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**IN THE FAMILY COURT
AT NELSON**

**FAM-2008-042-000458
[2016] NZFC 1636**

BETWEEN	HALEY SIDNEY Applicant
AND	ANDREAS BOONE Respondent

Hearing: 22, 23 and 24 February 2016

Appearances: Ms S E Gracia for Applicant
Mr I D Miller for Respondent
Ms K R Meyer - Lawyer for the Children

Judgment: 10 March 2016

RESERVED JUDGMENT OF JUDGE P WHITEHEAD

[1] These are Care of Children Act 2004 proceedings principally to determine safety issues pursuant to s 5(a) and s 5A and whether contact should be supervised or not and issues flowing from those principal issues.

Background

[2] The father and the mother, as they shall be called, married on 11 September 2006. Their first son, Stan, was born on [date deleted] 2007. The parties separated on 27 May 2008 before the birth of their second son. On 29 May 2008 the mother applied for a temporary protection order which was granted and was made final by consent.

[3] In June 2008 the protection order was discharged as the parties reconciled. The relationship again foundered with police domestic violence callouts and Child Youth and Family Service notifications.

[4] Nevertheless the parties continued in an on-and-off again relationship, with Alden being born on [date deleted] 2009.

[5] In May 2010, a second temporary protection order was granted and that proceeded to a defended hearing before me on 27 July 2010. During that hearing, the father steadfastly denied that he was in any way domestically violent against the mother. At paragraph [35] of my judgment I commented that:

My concern has been, rather, that the father totally and absolutely refutes that he has in any way been domestically violent towards the applicant mother and that means, in my determination, that he has a way to go before the mother can be said to be safe.

As a result a final protection order was granted and I indicated to the father that after he had completed the programme he could apply to remove the provisions relating to supervised contact and to discharge the protection order.

[6] During that hearing, it was established that there were four incidents of assault, all of which in effect the father alleged were arising from accidents, or play

fighting, but on two occasions the mother suffered injury, namely cracked ribs and an injured eye after a DVD was thrown at her.

[7] In 2011, the parties attended a Family Group Conference as a result of which, by consent, final parenting orders were made on 26 May 2011 providing for the mother to have the day-to-day care of the two children and the father to have graduated contact with the children and by September 2011 the boys were to be in the father's care from Sunday at 9.30 am, delivered by the mother to the [location deleted] and would remain with the father until Wednesday morning when he would drop them off at the [name of school deleted] at 9.00 am.

[8] Further conditions attached in relation to the formulation of a safety plan for the mother, particularly as both parents would be at the hospital when Stan required hospitalisation for his [name of condition deleted], a condition from which the sufferer has internal and external growth of small tumours leading to difficulties with speech and motor movements and developmental delay.

[9] The shared-care arrangement continued through until September 2014, at which time the mother applied to suspend the parenting order due to allegations of physical violence made in respect of the children perpetrated by the father. The parenting order granting contact with the father was therefore suspended on 5 September 2014, specifically as a result of an allegation made by Alden that his father had hit him in the face with his hand.

[10] The school counsellor was involved and as a result notification made to the police by the school counsellor and the police charged the father with assaulting a child after the children underwent evidential interviews on 10 September 2014. Both boys disclosed certain acts of physical and psychological abuse during the course of those interviews; and on 18 September the parenting order was varied to allow supervised contact through Care Solutions, the contact having been suspended for a period of six weeks from 5 September 2014.

[11] Thereafter followed a number of breaches by the father of the strict rules provided by Care Solutions, the supervising agency of contact; the first on 5 October

2014 where the father allegedly asked the children if they had bruises and checked for the same; and on 10 October 2014 where he invited third parties to the contact session with Care Solutions without first obtaining Care Solutions' approval.

[12] As a result of these reports, the father believed he was "*unsafe*" at contact with Care Solutions and subsequently refused to attend further contacts.

[13] On 17 December 2014, there was a submissions-only hearing regarding contact and as a result contact through Care Solutions on one occasion per week and at the Church on three out of four Sundays per month was ordered.

[14] The mother subsequently endeavoured to vary the parenting order specifically to cease the Church supervised contact, due to her concerns about inappropriate comments made by the father to the children, but that application was refused at a submissions-only hearing on 13 March 2015.

[15] At a hearing on 16 April 2015 in the District Court, the father pleaded guilty to assaulting Alden and was discharged without conviction. The father's view of that was that he pleaded guilty on an indication of sentence that he would be discharged without conviction. He had maintained a not guilty plea until that time, but the fact of the matter remains that he pleaded guilty and the Court must accept that is a matter of record, a situation reiterated by the psychologist, Mr Greer, at hearing.

The Law - Findings and Submissions

[16] Section 4 of the Act provides that the child's welfare and best interests are to be paramount in any consideration under the Act. The determination is what is in the welfare and best interests of the child in his or her particular circumstances; and the Court must take into account the principle that decisions affecting the child should be made and implemented within a timeframe that is appropriate to the child's sense of time and considering the principles in s 5.

[17] The Court may take into account the conduct of the person who is seeking to have a role in the upbringing of the child to the extent that that conduct is relevant to the child's welfare and best interests.

[18] Clearly, the latter is a factor in this case because of the allegations of domestic violence towards the children, which require findings of fact in respect of those allegations which include allegations of both physical and psychological abuse.

[19] What is in the children's best interests and welfare, requires a consideration of multiple factors, as referred to by Fisher J in *D v W* [1995] 13 FRNZ 336. These factors are still relevant today and include length of existing and future bonding, parenting attitudes and abilities, availability for and commitment to quality time with the child, support for continued relationship with the other spouse, security and stability, role-modelling, effects of wider family/whānau, provision of physical care, material welfare, stimulation, educational opportunity and wishes of the child; some of these factors are incorporated in ss 5 and 6 of the Care of Children Act.

[20] The issue of day-to-day care is not relevant to these proceedings as a day-to-day care order was made in favour of the mother by consent on 26 May 2011. Nevertheless the best interests and welfare of the children are also paramount in considering the father's contact to the children.

[21] Section 5 of the Act provides:

5 Principles relating to child's welfare and best interests

The principles relating to a child's welfare and best interests are that—

- (a) a child's safety must be protected and, in particular, a child must be protected from all forms of violence (as defined in [section 3\(2\) to \(5\)](#) of the Domestic Violence Act 1995) from all persons, including members of the child's family, family group, whānau, hapū, and iwi:
- (b) a child's care, development, and upbringing should be primarily the responsibility of his or her parents and guardians:
- (c) a child's care, development, and upbringing should be facilitated by ongoing consultation and co-operation between his or her parents, guardians, and any other person having a role in his or her care under a parenting or guardianship order:

- (d) a child should have continuity in his or her care, development, and upbringing:
- (e) a child should continue to have a relationship with both of his or her parents, and that a child's relationship with his or her family group, whānau, hapū, or iwi should be preserved and strengthened:
- (f) a child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.

[22] Section 5A of the Act provides:

5A Domestic violence to be taken into account

- (1) This section applies if—
 - (a) an application is made to the court for—
 - (i) a guardianship order under [section 19](#) or [27](#); or
 - (ii) a direction under [section 46R](#) in relation to a guardianship dispute; or
 - (iii) a parenting order under [section 48](#); or
 - (iv) a variation of a parenting order under [section 56](#); and
 - (b) a final protection order made under [section 14](#) of the Domestic Violence Act 1995 is, or at any time has been, in force against 1 or more parties to the application.
- (2) In taking into account the principle in [section 5\(a\)](#), the court must have regard in particular to the following matters:
 - (a) whether the protection order is still in force:
 - (b) the circumstances in which the protection order was made:
 - (c) any written reasons given by the Judge who made the protection order for his or her decision.

[23] Section 6 of the Act provides:

6 Child's views

- (1) This subsection applies to proceedings involving—
 - (a) the guardianship of, or the role of providing day-to-day care for, or contact with, a child; or
 - (b) the administration of property belonging to, or held in trust for, a child; or

- (c) the application of the income of property of that kind.
- (2) In proceedings to which subsection (1) applies,—
- (a) a child must be given reasonable opportunities to express views on matters affecting the child; and
 - (b) any views the child expresses (either directly or through a representative) must be taken into account.

[24] Clearly s 5(a) relating to safety of the child was intended to place the safety of the child as the most important principle – refer Duffy J in *Lowe v Way* [2015] NZFLR 547. Nevertheless the other principles must also be considered based on their relevance to the circumstances of the matter before the Court.

[25] Section 5A requires the Court in any proceedings relating to a guardianship order, or a parenting order and where a final protection order has been made, to take into account the principle in s 5(a) and the Court must have regard to those matters referred to above.

[26] There have been two final protection orders in this matter. The first on 29 May 2008, which was as stated above, subsequently discharged as the parties had reconciled and the second on 27 July 2010 after a defended hearing with the father opposing the making of a final order. That order is still in force.

[27] That hearing indicated a history of violence reported by the mother and a number of instances were cited, although the Court looked at four only which the father completely denied. He did admit striking her on the lip by accident causing her some internal mouth injury, and again kicking over a bucket with which the mother was cleaning. The father said that he tripped over the bucket and it was an accident.

[28] He said that he threw some CDs in the air and one accidentally hit the mother in the eye. On 2 December 2009 the father says that he was play fighting, but the mother says that she was pulled off the bed, fell on the floor and he then kned her in the ribs causing her considerable pain and unable to breathe. She suffered cracked ribs at that time and required medical treatment.

[29] The mother clearly determined that she was the victim of domestic violence, despite the father's denials and the Court determined that there were simply too many coincidences resulting in the mother's injuries and did not accept the evidence of the father. A final protection order was made accordingly.

[30] There is therefore a background of domestic violence by the father to the mother, which remains totally denied by the father in the current proceedings and he further denies that he has been domestically violent to the children.

Remaining Principles Relating to Child's Welfare and Best Interests

[31] Section 5(b), (c), (d), (e) and (f) must also be considered:

Section 5(b) - Both parents are involved in the child's care, development and upbringing.

There appears to be no issue with that.

Section 5(c) - Ongoing consultation and co-operation between the parents

This unfortunately is sadly lacking with communication difficulties being to the fore. A communication book was instituted, but the mother states that it was never returned by the father and the father states that she never filled it out in the first place.

Whatever the situation, it is clear that the communication book failed. The parties appear unable to talk face-to-face, or by telephone and it would seem that the only method of communication remaining is by email and that should be instituted only in respect of matters relating to the children.

Section 5(d) - There is no issue in this case with the mother's day-to-day care.

A final parenting order was made providing her with the day-to-day care on 26 May 2011. Otherwise the father shares care to the extent of his contact.

Section 5(e) - The children do have a relationship with both parents.

But there is a need to develop the children's relationships with their extended family. The father is Maori and attends the local marae in [location deleted] and wishes to take the children to his family in Christchurch where once a year he visited with the children, but that of course has ceased since the supervised contact order was made.

[32] The mother has family in the United States of America and they have had no contact with the children. There is currently an order preventing the removal of the children from New Zealand which the father indicated he would be happy to have discharged, but the mother seeks that it remain in effect because of safety issues. She did not expand upon the reasons for that in her evidence.

[33] The Court sees no reason why the children should not have contact with the father's whanau in Christchurch. This could happen independently of any involvement of the father pending final resolution of contact; and likewise if the mother sought to travel to the United States of America there could be little reason to prevent her from doing so if the order preventing removal was suspended.

Section 5(f) - The children's cultural identity should be preserved and strengthened.

The father is particularly concerned on this issue. He says that the children's cultural needs are not being met. The children used to attend on three occasions per annum the local marae for Te Haerenga from Friday until Sunday morning. Te Haerenga is loosely translated as "*the journey*" and is a venture that incorporates basic discipleship and Maori cultural values. It uses the concept of marae stays to facilitate weekend gatherings on a number of occasions over the year.

[34] The mother states that the children are involved in Maori culture with attendance at the Kapa Haka group at their school and basic Te Reo. Whilst this may maintain the level of understanding that they have achieved thus far, it certainly

would not develop their Maori cultural heritage and there is a need for the parents to consider how best their Maori heritage should be developed.

[35] If supervision is to continue, which is the outcome of this judgment, then attendance at Te Haerenga creates considerable difficulties as it involves overnight stays for a weekend and would be unrealistic for a supervisor to be tasked in that manner.

[36] The best and achievable result for these children is unsupervised contact with their father in a safe environment where they are not subjected to psychological or physical abuse. This may have been achieved already if the father had seriously taken onboard Mr Greer's recommendations at the conclusion of his report. Those recommendations are as follows:

Planning for contact should be for a year at a time with a medium term goal of progressing contact to unsupervised contact for approximately two to three times per fortnight for each child. The initial steps for this to occur would include –

1. The completion of a wide-ranging, independent, mental health assessment followed by formal therapy as necessary. (This has been amended to neuro-psychological and psychiatric assessments in tandem as there is the suggestion of a possible brain injury).
2. Attendance of and commitment to a group of individual Living Without Violence programmes. This has been undertaken by the father and completed. He says that it was beneficial to him and gave him a better understanding of how he should react in certain circumstances.
3. For him to demonstrate during supervised contact over time that he is able to consistently interact positively with the children and to specifically demonstrate co-operation with the contact supervisors and other social agencies working with the family. This including avoiding given preference to Stan and leaving Alden out.

[37] I have read all the Church members reports who have supervised contact. Generally they indicate that contact has progressed well with no difficulties. There was one occasion with one supervisor where the father indicated his anger and aggression at his belief of injustice over a particular event.

[38] A different story arises with the more strictly controlled supervision by Care Solutions. Their concerns raise issues of the number of gifts brought for the

children; aggression towards one supervisor in particular, who although willing to continue after the confrontation, was rejected by the father and he then refused to undertake supervised contact through Care Solutions until it was re-ordered on 30 March 2015.

4. If the father was able to demonstrate over a period of three to four months that he had engaged effectively in that process; and particularly in his interactions with the children, it was suggested that supervised contact could be progressively adjusted to encourage more time away from the Church on interesting activities.

[39] In part this has occurred with contact occurring at the marae and elsewhere and there is a need for greater flexibility, but as stated by the psychologist, the Church supervisors would have to engage in information sharing and monitoring with a third party, possibly initially lawyer for child.

Child's Views - Section 6

[40] In this case the views of the children have been relatively consistent. Stan has stated to lawyer for the children that he wishes more contact with his father, but he appears ambivalent in that regard to the extent that he initially required an adult to be present. In the last interview, lawyer for child was told by Stan that he seeks more time with his father and now he only wants his dad present other than Alden as he found that other adults distracted his father from Stan's time with him. He sought contact during the day and overnight, but expressed some reservations.

[41] Alden's views have changed. He initially sought no contact. He has over the supervised contact period regained some trust and he is now more positive in respect of contact, although had refused contact in December 2015 through to January 2016 as he felt left out because Stan is the focus of his father's attention. This was stated by Alden to lawyer for child, the psychologist and to his mother.

[42] He stated that he was now more comfortable without other adults being present as he feels shy around those other adults.

[43] Curiously, he stated that he and his brother had "*taught their Dad not to be mean any more*".

[44] When these statements from the children were put to the psychologist, Mr Greer, he determined that the boys' trust is still quite fragile, being aware of each parent's attitude towards the other parent.

[45] He determined that there remained a risk that Stan may see himself as special which, given his disabilities, is not good and that Alden may feel rejected by his father leading to less, if not no contact.

[46] Stan and Alden are 8 and 7 respectively, but their parents have been involved in the Court process for seven years, virtually consuming Alden's life and all but one year of Stan's life. It is clear that both boys are very aware of their parent's' attitudes towards the other and I reflect the psychologist's view point that the boys are certainly questioned too often by their mother and her partner.

[47] However, the Court must take into account the children's views subject, in my determination, to their age and maturity and to their lack of understanding as to safety issues, which are discussed further below.

[48] The boys both underwent investigative interviews and in respect of Stan, it is clear that he liked spending time with his dad and with his mum. With his dad he liked playing with the Xbox and with his mum, the playstation. He states that he feels safe with both his dad and his mother and he expressed that he would go to either his dad or his mum if he felt scared.

[49] He did state that *"dad yells and pushes when he is angry"* and he demonstrated that in the interview, with hands being pushed into his chest. This occurs only when he is naughty and he showed what his father's face looked like when he was being pushed in the chest and he pulled an angry face and said that this makes him feel sad and he gets scared and cries because it hurts. He said that he was not allowed to tell anyone that he was pushed when at his dad's as he said that *"Dad would get into trouble with the police"*.

[50] Stan was aware that his dad did not like his mother's partner and he stated that his father says that "*Caleb (the mother's partner) is mean but he isn't*" and that makes him feel sad.

[51] Alden said that his dad doesn't like Caleb and it is clear that he has heard comments by his father in that regard.

[52] He stated that he always wants to see his dad, but he has to stay with his mum. He gets time out when he is naughty at his dad's.

[53] He stated that "*Dad hurt his lip by slapping his lip with his full hand*". He said it hurt and it was bleeding because he could feel the blood running down his chin; and he said that it was so scary when it happened and he told all his friends and teachers at school.

[54] He stated that he felt okay going with his dad because he likes playing the Star Wars game at his fathers, but if he gets scared there he hides under his bunk bed. He does not like it when his dad yells as that makes him scared because his dad is angry when he is yelling.

[55] These comments about their father have also been told to their mother, Caleb and the psychologist. Both parents were of the view that the boys were truthful and that they could tell when they were lying, which they were not averse to. The psychologist was also of the determination that the information he received from the boys was the truth as they saw it.

Evidence of the Mother

[56] The mother is adamant that she seeks supervised contact only. She would prefer that contact supervised by Care Solutions.

[57] Her affidavit evidence was extensive and more of a hindrance than assistance to the Court. She states that she believes the children, when they have detailed incidents of their father's psychological abuse, his derogatory comments in respect of her and Caleb and physical violence towards the children. She states that her

delay in filing the application to cancel or suspend contact of some five months, arose because of her doubts as to what she was hearing from the children, but her evidence suggests that it was the school social worker that notified the police of her concerns and as a result after the investigations by the police were undertaken, the mother accepted that the children's statements were truthful.

[58] She has been the subject of considerable criticism from the father. He has criticised her to the kindergarten and subsequently the school at which the children attended, as he was, in the kindergarten teacher's words "*keen to share the family history about Haley's inadequate care and his negative comments were displayed in front of the children*".

[59] The kindergarten made a notification to Child Youth and Family Services on 6 March 2013 because of the very acrimonious relationship between the parents and because the father was described as being "*very volatile*". She stated that the father was very verbally aggressive towards her, particularly by his body language because of a sheet detailing the family history, or whakapapa, which the father believed was totally inadequate because of his own Maori culture.

[60] The overall impression gained by the Court of the mother, was that she was someone who had her own inadequacies, but when they were brought to her attention she strived to remedy them. She did not make derogatory comments about the father and did her best to shield the children from her own beliefs, but the psychologist was of the view that her beliefs in respect of the father were nevertheless conveyed to the children.

[61] She struck the Court as a thoughtful person who had the best interests of the children at heart. Both she and her partner had offered to assist in funding supervised contact for the father by meeting half the cost of the same; and her evidence that she endeavoured to encourage Alden in particular to attend at contact, struck the court as being the truth.

[62] She seeks in terms of Mr Greer's report, that the father undertake a neuropsychological and psychiatric assessment to determine whether there was any brain

damage or mental health issue. Her particular concern was that, notwithstanding the father had now undertaken three anger management courses, he was still making comments to the children that were, or could be psychologically abusive. On the Friday prior to the Court hearing, the children came back from contact and Stan told her that his parent's were attending Court on Monday.

Evidence of the Father

[63] He denied calling Haley or Caleb "*fuck wits*" to the children who reported that back to the mother; and he states that he has no faith in the headmaster of the school, did not call Caleb "*an egg*"; and nor did he say that "*the kids should pour boiling water over their mother*".

[64] Comments from some of the father's witnesses would also indicate that he has mentioned to them the mother's lack of maternal abilities.

[65] Ultimately he accepted that the children have formed the view that he did not like Caleb and that it would be upsetting for them.

[66] The father stated that he might disagree with people and that he would not necessarily be angry. He stated that he was assertive, but not aggressive.

[67] The father denied viewing pornography at any time and apart from the details of contents of a disc that were presented to the Court, there is no evidence before the Court that this is the case.

[68] He acknowledged using marijuana "*not very often*" with the last time being approximately one month ago.

[69] Considerable evidence was given about the alleged favouritism of Stan over Alden by the father which he denied. He says that he loves both boys, but that Alden is very independent and prefers at times to play on his own whereas Stan is the exact opposite.

[70] With regard to Mr Greer's recommendation that the father undertake a neuro-psychological and psychiatric assessment, he stated it was "*just a suggestion*". But acknowledged that he and his lawyer had tried, but had been unable to obtain such assessments.

[71] Overall the Court has some sympathy with the father. There is no question that he loves both boys and wishes them to be brought up in a clean and tidy environment with stimulation. His difficulties would appear to be caused by his quickness to anger and his highly emotional, aggressive and agitated state when he does become angry.

[72] He has undertaken supervised contact with the children since 5 September 2014 when the parenting order was varied. Such contact has been successful to a large degree, although there have been breaches by the father of Care Solutions' rules and at one point he refused to have a particular supervisor supervise his contact because he believed that he was not safe. This was as a result of the supervisor reporting negatively about the father's conduct at contact, with his introduction of third parties without approval, the provision of lollies to the children and a considerable number of gifts which has caused consternation to the supervisors throughout.

[73] He is on a Work and Income benefit and cannot afford to meet payment of the supervision cost of \$150 in respect of supervised contact through Care Solutions. The mother has offered to meet half the cost of that, but the father says that he would still not be able to meet the half cost. With respect to the father, he is inclined to square his own pitch by having angry exchanges with one Care Solutions supervisor and one of the Church member's supervisors. He sees no fault in his own behaviour.

[74] With regard to the psychologist, clearly the interview did not proceed very well. The psychologist described him as rapidly changing from becoming forthcoming to quite aggressive (or extremely assertive). He became increasingly unco-operative during the interview and did not seem to have a good insight into, nor control of, the effects of his angry responses and the potential effects of these on

others. The psychologist noted that personnel at the kindergarten, school, Care Solutions and Get Safe have all experienced similar responses from the father.

[75] It was the psychologist's view that the father still had significant difficulties in controlling his agitation and anger, including in front of the children and has displayed little insight, modification or acknowledgement of this in a variety of settings and this suggests that he remains at significant risk of displaying inappropriate anger in front of the children. As a result the psychologist is of the view that the father should continue over a period of at least 12 months having supervised contact and undergoing a psychiatric and neuro-psychological assessment. This is supported, the psychologist says, by a number of professionals involved with the family having queried whether the father has undiagnosed mental health difficulties and despite the fact that the Court has suggested he undertake such assessments, they have still not been undertaken.

[76] It must be said that during the hearing the father remained calm, although was sarcastic in many of his responses in cross-examination ("*so you say*").

[77] The father has many supporters within the [location deleted] community and there have been at least six affidavits filed in his support indicating he is a good father when with his children. The Court has no doubt that is the case, except for the occasions that are discussed below as examples of his behaviour towards the children.

The Psychologist

[78] Mr Greer is a registered clinical psychologist and has practised as such since 1985 to the present and was a registered psychologist with the Department of Education for nine years. He has provided reports to the Court from 1975, shortly after his qualifications were gained at Canterbury University. He has provided many reports to the Court and is highly experienced and well-regarded.

[79] His assessment of the father identified a number of significant concerns with respect to his capacity to consistently maintain positive and safe interaction with the children.

[80] At paragraph 13 of his report, he states:

While he pleaded guilty to hitting Alden, Andreas categorically stated that he had not hit Alden and had pleaded guilty to save Alden giving evidence. However, Alden's interview with the police indicated that he had been hit by his father and that he was fearful about this. During interview Andreas also denied any history of physically or verbally abusing Haley, although a protection order had been granted against him. The Get Safe worker stated that when Andreas undertook Get Safe programmes in 2008/09 he was difficult to engage and did not readily grasp the concepts. Andreas' church representative (while supporting Andreas in having the children live with him instead of Haley and noting Andreas' significant progress over the past years), stated that while Andreas' had denied a number of assaultive actions in his view Andreas' is still on his "*journey*" and that he did not trust Andreas' denial of all the allegations against him.

[81] The psychologist then expanded by stating:

The extent of Andreas' denial together with his protection order apparent subsequent ongoing domestic violence and anger (from police, CYFS, community information together with the writer's own experience) indicates poor insight and a high risk of continued angry or violent responses including potentially in the domestic setting.

[82] His determination, with which I agree, was that both parents have overly involved the children in their views of the other parent and as a result the children's views in respect of contact with their father may be coloured by either of the parent's comments in respect of the other parent. It is described by the psychologist as a significant pattern by the father.

[83] At page 10 of the report, second bullet point, the psychologist states that:

Consistent with the experience of the kindergarten Andreas was observed to be very intense in his interactions with the children ... this intensity was consistent with his high level of negative emotion displayed with respect to his distress at not having regular contact nor care of the boys.

[84] The psychologist's observations and statements received from the father, indicated that the father seems to be excessively focussed on Stan's wellbeing.

[85] In the end result Mr Greer was of the determination that while the children wished to have a close productive relationship with their father, there were a number of indications that the children remain apprehensive of their father.

[86] With regard to the father's parenting capacity, the psychologist stated that the father had difficulty with the interview in that he readily became agitated and

concerned that the writer was like “*other Court contractors*” exploiting the system and prejudiced against him; tended to perseverate on certain points (for example, blaming Haley for all difficulties with the children, including his perception of Stan losing ground educationally). He was very resistant to acknowledging any parenting difficulties and particularly domestic violence. The psychologist was of the determination that the father’s presentation was resistant and inconsistent and indicative of at least significant emotional distress over and above that which would be expected from the assessment process.

[87] Even at hearing some nine months after the report was written, the psychologist was of the determination that the father was not likely to be ready for unsupervised, or even less supervised contact, for a considerable period. That period at hearing was determined as a period no less than twelve months.

Social Worker’s Report

[88] This report shows at least four notifications to Child Youth and Family Service, two arising in 2010, one in 2011 and a further report from [name of school deleted] (referred to above) in 2013. The prior reports appear to relate to allegations of poor hygiene in the home which was overcrowded and that the children were uplifted dirty and smelly.

[89] A family group conference was held for the children on 17 May 2014 which resulted in a plan indicating that the mother and father were able to work together at that time at least, firstly for the contact arrangements for the father which resulted in the consent parenting order of 26 May 2014; and secondly a safety plan around Stan’s admission to Christchurch Hospital.

[90] The report indicated no concerns as to the living situation in either the mother or the father’s home, but reflected the psychologist’s determination that the father was clearly affected by the events and has struggled to control his emotions and presented as angry on many occasions. The report writer recommended that the father consider a formal assessment in regard to his mental health, because of his own background of domestic violence as a child and because of alleged drug and alcohol abuse.

Findings on Domestic Violence

[91] In terms of s 5(a) it is necessary for the Court to make findings of fact as to whether any allegations of violence affecting the child are proven on the balance of probabilities and then to assess the risk to the child from the person who was found to have acted violently.

[92] According to the commentary in Westlaw NZ:

This is likely to involve looking at proven acts of violence or abuse and assessing whether there is a pattern of behaviour that is likely to continue or escalate. If the proven abuse is towards the child's other parent or carer or another member of the household, the Court will need to determine whether or not any acts of abusive conduct –

- Were recent or sometime in the past;
- Were serious or relatively minor;
- Arose in a particular context; and
- Were isolated or such as to indicate a pattern of behaviour which poses a risk to the child; see *Surrey v Surrey* [2010] 2 NZLR 581.

[93] Further, when considering contact in favour of a person who has used violence, the Court must consider the attachment of a condition to a parenting order aimed at protecting the child and when making or varying a contact order, order that contact be supervised if it is not satisfied that the child will be safe with the contact parent.

[94] The term “*safety*” in the context of s 5(a) is far wider than safety from physical violence or sexual abuse. The child must be protected not only from physical injury or abuse, but also from any threats to his or her health or physical, physiological or psychological wellbeing and development.

1. The mother alleges that in April 2014, Alden came back from the father's contact with a swollen lip and Alden told her that his father had slapped him for allegedly putting dirty clothes in with clean clothes.

The father denied this even occurred. The incident was subsequently the subject of a charge brought by police after an investigative

interview and subsequently, despite the father saying that he was defending the matter, he entered a plea of guilty on a sentence indication of discharge without conviction. He says in his evidence that he only pleaded guilty to prevent his children from giving evidence in Court and he advised in the course of cross-examination that the sentence had nothing to do with the outcome or reason for his decision in pleading guilty to the charge.

Simply the father has pleaded guilty to this charge, acknowledging the factual matters arising and this Court must accept that fact. This incident therefore is substantiated as physical abuse in terms of the Domestic Violence Act and Care of Children Act.

This finding is also based on the investigative interview where Alden indicated that he was scared of what occurred on that occasion and his explanation was simply a repetition of the facts as he saw them. I accept that Alden was telling the truth in respect of this incident, as did the psychologist.

Both the doctor and CYFS were advised of these events, but it appears no further action taken.

2. The second incident is alleged to have occurred between 21 July 2013 and 25 July 2013 when the boys returned from their father's. Alden had been getting rashes in his groin and as a result, when the mother was putting Vaseline on them she saw a good-sized bruise on his thigh and Alden said that his father had done it, had got mad at him and put him down hard on a chair. These bruises were noted by the family doctor.

The mother alleges that Alden in particular returned from contact on a number of occasions with bruises on his legs and thighs. The father completely denies this event and explains that Alden is very heavy and he doubted if he could lift him. The mother disputes this fact stating that she has seen the father lift Alden subsequently without any difficulty.

Whilst more historical, the Court is prepared to accept this as domestic violence.

3. Between 14 and 17 August 2011, it is alleged Alden had two grazes on his forehead. This is historical and as Alden would have been aged 3 at the time there has to be some doubt as to whether this is domestic violence or not, and I make no finding.
4. On one occasion Alden, whilst being driven in the car, showed his mother how his father disciplined him by grabbing hold of his mother's ear and pulling it upwards. This event occurred in March or April 2015, but there was no timeframe as to when the event occurred.

The father denies that he did this, but said that he rather ran his fingers down the child's earlobe. This was some form of disciplinary action and it was hard to understand why the father would do this, but certainly the effect upon Alden was that it hurt.

It is difficult to see how Alden could totally misinterpret his father's actions, but if his ear was pulled upwards it would constitute physical violence, but I am unable to determine whether this is the case or not.

5. It is alleged that Stan drove his bike over a "*slip and slide*". His father ordered him to bed and he had to stay there for the day. Again it is unknown when this occurred, but Stan had told his mother over the December 2015 holidays.
6. Stan, in the evidential interview, talked about his father pushing him in the chest. He said that this occurs whenever either of the boys is naughty, he is then pushed in the chest when his father is angry. He then said "*Dad looks like this*" and pulled a very angry face at the video camera during the course of the interview. He said that it makes him feel sad, he gets scared and he cries and it hurts.

He further said that his father told him not to tell anyone as he would get into trouble with the police.

The father says that he puts his hand on the kid's chests when he is disciplining them. He says there is a need for parents to discipline children when they are naughty, or misbehaving, but he acknowledges that the children may see this differently and he indicated that he would not do so again.

[95] I accept Stan's statements in the evidential interview as correct and this would be and is domestic violence.

[96] Those incidents that have been found as domestic violence form a pattern of behaviour that constitute in my determination domestic violence and despite the father stating in the course of evidence that he has learned a lot about discipline as a result of this hearing, the Court remains concerned that this conduct may continue, particularly in view of the psychologist's findings that there may be a brain injury or mental illness that needs to be addressed by the father.

[97] Accordingly I assess that the children remain at risk from their father in the event that he goes under stress, or becomes angry with them when in his care. Perhaps of greater concern is the fact that the alleged physical assaults have occurred after the father has already attended two Stopping Violence programmes. He has recently completed a third as a result of a suggestion by the psychologist in his report.

Psychological Abuse

[98] There are multiple allegations, over 25 in total, of psychological violence made against the father. These are alleged to have occurred, in lawyer for child's submissions, during supervised contact since September 2014 and can be classified, she submits, into three groups being:

1. Inappropriate comments about adult matters (Court, the contact arrangements for the future, his prior jail term). Examples of these are as follows –

- (a) Stan came home from the last contact occasion and advised his mother in tears that he would not be seeing his father next week because contact had ended as the parties were in Court on Monday through until Wednesday. As a result he was of the belief that his contact with his father had concluded.

In answer to this the father has said that Care Solutions cut the contact short and indicated that funding had ceased for supervised contact.

The report from the Care Solutions Programme Provider is that on 19 February 2016 the father had engaged in a conversation about the Court with Stan and that he may not see the boys for a while and that he loved them. As a result of this, the supervisor shut down the contact arrangement. However, Stan became very upset. Certainly this is involving the children in adult issues and in my determination is psychologically abusive of them.

2. Threats towards the mother and her partner, Mr Osborne.
3. Negative comments about the mother and her partner, Mr Osborne, and the situation in general. Examples of the above include –
 - (a) Dad saying that he “*didn’t like Caleb, that Caleb is mean*” and this has upset Stan and Alden, when they both said that he wasn’t; Ms Burn stating in evidence that the father was keen to share his family history and in particular about the mother’s inadequate care and negative comments about her which were stated in front of the children; the psychologist noting similar comments made in respect of the mother and Mr Osborne by the father.

[99] Whilst the children may be stating matters that they believe the mother might wish to hear, the number of incidents are so numerous as to leave little doubt that their reporting is correct. Such statements have been made by the children in a matter-of-fact way, without embellishment or fantasising.

[100] Overall I therefore find that there has been physical and psychological abuse of the children.

[101] There has also been a prior determination of physical abuse by the father against the mother, resulting in the protection order granted after a defended hearing on 27 July 2010, but it is accepted by the mother that there has been no physical violence by the father in respect of the children since the supervision order for contact was made; and clearly there has been no physical violence against the mother since the protection order was made.

[102] There are also allegations that the father has difficulty with his attachments as he is overly attached to Stan, as he sees that child with special needs and therefore requiring his special attention, which has resulted in behaviours from Alden that suggest that he has been rejected, or at least is not the focus of his father's attention - (refer Mr Greer's evidence).

[103] It is alleged by the mother that as a result of this purported favouritism by the father towards Stan, that Alden has subsequently refused to attend contact, despite encouragement from the mother and from the supervisors; and the father therefore risks alienating Alden from him unless he is more even-handed in his approach to both children.

Submissions

[104] Ms Gracia for the applicant, submits that there is evidence of physical harm to the children, with which the Court agrees.

[105] Her client's position is to support the boys' relationship with the father, but contact should continue supervised until such time as a neuro-psychological and

psychiatric assessment was undertaken. She is prepared to meet half the cost of continuing supervised contact through Care Solutions.

[106] Mr Miller for the father, submitted that the issue of violence needs determination. He conceded that the father was not able to keep his views away from the children, but queried whether it was enough to make the children unsafe.

[107] He submitted that there could be a loosening of some supervision and indicated that there was a concern in relation to cultural matters and how this could be improved.

[108] He accepted that the children's views needed to be taken into account. He queried the funding of supervision and finally accepted, properly in the Court's view, that there is a need for a neuro-psychological and psychiatric assessment before there is a move to unsupervised contact.

[109] Ms Meyer, as lawyer for the child, provided written submissions submitting that the children's trust is still fragile as stated by the psychologist, referring to comments made by the children about wanting a "*nice dad*" and that their father "*was not being mean any more*".

[110] She supported supervised contact, at the very least until the risks referred to in her submissions had been addressed.

[111] The difficulty will be with providing appropriate supervisors as the Court has reached the determination that before contact moves to unsupervised contact, there needs to be a neuro-psychological and psychiatric assessment. The evidence of the father was that he would be able to receive funding from the marae, but it may also be the case that he could receive funding from legal aid if he is indeed on legal aid. Certainly it is essential that these assessments be undertaken in view of the psychologist's findings.

[112] Finally it is my determination, balancing all factors that this matter needs to be brought to a conclusion by final orders today, but with leave granted to the father

to reapply when he has concluded his assessments and addressed any issues that might arise there-from to the satisfaction of the Court.

[113] It is noted that there appears to be an error in the orders made. There was a parenting order made on 26 May 2011 which was a final order. That provided the day-to-day care to the mother. That order was varied on 5 September 2014, only for a period of six weeks, in that the contact was suspended. A further variation was made on 17 December 2014 and that interim parenting order was further varied on 30 March 2015 to provide that contact can occur on every three out of four Sundays from 9.00 am to 12.30 pm, supervised by either Dusty Bancroft or Alban Ashworth, or such other person or persons as either party may propose, providing lawyer for child first satisfies herself that the person proposed understands the nature and role of their pasts.

[114] Contact through Care Solutions was also to continue. However, the Court then issued an interim parenting order and with respect that should have been a variation order. The interim parenting order states that the mother shall have day-to-day care on an interim basis with contact occurring as set out. The interim parenting order providing day-to-day care is in fact incorrect, as that original order has remained undischarged as the full parenting order providing day-to-day care.

[115] Accordingly I consider the following orders to be in the best interests and welfare of the children, particularly taking into account s 5(a) and s 5A Care of Children Act 2004:

1. I confirm the parenting order that was granted in favour of the mother providing her with the day-to-day care of the children dated 26 May 2011.
2. All prior interim orders are hereby discharged.
3. There is an order providing to the father contact to the children in the following terms –

- (a) There is a final parenting order as to contact in favour of the father from 9.00 am to 12.30 pm on alternate Sundays with either Mr Hollins or Mr Bancroft supervising such contact. In the event that either of the supervisors withdraws, then either party may propose a further supervisor providing Ms Meyer first satisfies herself that the person proposed understands the nature and role of their task. If issues and difficulties arise resulting in that person or persons not being able to properly supervise contact, then Ms Meyer can withdraw her approval of the supervisor whether already authorised or not.
4. Contact through Care Solutions is to continue funded by the Court on one occasion per fortnight on the standard conditions imposed by Care Solutions.
5. There may be further contact through Care Solutions on the alternative week, but the cost of the same shall be met by the parties equally. That is, \$75 by the father and \$75 by the mother if the cost remains the same.
6. Whether Care Solutions or Church members supervise the contact, it is not restricted to the Care Solutions premises, nor to the Church premises, so long as the supervisors are able and willing to be flexible and move to various venues during the contact period.
7. The consolidated fund shall only meet the costs of 13 further contact sessions, that is for a period of six months from the date of this order. If Care Solutions is to supervise contact thereafter, then the parties shall be solely responsible for the costs of the same.
8. The conditions of contact shall be as follows –
 - (i) the father shall not check the children for bruises;

- (ii) he shall not discuss adult issues, Court, or possible future contact with the children;
 - (iii) he shall not bring junk food or confectionery of any description for the children;
 - (iv) the father may propose a person to accompany him to the supervised contact visits;
 - (v) the supervisor will make a note of any matter of concern that is raised during the course of contact and shall advise lawyer for the child of the same.
9. Changeovers shall occur in each instance at a place nominated by the supervisor prior to the contact session commencing. The mother, or her partner Mr Osborne, shall be responsible for the delivery to and uplifting of the children from such venue.
10. All communication between the parties shall be by way of email.
11. Leave is given to the father to apply for a further parenting order seeking contact unsupervised to the children within a period of two years from the date of this judgment, upon the condition that he has undertaken a neuro-psychological assessment and a psychiatric assessment in tandem with the same; and shall have undertaken any therapy required as a result of such assessments; and further shall have complied with the rules of supervision imposed by the supervisor; and further provided that he has undertaken safe contact with the children throughout.

[116] Lawyer for child is to remain in her appointed position for a period of two months from the date of release of this judgment. The purpose of her continuing appointment is to advise the children appropriately of this judgment and further to assist in the event of any change in supervisors.

[117] I am satisfied, in the circumstances, that because of the orders, particularly in respect of shared cost of supervised contact, that if there were to be costs contribution orders made, it would cause serious hardship to each of the parties and to the dependent children of the parties. There will be no costs contribution orders accordingly.

P Whitehead
Family Court Judge