

EDITORIAL NOTE: NAMES AND/OR DETAILS IN THIS JUDGMENT HAVE BEEN ANONYMISED.

**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](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).**

**IN THE FAMILY COURT  
AT TAURANGA**

**FAM-2006-035-000058  
[2016] NZFC 4755**

IN THE MATTER OF      THE CARE OF CHILDREN ACT 2004  
  
BETWEEN                      MERLE JACKEMAN  
   Applicant  
  
AND                              ESTHER ROYCE  
   Respondent

Hearing:                      3 June 2016  
   Merle Jackeman in Person  
Appearances:                T Marshall for the Respondent  
   S Scott as Lawyer for Child  
  
Judgment:                    10 June 2016 at 4.30 pm

---

**RESERVED JUDGMENT OF JUDGE A J TWADDLE  
[Contact Arrangements]**

---

[1] This case is about contact between Sam aged 11 and his father, Merle Jackeman.

## **Background**

[2] Mr Jackeman and Sam's mother Esther Royce separated in 2005 when Sam was aged three months. Sam has primarily been in the care of Ms Royce since then. They live in [name of suburb deleted].

[3] Following the separation, Mr Jackeman formed a new relationship. This relationship ended and [details deleted] he formed a relationship with his current partner Valerie. He lives with her and her two children in [name of suburb deleted], Auckland.

[4] A parenting order made on 28 May 2014 provides that Sam is to be in the day-to-day care of Ms Royce and that Mr Jackeman was to have contact for one week of each of the school term holidays and for two weeks in the Christmas school holidays.

[5] Mr Jackeman did not have contact in the July 2015 school holidays and applied to vary the parenting order as to contact so that his contact would be increased.

[6] Ms Royce cross-applied in September, also for a variation to the parenting order as to contact. She said contact did not occur in the July 2015 school holidays because Sam had [incident details deleted] on the last day of the school term. There was, she said, a history of Sam not wanting to see his father.

[7] On 17 September the Court suspended the 2014 order and made an interim parenting order providing that Sam was to be in the day-to-day care of Ms Royce and that Mr Jackeman was to have contact supervised by an approved supervised contact provider or a person approved by the Court or agreed to in writing by Ms Royce.

[8] Mr Jackeman has not seen Sam for over a year.

[9] Mr Jackeman's proposal as to contact is:

- (a) His ultimate goal is to have Sam in his care in the school term and Christmas holidays as was the case before contact arrangements changed;
- (b) Initially he proposes contact once a month overnight on a weekend in Tauranga. He would stay Saturday night and have quality time with Sam;
- (c) During the weekend contact, Sam could see Mr Jackeman's sister who lives in [location deleted];
- (d) He would like contact at Christmas so Sam could spend time with his grandparents, who have not seen him for a year;
- (e) He would like weekly telephone contact.

[10] Ms Royce's proposal was that Sam should have no contact with Mr Jackeman. If however the Court decided Mr Jackeman should have contact, Ms Royce proposed that he should have supervised contact at a Court approved agency with assistance from a family therapist.

### **Legal principles**

[11] Section 48(1) of the Care of Children Act gives the Court the power to make a contact order. The power must be exercised on a reasonable and principled basis. The principles to be applied are set out in ss 4, 5 and 6 of the Act.

[12] The overriding principle is set out in s 4 and is that the child's welfare and interests are the first and paramount consideration.

[13] The s 5 principles which are relevant to a determination of the issue in this case are:

- (a) A child's safety must be protected, and, in particular, the child must be protected from all forms of violence (as defined in s 3(2) to (5) of the Domestic Violence Act) from all persons including members of the child's family;
- (b) A child's care, development and upbringing should be facilitated by ongoing consultation and cooperation between his or her parents and guardians;
- (c) A child should have continuity in his or her care, development and upbringing;
- (d) A child should continue to have a relationship with both of his or her parents, and the child's relationship with his or her family should be preserved and strengthened.

[14] Section 6 of the Act provides that a child must be given reasonable opportunities to express views on matters affecting the child, and any views the child expresses (either directly or through a representative) must be taken into account.

[15] Mr Scott filed memoranda in May 2014, October 2015 and May this year in which he referred to Sam's views, and I spoke with Sam before the hearing started. I am satisfied that the requirements of s 6 have been met.

[16] With respect to Sam's views, it is relevant to refer to *C v S* 25 FRNZ 123, where Randerson J said:

The expression, "taken into account" is stronger than "have regard to" but does not go so far as to oblige the decision maker to act in accordance with any view expressed by the child. That would run counter to the Court's wider obligation to assess what the child's welfare and best interests require: s 3. The obligation to take any such views into account is mandatory, but the section...is silent as to the weight to be given to the views expressed. It is implicit that the Court retains a discretion to give such weight to the child's views as it considers appropriate in the circumstances of the case. Despite the omission in the new section to reference to the age and maturity of the child, the legislature cannot have intended that a Court should not have regard to those factors along with such other considerations as may be relevant to an assessment of the weight to be given to a child's views.

## **The evidence**

### *Mr Jackeman*

[17] In his affidavit evidence Mr Jackeman said Sam needed more time with him. He, his partner and Sam's extended family are more than willing and able to look after him and accommodate his needs. He had accepted limited contact with Sam for many years, but as Sam gets older he needs his father's input and influence. He had seen small changes in Sam's behaviour and felt he lacked discipline, and required his father's morals, standards and respectfulness, which he was not getting from his mother. More contact with him would give Sam a more balanced upbringing. He very much loved Sam and believed that what he described as his mother's controlling and manipulative behaviour had caused Sam to think otherwise. Sam has a large extended family consisting of grandparents, uncles, aunts and cousins and more time with them would also benefit Sam.

[18] Mr Jackeman said his relationship with Sam had deteriorated because Ms Royce chose not to communicate with him, she would, he said, do anything and everything in her power to discredit and undermine his parenting skills. Reducing contact would create an unbridgeable divide in his relationship with Sam.

[19] Mr Jackeman was concerned about bullying and physical abusive behaviour by Sam towards his partner's children. He believed Sam ruled the roost in his mother's home and that he had been subject to undesirable influences at Ms Royce's workplace, [details deleted].

[20] Mr Jackeman denied that he had been verbally or psychologically abusive towards Sam. He had "used his discretion" in disciplining Sam and had never been cruel to him. Nor had he pulled Sam off a bed. He had tapped Sam on the head with a fishing rod after which Sam started hitting him. The rod was a four inch long, child's rod; it was not a forceful blow and he saw nothing wrong with doing this.

[21] Sam's troubles started, Mr Jackeman said, several years ago when he lived in [name of town deleted]. His behaviour was unstable and his school became concerned. His behaviour problems have escalated since Ms Royce began her current work.

[22] Mr Jackeman said that when Sam stayed with him for contact, he had been involved in various family activities, including going to the Easter Show, the museum, speedway, super cars, Rainbows End, fishing trips, picnics and days at the beach.

[23] Mr Jackeman believes Ms Royce has a detrimental effect on Sam's decision making; that she has influenced his choices (including threats that he would run away if forced to have contact) and that he would say and do anything to please her as she has a direct influence on everything he does.

[24] In his oral evidence Mr Jackeman said Ms Royce was a good mother to Sam and had not tried to stop him having contact with Valerie or with his parents.

[25] While Mr Jackeman accepted Sam suffered from migraines, he had, Mr Jackeman said, done so for years; the migraines were not linked to having contact with him.

[26] Mr Jackeman accepted Sam was likely to have felt humiliated in front of his friends during the fishing rod incident. He said he later apologised to Sam.

[27] Mr Jackeman said he had always wanted contact with Sam. He had thought carefully about the consequences for Sam if he was made to have contact. Initially Mr Jackeman said if Sam was forced to have contact their relationship could only improve; if he accepted Sam's view their relationship would become non-existent. But later in his evidence, when asked what he hopes to achieve if Sam was forced to see him, Mr Jackeman said he would not insist on Sam seeing him, and would not expect a social worker or police to be involved if a contact order was made and Sam refused to see him. Mr Jackeman said he wanted a more loving relationship than they had at present. He accepted he was partly to blame for the relationship breaking down. He realised that making Sam see him would be counter-productive to their

long term relationship if Sam was adamant he did not want to see him, he would have to accept that.

[28] The breakdown in their relationship occurred, Mr Jackeman said, because Sam had been disrespectful to him and he had disciplined him. Sam “did not do discipline well”, and had told his mother; things had then been blown out of proportion.

[29] Mr Jackeman said he and Ms Royce do not get on and do not communicate. He did not accept he had verbally and psychologically abused her, but said when he had tried to negotiate contact times and arrangements unsuccessfully he had become frustrated and had been “a bit stern” with her.

[30] Sam had often told him he loved him, and when he returned him to his mother, Sam said he felt unhappy and distraught.

*Ms Royce*

[31] Ms Royce’s affidavit evidence was that there had been ongoing problems with the 2014 contact order since it was made.

[32] After she had filed the 2014 proceedings, Mr Jackeman had been verbally and psychologically abusive towards her; he had called her names and was “continually nasty”.

[33] She had difficulty encouraging Sam to go on contact. In 2014 he had migraines in the period leading up to holiday contact; he had begged her not to make him go on contact visits and had been physically ill and had vomited before contact.

[34] Sam told her his father had been cruel to him, putting him down by calling him a wuss and mummy’s boy, telling him to harden up when he had a migraine and pulling him off a bed.

[35] Sam had been in some trouble at school. In a letter dated 24 July 2015 his teacher said:

I have noticed that leading up to the holidays when he is to visit his dad, he becomes quite anxious and angry and develops migraines. When he returns he is unhappy and upset and very frustrated for a number of days.

[36] Ms Royce referred to a number of emails Sam sent to his father in July and August last year, telling him he did not want to visit him. Mr Jackeman had replied to Sam, saying if he did not want to visit because he did not like his rules and discipline, that was his choice; he was welcome as long as he accepted their rules; life did not revolve around him and certain behaviour and comments were not acceptable.

[37] Mr Jackeman explained to Sam he had tapped him on the back of his head with a fishing rod because he was being rude and disrespectful.

[38] Ms Royce said she was concerned about the implications if Sam was made to go on contact visits because he had told her he would run away.

[39] Ms Royce saw no problems with Sam's moral standards; he knew how to share and to be responsible. He did not rule the roost at her home; they have a healthy relationship and discuss matters of importance. She did not undermine Mr Jackeman's parenting skills to Sam; she had said things may be done differently at his father's but also that he needs to abide by his father's rules when he is in his home. She told Sam that although his father may be stricter than she is, he still loved him.

[40] Sam is not, she said, influenced by her; he had been brought up to think for himself; he was mature and able to voice his own opinions and ideas.

[41] Royce [occupation related details deleted].

[42] Ms Royce said Sam could have contact with his paternal grandparents, aunts, uncles and cousins by phone, email and Facebook. She had no reason to isolate Mr Jackeman from Sam's life. She saw Sam's views as a reaction to the way his father had treated him and believed his views should be respected.

[43] In her oral evidence Ms Royce said she was frightened of Mr Jackeman and uncomfortable having face to face communication with him. As a result she had stopped communicating with him but was open to communicating with Valerie about Sam.

[44] Ms Royce said she believed Sam's attitude to contact changed after Mr Jackeman formed a relationship with Valerie and moved from [name of town deleted] to Auckland. In her home Sam was an only child; in Mr Jackeman's home he was one of three children; he was expected by Mr Jackeman to fit in but had difficulty doing so and became upset as a result.

[45] Ms Tartt, a friend of Ms Royce, said Sam had asked her for advice about the situation with his father. He had made it clear to her he did not currently want to see his father.

[46] Ms Tartt said Sam is normally a happy and outgoing boy, but she had noticed he got really upset in the weeks leading up to school holiday contact.

[47] Sam told Ms Tartt when he was in his father's care he was not allowed to speak to his mother, was not allowed to use the internet and was treated differently to the other children in the home. His father had called him a wuss, mummy's boy and a good for nothing brat. He felt like he wanted to hit his father when his father said this.

[48] Ms Tartt was not required for cross-examination.

### **Sam's views**

[49] In his report of 26 May 2014, Mr Scott said Sam enjoyed his relationship with his father. He texted and emailed his father regularly and he enjoyed spending time with his father during the school holidays. Mr Scott said Ms Royce and

Mr Jackeman were able to cooperate and communicate by text in relation to contact visits.

[50] In his report of 22 October 2015 Mr Scott said Sam told him that his time with his father had become increasingly difficult, and he was extremely uncomfortable in his relationship with him. Sam told Mr Scott he did not want face to face contact with his father, although he was agreeable to email contact. He did not enjoy contact or being part of a blended family during contact. His father was often offensive about Ms Royce which he found stressful. He had tried to talk to his father about not enjoying holiday time with him, but felt shouted down and not listened to. Mr Scott said that Sam seemed to enjoy a good relationship with Valerie and was able to maintain his relationship with his paternal grandmother and grandfather through Facebook, emails and telephone calls.

[51] In his report of 24 May this year, Mr Scott reported Sam remains firmly of the view that he does not want to have direct contact with his father. He became visibly anxious when Mr Scott suggested any form of contact, either face to face, email or telephone. He is progressing well at school.

[52] Mr Scott said Sam has reasonably regular contact with his paternal grandparents who live in [name of town deleted]. A paternal aunt recently moved to [name of town deleted]. He has a good relationship with her and his two adult cousins. He receives Facebook messages from Valerie, which he described as “really supportive of him and his position”.

[53] During my meeting with Sam, we discussed [details of identifying discussion deleted], and his school, which he described as “pretty cool”. [activities deleted].

[54] Sam said living with his mum was “going well”. They have two cats, Tom and Stripes. He likes to [activity deleted].

[55] Sam said he did not want to see his father, who had been mean to him and was not really caring. Sam said he got on well with Valerie, who is caring and supportive. He did not want phone calls with his father; he said he could be abusive.

[56] Sam impressed me as friendly, quiet, mature, confident and composed. I find his views must be given significant weight because of his age, maturity, the strength and consistency of his views over the past 18 months, and the cogency of the reasons he has for not wanting contact (Mr Jackeman's behaviour towards him with the fishing rod, calling him names and putting him down, and treating him differently from Valerie's children).

## **Findings**

[57] I find:

- (a) Until about the time Mr Jackeman began his relationship with Valerie, Sam enjoyed contact with his father;
- (b) The situation had changed by October last year when Sam told Mr Scott he was extremely uncomfortable in his relationship with his father;
- (c) The change in Sam's views is likely to have come about as the result of two factors:
  - (i) Mr Jackeman wanted Sam to fit in with the standards and expectations of his new family with Valerie and her two children. Coming from a situation in which he had always been an only child, Sam found this difficult. He is likely to have felt he needed to compete with Valerie and her children for his father's attention, and to have felt upset and rejected by having to "blend in". Further he is likely to have felt upset, humiliated, put down and not listened to as a result of his father's efforts to instil respect in him and get him to fit in. For his part, Mr Jackeman appears to have had no insight into Sam's position and found his behaviour to be disrespectful. He reacted in a somewhat heavy-handed way towards Sam and blamed Ms Royce for the change in Sam's views;

- (ii) The relationship of Ms Royce and Mr Jackeman deteriorated when Ms Royce filed her proceedings in 2014 and a cease to communicate. Sam would have been acutely aware of this, which is likely to have caused him to feel unsettled, confused and anxious;
- (d) The relationship between Ms Royce and Mr Jackeman remains tense and mistrusting and they have no personal communication;
- (e) Ms Royce has not overtly influenced Sam's views and has encouraged Sam to communicate with Valerie and his paternal grandparents;
- (f) If forced to have contact with his father, Sam is likely to feel extremely upset, anxious and that he has not been listened to.

[58] Dealing with the s 5 factors I find:

- (a) Sam's emotional and psychological safety would be put at serious risk if contact was directed in terms of Mr Jackeman's proposal. Sam would be likely to feel extremely upset, anxious and that his views had not been listened to. This could have consequences for his physical health and be detrimental to his progress at school;
- (b) Ms Royce and Mr Jackeman are failing in their responsibility to consult and co-operate about Sam's care, development and upbringing, which is likely to make Sam feel confused, anxious and unsettled. The ability of Ms Royce and Mr Jackeman to communicate could be improved if they undertake communication counselling;
- (c) Sam is to remain in the care of his mother so there will be continuity in his care arrangements;
- (d) If Mr Jackeman does not have face to face contact, it will be difficult for his relationship with Sam to be preserved and strengthened. What is required is for Sam to feel safe with his father. It will be up to Mr Jackeman to start rebuilding the relationship in a non-threatening

way which could include in the first instance letters, cards and gifts from him personally.

[59] Having weighed these factors, I find it would not be in Sam's welfare and interests for him to have contact in terms of Mr Jackeman's proposal for these reasons:

- (a) Contact would not be consistent with Sam's views, which must be given significant weight;
- (b) Sam's emotional and psychological safety would be put at serious risk if he is forced to have contact;
- (c) Any advantages for Sam in having contact are at present likely to be significantly outweighed by the potential disadvantages.

#### **Order and directions**

[60] I make the following order and directions:

- (a) The parenting orders as to contact made on 28 May 2014 and 17 September last year are discharged;
- (b) Mr Jackeman is to have contact by means of letters, cards and gifts and such other contact as is agreed between himself and Ms Royce;
- (c) Ms Royce and Mr Jackeman are to undertake communication counselling with a view to them being able to communicate about contact arrangements and relieve Sam of any confusion, anxiety and unsettlement he may feel about their relationship and contact.

A J Twaddle  
Family Court Judge