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**IN THE FAMILY COURT
AT AUCKLAND**

**FAM-2015-004-001055
[2016] NZFC 4785**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	LUCIA ROMILLY Applicant
AND	CARSON ELLIOT Respondent

Hearing: 7 June 2016

Appearances: A Rakena for the Applicant
Respondent appears in Person
S Palinich as Lawyer for the Children

Judgment: 7 June 2016

ORAL JUDGMENT OF JUDGE L de JONG

[1] This one hour safety hearing is in today's urgent list for no urgent reason.

[2] The brief background to this matter is that the mother's without notice application for an interim parenting order was put on notice on 10 November 2015 and placed in the standard track. At the last Court event on 3 May Judge Manuel noted the father's absence at the directions conference and failure to take any formal steps. The father was directed to file affidavits within 14 days. He has not but has appeared at today's hearing.

[3] Counsel had flagged before today the prospect of settlement being reached. I had the opportunity to hear evidence today from both parents.

[4] The mother's affidavit evidence, which is unchallenged today, is that the children have been in her primary day-to-day care since May 2014. Brodie was born on [date deleted] 2010. He is 6. Maddie was born on [date deleted] 2013. She is 3.

[5] The father is described in the mother's affidavit evidence as having a bad history of poor behaviour exacerbated by alcohol abuse which resulted in the mother obtaining a temporary protection order last year which was made final on 13 April 2015. It also led to the mother complaining in September last year about the father breaching the protection order.

[6] The mother's evidence today is startlingly different from her affidavit evidence filed in support of parenting and protection orders. There has been a revelation. The mother explains that the father reached out to her at the beginning of this year in the hope of addressing his alcohol problem. At the end of last year his drinking reached a point where he tried to stop drinking himself but instead had a seizure. That is an indication of how serious the father's alcohol addiction is.

[7] At the beginning of this year the father attended the Turning Point drug and alcohol rehabilitation programme. The father's evidence is that he had a week of medical detox and spent the remaining three or four weeks involved with intensive programmes at Turning Point. He continues to attend a counsellor associated with Turning Point by way of follow up and also continues to have contact with the Turning Point institution. The father says he does his best to attend two AA meetings a week.

[8] The protection order provides for the father to commence a Friendship House non-violence programme on 30 April last year. As I understand it he has not attended the programme.

[9] On 2 November last year the father was convicted for breaching the final protection order. He was ordered to pay reparation of \$300 to the mother. The

mother confirms this has been paid. He was also ordered to undertake nine months' supervision. There was a special condition that he undertake alcohol and drug counselling and treatment as directed by the probation officer. This information was provided in the form of a transfer of information report from the criminal jurisdiction which was confirmed by the parents.

[10] The mother's evidence today is that every Tuesday the father picks the children up from school, and daycare, and has them until bedtime. He returns the children to the mother who lives only five minutes drive away. Each weekend the father has the children from Saturday afternoon until Sunday evening.

[11] The mother says this arrangement works well. The mother is confident the father has done well to address his alcohol issues and that he is committed to remaining alcohol-free. However, she is realistic. She realises the father is in the early stages of his rehabilitation. She therefore seeks a condition to any parenting order made that the father is not to consume or be affected by alcohol. I am satisfied a condition of this kind is in the welfare and best interests of the children.

[12] The mother explains to the Court that the relationship between the parents is much better. They have regular contact which is undertaken respectfully. The mother is aware of the father's work at the Turning Point facility. She visited him weekly and the feedback from the counsellors was good.

[13] For the mother's part she is in the middle of [training course details deleted], a course she hopes to finish at the end of next year.

[14] The mother also explains that last Christmas the father had the children from Christmas Eve to Christmas lunchtime. It is proposed Christmas Day contact is alternated each year. This year the father is due to have the children from Christmas lunchtime until Boxing Day lunchtime.

[15] The mother says she has good family support and a close circle of friends.

[16] I requested the Domestic Violence Act file because it was not before me when I read the parenting file this morning. The evidence filed by the mother in support of her protection order is focused on the psychological and emotional abuse experienced by her at the hands of the father when affected by alcohol. About two years ago the father also punched holes in the wall of their house. The mother outlines in her affidavit that the father behaved poorly when affected by alcohol in front of the children. He set a poor example for the children and was disrespectful of the mother.

[17] When it came time for the father to give evidence about this today he accepted without hesitation that the way in which the mother described the past was accurate. He says he has known for a long time that he has an alcohol addiction. For him the difficulty was in addressing that addiction. He is presently going through the honeymoon phase of being very happy about addressing alcohol in his life and that of his family. He is confident he will remain alcohol free for the rest of his life. Like the mother, this Court is realistic. There will be occasions in the future where the father will be seriously challenged. He may even relapse. It is not so much an issue of relapsing as to how the father will address challenges in the future and any difficulties associated with the prospect of relapsing.

[18] I am confident from what the mother and father have said today that there is presently no risk for the children in their father's care provided the father is not drinking. One area that I was left concerned about was when I asked the father about trigger points. I was left concerned because the father appeared to have no or little insight into his triggers. In part he explains this is because he is still going through the learning process. That might well be.

[19] Having regard to the fact this Court does not have any documentary evidence from Turning Point facility, and the concerns I have just raised about the father's trigger points, I am satisfied that it is better, and in the welfare and best interests of the children, that an interim order is made rather than a final order at this stage. I propose to make interim parenting orders which simply confirm the current arrangements for contact and to provide for holiday contact as agreed. It is recognised the children are still young and that some flexibility will be needed for

future contact arrangements. For this reason a clause will be added which allows the parents to negotiate further or other contact.

[20] I intend to adjourn the proceedings for review by way of a registrar's list in January next year. By that time this Court expects the father will have filed documentation from Turning Point, and any counsellors, to address the matters raised in this decision. If there have been no further incidents of concern, and there is satisfactory documentary evidence before the Court, I see no reason why the interim orders cannot be converted into final orders on the papers. This will simply require written confirmation from each parent and/or their respective lawyers. I note in this regard that the father is unrepresented by choice.

[21] Although the father has not yet attended a non-violence programme I recognise at his assessment that the programme provider may determine the father is not required to attend a non-violence programme. Having regard to the matters outlined in this decision that, of course, is a matter for the programme provider.

ORDERS & DIRECTIONS

[22] I therefore make the following orders and directions:

- (a) Interim parenting orders are made on the basis the children are in their mother's day-to-day care and have contact with their father as follows:
 - (i) Each Tuesday from after school/daycare until bedtime.
 - (ii) Each weekend from Saturday afternoon to Sunday evening.
 - (iii) Christmas Day contact from Christmas Day lunchtime to Boxing Day lunchtime each even year and Christmas Eve to Christmas Day lunchtime in odd years.
 - (iv) Holidays as agreed.

- (v) Such further or other contact as agreed.
- (b) It shall be a condition of the interim parenting order that the respondent shall not consume or be affected by alcohol.
- (c) The interim parenting orders shall continue until replaced by other orders.
- (d) The proceedings are adjourned to a registrar's list in January 2017.

L de Jong
Family Court Judge