NOTE: PURSUANT TO S 139 OF THE CARE OF CHILDREN ACT 2004, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE HTTP://WWW.JUSTICE.GOVT.NZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS.

IN THE FAMILY COURT
AT HAMILTON

FAM-2011-042-00906
[2016] NZFC 2592

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	GREG STAMP Applicant
AND	AKU HENARE Respondent

Hearing:	30 March 2016
Appearances:	S Hoebergen for the Applicant No Appearance by or for the Respondent
Judgment:	30 March 2016

ORAL JUDGMENT OF JUDGE R H RIDDELL

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[1] On 28 September 2015 His Honour Judge Collin made directions to progress this matter to a hearing. The child Corey is in his father's day-to-day care as the result of an urgent application which was accepted by the Court in June 2015 and an interim parenting order made on 8 June of that year. That order directed mother's contact to be supervised. It is accepted that the mother has difficulties with alcohol and drugs and the matter was set down for a fixture.

[2] Since then counsel for the father has filed an application to strike out the mother's response and she was directed by Judge Collin to file an affidavit setting out her position. Ms Henare has done so in an affidavit sworn 25 February 2016. For some unknown reason her counsel has not attended Court by telephone as was anticipated and of course the mother Ms Henare is not in Court either.

[3] Today I am asked to strike out Ms Henare's defence. That is opposed by Ms Henare herself and I need to refer to her affidavit which for some reason was not served on counsel for the applicant. The affidavit makes the following clear:

(a) The mother has struggled with the change of care arrangements for Corey but accepts that it was necessary.

(b) She acknowledged that she has had problems with drugs, that she went on to the Methadone programme and is now taking DHC Codeine which is administered to her on a daily basis.

(c) She is intending to enrol at rehab and that will take some months to complete.

(d) She wants to share the care of Corey in Hamilton ultimately but acknowledges that she needs to undertake and complete rehab and be drug-free before that can occur. She also says she would like to relocate back to Nelson with Corey but would assess that once she is out of rehab.

(e) She asks the Court to adjourn the matter for four months to allow her to complete rehab and relocate to Hamilton. She says that if the Court is not prepared to do that then she is willing to consent to an interim parenting order giving the father day-to-day care of Corey and for her to have supervised contact with the order to become final in six months if no objection is raised.

[4] I am not prepared to adjourn this matter again. The mother clearly is struggling with her own issues and needs some time to address those. It is not reasonable either to Corey or to Corey's father who has had to wait while the matter was set down for a hearing and now to hear that the mother wishes to adjourn matters for at least another four months. This matter is on the without notice track. That means it can have a directions conference and then it needs to progress urgently to a hearing. It is not reasonable to allow it to be adjourned further. The most sensible and fair solution for Corey is that the Court makes a final order today and that once the mother has completed rehab, is drug-free and is certain about where she will be living and is able to live independently then she can apply to the Court or reach agreement with the father on an out of Court basis. But these proceedings have been before the Court for too long for the Court now to simply adjourn it again. It has already been adjourned to a formal proof and then to a hearing. I am not prepared on the without notice track to allow it to linger any further.

[5] Accordingly, the interim parenting order of 8 June 2015 is discharged. That order was varied by me on 12 August 2015 although no formal variation order appears to have been issued. In any event I am going to discharge that variation as well.

[6] I am heartened by the fact that Corey has been to visit his mother in Nelson and with the father's consent has been able to have contact supervised by the maternal grandparents. Clearly there is sufficient goodwill between the father and the mother to ensure that Corey continues to have contact with his mother.

[7] Accordingly, I now make a final parenting order granting Mr Stamp day-to-day care of Corey. The mother's contact is expressed to be supervised on

terms acceptable to Mr Stamp. Contact is to occur on the basis that are to be no drug use or alcohol use while the child is in the mother's care.

[8] In the event that the mother does complete rehabilitation and is in a position to share the care of the child and that occurs within two years then that will be considered a significant change of circumstance and she will be granted leave to make application to the Court for that to occur.

[9] Mr Stamp is legally aided and in the circumstances should not be required to make a contribution to the costs of lawyer for child's appointment. I am going to direct that given Ms Henare's situation she is not required to contribute to those costs either. That being so Mr Ruthven's appointment is now concluded with the Court's thanks.

R H Riddell
Family Court Judge