

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.GOV.TZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).

**IN THE FAMILY COURT
AT WHAKATANE**

**FAM-2014-087-000228
[2016] NZFC 3418**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	HONOR ANSEL VIN ANSEL Applicants
AND	TYLER AKUHATA PATRICIA ANSEL JACK RIER Respondents

Hearing: 26 April 2016

Appearances: A Kershaw for the Applicants
Respondent Akuhata appears in Person
No appearance by or for the Respondents Ansel and Rier
J Kay as Lawyer for the Child

Judgment: 26 April 2016

ORAL JUDGMENT OF JUDGE S J COYLE

[1] This matter is before the Court in relation to the substantive applications by Mr and Ms Ansel, the [family details deleted] grandparents of Morley, Jaci, Huxley and Jonah for a final parenting order and for their appointment as an additional guardian of the children.

[2] The children are currently in their care pursuant to an interim parenting order and there have been various applications in relation to Ms Ansel and Mr Akuhata's contact with the children. Mr Akuhata is the father of all the children, bar Morley whose father is Mr Rier.

[3] The matter today has been set down for a formal proof hearing of Mr and Ms Ansel's applications because neither Ms Ansel or Mr Akuhata have taken any steps in the proceedings for a long time now and the proceedings were simply drifting through the Court process without any real evidence or progression from Ms Ansel or Mr Akuhata. Their counsel have previously been granted leave to withdraw because of their failure to obtain instructions.

[4] Today Mr Akuhata is present and he has addressed me as to his issues which I will come to shortly.

[5] Ms Kershaw, counsel for Mr and Ms Ansel, raised a preliminary issue and that is on 3 March 2016, a without notice application was made by Mr and Ms Ansel to vary the current interim parenting order, in effect to suspend the parent's contact. That order was granted by Judge Walsh on 3 March and the time for Mr Akuhata to file a notice of response was abridged to 48 hours. He has been unable to be served with that application, although it is clear he is aware of it and he has addressed me in relation to issues which directly impact upon that application.

[6] Ms Kershaw urges me today to grant the without notice application that was filed last week and reminded me that when the matter came before me on 13 April, I commented that should Mr Akuhata not be proceeding, a without notice application to dispense service in the circumstances would be appropriate. The option of course is to give further time for Mr Akuhata to respond to that application, given that he is here today but I am not going to do that. As I said, these proceedings have drifted on

long enough throughout the Court and many of the delays have been occasioned by both Mr Akuhata and Ms Ansel's lack of participation in the proceedings.

[7] I therefore make an order dispensing with service of that application on Tyler Akuhata.

[8] Mr Kay appears as counsel for the children and he fully supports the position of Mr and Ms Ansel and the orders sought by them.

[9] The background proceedings are set out by Ms Kershaw at paragraph 1 of her memorandum. The initial application was on 12 November in which Mr and Ms Ansel sought leave to apply for a parenting order and a parenting order on a without notice application in relation to the three oldest children. Then in September 2015 they have applied on notice for appointment as additional guardians of the three oldest children. Following the birth of Jonah on [date deleted] 2015 they then applied for leave to apply for a parenting order, and appointment as an additional guardian in relation to Jonah. On 25 November 2015, a without notice application for an interim parenting order in relation to Jonah. Finally, in March of this year the aforementioned without notice application seeking a variation of the interim parenting order in relation to all four children was made by Mr and Ms Ansel.

[10] The current position under the collective orders is that all four children are in the day-to-day care of Mr and Ms Ansel. The children's mother, Ms Ansel, had her contact suspended as at 3 March 2016 with an additional condition that any contact would need to be supervised by a person approved by the Court.

[11] Mr Akuhata's contact with the [number deleted] children of which he is the father has been suspended by order dated 21 January 2016.

[12] Mr Rier, the father of Morley, has not taken any steps within the proceedings and therefore has had no contact reserved to him by way of Court order.

[13] Today Mr Akuhata has confirmed that he accepts that for pragmatic and practical reasons, the children need to remain in the day-to-day care of Mr and Ms Ansel. His issue is one of contact. He has not had contact for some time now and today he has turned up to Court with a list of contact supervisors. This is the first time this information has been provided to Mr Kay or Ms Kershaw and there has not been an opportunity therefore for those persons to be appropriately vetted and for consideration to be given as to whether they are suitable or not. There is no evidence from Mr Akuhata in relation to these people and no evidence from the proposed supervisors that they are able and/or willing and information such as their previous conviction (if any) and whether they have had any prior involvement with Child, Youth and Family.

[14] The Court therefore has been asked by Mr Akuhata to approve these people as supervisors in a vacuum for the lack of actual evidence as to their suitability or otherwise as supervisors. Mr Akuhata also has indicated that he would like regular and frequent contact but he also recognises that that contact will be constrained by the fact that he is living in [location deleted] and thus there is the issue of distance. He seems to be proposing that contact occur at least fortnightly, in [location deleted], but that is against the background of him having no contact with the children for some time, his not having filed any evidence to respond to the issues which led to his contact being suspended. Additionally, he has recently been convicted and sentenced to 18 months' intensive supervision with judicial monitoring for a charge of breach of protection order against Ms Ansel and a charge [details of charge deleted].

[15] It appears from what he tells me, he does not accept the facts but rather indicated that he pleaded guilty for pragmatic reasons. The provisions of the Evidence Act 2006 are clear that the entry of a conviction is proof of the matters set out in the summary of facts unless an application is made to criminal jurisdiction for a retrospective disputed facts hearing.

[16] In making any decisions in relation to these children, I must consider their welfare and best interests pursuant to s 4 Care of Children Act 2004. Additionally, I need to consider their views and they are set out by Mr Kay who has acted for these children for a number of years now. The older children in particular want to have a

relationship with their parents and want regular contact and Mr Kay has expressly set out those views in his reports to the Court and in his submissions today but s 4 also makes it clear that in considering what is in children's best interests and welfare I need to consider the relevant principles in s 5 Care of Children Act.

[17] In my view, the principles in ss 5(a) to 5(e), inclusive, are relevant. There is no evidence that s 5(f) has any direct relevance on the facts of this case. The principles in ss 5(b) to 5(e) inclusive are really centred in the children's parenting having responsibility for their care, development and upbringing with there being continuity in care for these children and for the children developing a relationship which needs to be both preserved and strengthened with both their parents and their wider family group.

[18] The Supreme Court has said in cases *Kacem v Bashir* [2010] NZSC 112, [2011] 2 NZLR 1 there are cases where s 5(a) of the Act is presumptive. Section 5(a) is centred in children being protected from all forms of violence, with violence being given the expansive definition set out in the Domestic Violence Act 1995. What this means, is that there are cases in which the need to ensure the safety of children and their protection from ongoing violence is such that the other principles in s 5 obtain less weight and importance because of the overarching need to ensure safety for these children.

[19] In this case, s 5(a) is quite clearly determinative on the facts of the case. For whilst Mr Akuhata is right in that there is no evidence that he in particular has physically harmed the children, there is clear evidence that these children have been exposed to ongoing psychological abuse through their exposure to parental violence. He has recently been convicted for breaching a protection order, his contact has been suspended and yet he has not sought to produce any evidence as to any changes that he has made in his life.

[20] This is a relationship, which as I have discussed with him and he has agreed with me, where he and Ms Ansel have continuously at times drifted back together, again become enmeshed in what clearly is a toxic relationship and which these children have been exposed to parental conflict, violence, aggression and arguments.

[21] Mr Akuhata today tells me that he understands that dynamic and the effect on the children and that he is committed to his relationship with Ms Ansel ending but acknowledges that she is struggling to reach the same conclusion. That is not the first time the Court has heard that sentiment expressed only to be faced with evidence of an ongoing relationship and an ongoing exposure to violence.

[22] There is nothing I have heard from Mr Akuhata today which indicates to me that he understands the effect of domestic violence on the children. There is no evidence of any changes that he has made and indeed his recent convictions for domestic violent offending really indicate that he continues to present a risk, for these children an exposure to ongoing violence (as defined under the Domestic Violence Act). His contact needs to continue to be supervised. In part, I apprehend that Mr Akuhata accepts that as he was proffering the name of various people as potential supervisors.

[23] There comes then an issue of frequency. I agree with Ms Kershaw that contact in [location deleted] is out of the question at this point in time. Additionally, as I have said earlier, there simply is no evidence before the Court as to the suitability, or otherwise, of the proposed supervisors. Contact needs, in my view in order to meet the needs of the children and particular their needs for safety to be at a Court approved supervised access centre and I agree with Mr Kay's submissions that it needs to occur in [location deleted].

[24] The order I make today, as a consequence of changes enacted by Parliament two years ago now, will become a final order that cannot be amended by the Court for a two year period, unless there is a material change in circumstance. The Court will require, before considering the issue of leave, absolute clear and unequivocal evidence of change by both parents before there can be consideration of contact moving to more frequent and/or unsupervised contact.

[25] There will also need to be a longitudinal pattern established of the relationship between Mr Akuhata and Ms Ansel being at an end and I would have thought given the history of this matter, at least 12 to 18 months of no relationship and no ongoing violence or violent criminal offending would need to be evidenced.

[26] I am entirely satisfied, having considered this matter and read all the pleadings before coming into Court, that the making of a final parenting order providing for the children to be in the day-to-day care of Mr and Ms Ansel is in their welfare and best interests. For the reasons I have set out and the view I have reached the s 5(a) is determinative. I have reached the decision that both parents' contact needs to be supervised in order to protect the children's safety on an ongoing basis.

[27] Clearly Mr Akuhata, as a respondent in the final protection order and I have taken that into account pursuant to s 5A of the Act, as is required by the Act.

[28] Against that background and for those reasons, I now make the following orders and directions:

- (a) I make an order discharging all current interim parenting orders in relation to the four children.
- (b) I make a final parenting order in relation to Morley Ansel born [date deleted] 2007, Jaci Ansel born [date deleted] 2010, Huxley Ansel-Akuhata born [date deleted] 2013 and Jonah Ansel-Akuhata born [date deleted] 2015 in the following terms:
 - (i) All four children are to be in the day-to-day care of Vin Ansel and Honor Ansel.
 - (ii) All four children are to have supervised contact with their mother, Patricia Ansel, in the [location deleted] community every second Sunday for two hours, supervised by Vin Ansel or any other supervised agreed to by the applicants.
 - (iii) I make an order in relation to Jaci, Huxley and Jonah providing for them to have supervised contact with Tyler Akuhata one Sunday per month, supervised by a Court approved contact agency at Mr Akuhata's cost or supervised by any other supervisor approved by the applicants.

- (iv) Such other supervised contact as agreed between the applicants and the parent having contact as can be agreed from time to time.
 - (v) I make an order providing for all four children to have reasonable telephone contact with their mother, Ms Ansel, as agreed from time to time between Mr and Ms Ansel and Ms Ansel.
 - (vi) I make an order appointing Vin Ansel and Honor Ansel guardians of all four children in addition to Jack Rier and Patricia Ansel in relation to Morley and in addition to Tyler Akuhata and Patricia Ansel in relation to the other three children.
- (c) This being the end of the proceedings, Mr Kay's appointment as lawyer for the children is terminated with the thanks of the Court.

[29] Finally I record that Mr and Ms Ansel are in receipt of civil legal aid and thus they will be automatically exempt from any cost contribution order given that Ms Ansel and Mr Akuhata are not currently represented by counsel. They will need to be sent the appropriate form for them to complete and return so that consideration can be given as to whether a cost contribution order is to be made against them or not.

[30] Mr Akuhata in relation to that last matter, the law now provides that the Court must make an order that Mr and Ms Ansel, you and Ms Ansel pay, in effect a third each of two thirds of Mr Kay's cost in representing the children. When that letter comes out to you, there is a form for you to fill in with your income and your expenses.

[31] If you do not fill out that form, I must make an order. If you fill it out, the Court can make an order that there is serious hardship and therefore make an order that you pay nothing.

S J Coyle
Family Court Judge