Australia, although having lived here for many years she has other friends and supports.

### **Covid-19 and travel**

[95] The reality is that the future is uncertain and travel will be more difficult for the foreseeable future. The maternal grandparents had been unable to travel to New Zealand in 2020. If relocation was allowed, Ms [Hughes] planned to relocate immediately.

### **Section 4(2)(b) COCA**

Ms [Hughes]'s application not premised on Mr [Trask]'s conduct falling under s 4(2)(b) COCA. No submissions were made in this regard from any counsel. For the avoidance of doubt, I do not consider the family violence or the extent of Mr [Trask]'s limited contact or commitment to be relevant to the relocation question.

### **Summary and findings**

[96] [Jade]'s safety will be protected whether the relocation is permitted or not. Relocation will not promote parental responsibility, consultation and co-operation or continuity for [Jade]. Her relationship with her father will be truncated. [Jade]'s cultural identity will not be honoured. Her relationship with her paternal family may be lost. Although the contact with her father has been limited, it is valuable nonetheless and has the potential for growth.

[97] It may assist Ms [Hughes] for the relocation to be permitted but there is little or no evidence that the disadvantages she identifies are impacting on [Jade] or will do

so in the foreseeable future. [Jade] is already enjoying “an abundant and happy life” in New Zealand.

[98] Ms [Hughes]'s situation here is far from ideal but she has employment, accommodation, transport, social supports, financial assistance from her parents, counselling for herself and education for her daughter, all in a country which she has made her home for many years. Although she is under strain as a single working parent she is managing to parent her daughter ably. This is very much to her credit. While it is possible that that the strain may impact on her functioning in future there is no evidence of that at present.

[99] The application for relocation is declined because it is not in [Jade]’s welfare and best interests.

[100] A two hour short cause hearing is to be allocated in the New Year to review the current contact arrangements. The parties are to both file updating evidence 21 days prior and any affidavits in reply 14 days prior. Lawyer for child is to report 7 days prior. In the decision of July 2020 the Court stated that the review was to be of breath testing procedures but for the avoidance of any doubt it is to review contact arrangements in the round.

Dated at Auckland this \_\_\_\_\_ day of \_\_\_\_\_

A M Manuel  
**Family Court Judge**