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**IN THE FAMILY COURT  
AT HAMILTON**

**FAM-2013-019-001070  
[2016] NZFC 3372**

IN THE MATTER OF                   THE CARE OF CHILDREN ACT 2004  
  
BETWEEN                           JUSTIN KAY  
                                         Applicant  
  
AND                                 DANA EADES  
                                         Respondent

Hearing:                         26 April 2016

Appearances:                   Applicant appears in Person  
                                         W Weal for the Respondent  
                                         J Naidoo as Lawyer for the Child

Judgment:                       26 April 2016

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**ORAL JUDGMENT OF JUDGE G S COLLIN**

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[1] Justin Kay and Dana Eades are the parents of Peyton Kay-Eades, born on [date deleted] 2013, aged two.

[2] Presently there is in place a parenting order as to final day-to-day care, dated 23 September 2014. This grants final day-to-day of Peyton to Mr Kay. On 8 October 2015 there was a hearing in this Court regarding Ms Eades' contact with Peyton. Following that hearing the Court made an amended interim parenting order dated 8 October 2015 which granted Ms Eades' supervised fortnightly contact at a Barnardos supervised contact centre.

[3] For the most part supervised contact has occurred as scheduled, although some supervised contact visits have been cancelled at short notice or on one occasion when Ms Eades did not turn up. I accept that Ms Eades has been itinerant and over the last year and in all likelihood longer, has moved address on frequent occasions. Although I have been unable to establish exactly when she moved, it is clear that since the making of the interim parenting order she has resided at times in [name of town 1 deleted], [name of town 2 deleted] and more recently in [town 3 deleted]. I accept that despite where she has lived reasonable compliance with the supervised contact has occurred with this at times requiring Ms Eades to travel long distances.

[4] There is no dispute today that the parenting order granting Mr Kay final day-to-day care of Peyton should remain. It is entirely appropriate that it does. The issue before the Court is:

(a) Whether or not Ms Eades' contact should remain supervised.

(b) What contact should occur.

[5] Mr Kay's position is that unsupervised contact could now occur. Provided certain conditions are met he takes no issue with a fortnightly contact regime.

[6] Ms Eades's position is slightly less clear and varies throughout both her evidence and in her applications and affidavits filed in support. Her final position appears to be however that:

- (a) She wants unsupervised contact.
- (b) That it should be once a fortnight.
- (c) That it should be up to five hours.
- (d) That it should alternate between [town 3 deleted] and [town 4 deleted].
- (e) That because she is likely to have other children present someone else should be present with her during contact visits, her preference being that it is her partner, Jack Jonas.

[7] The Court must have regard primarily to the welfare and best interests of Peyton which are the paramount consideration of the Court. In determining her welfare and best interests the Court must have regard to the principles in ss 4 and 5 and in particular in this case the principles in s 5(a) relating to Peyton's safety and in my assessment principle 5(d) in respect of the continuity of her care and 5(e) the need for her to have continuing relationship with her parents and also her family group. The principle in 5(e) requires that if at all possible Peyton's relationship, her family group be both preserved and strengthened.

[8] In terms of Peyton, her family group in my assessment comprises both her paternal family, in particular her father and her half brother Sky, aged 16, together with the wider paternal family. I have no doubt that her relationship with her paternal family is secure which would reflect the primary care exercised by Mr Kay. On her maternal side Peyton has a [sibling] Kaden aged one and a half who is a child of Ms Eades and Mr Jonas, a child due to be born in [month deleted], likewise the child of Ms Eades and Mr Jonas and a [sibling] Neve Eades-Briggs, , aged five, the child of Ms Eades and Mr Whetu Briggs.

[9] Opportunities if at all possible need to be provided for Peyton to have regular contact with her half siblings. In addition Peyton has an extended maternal family although other than her grandmother Beatrice Eades, little contact if any appears to occur between Ms Eades and maternal family.

[10] Finally in relation to the maternal family Ms Eades is in a relationship with Jack Jonas, the father of Kaden and the unborn child. Mr Jonas filed an affidavit in support of Ms Eades but has simply failed to attend today to be available for the purposes of cross-examination. I accept at the outset that the rules require Mr Jonas to be present were not complied with in that no notice appears to have been given by either Ms Kay or Ms Naido requiring him to be present, but against that Mr Jonas' affidavit was not filed until 12 April 2016, or filed in Court until 14 April 2016.

[11] Ms Weal, on behalf of her client, believed that Mr Jonas would be present and it was not until today that she realised that he would not. This came as a surprise to her. The evidence provided indicates that Mr Jonas is not here because he has chosen instead to exercise contact with two older children who are in [town 3 deleted] from Gisborne over the school holiday period. I would have expected Mr Jonas to have prioritised this hearing and to have supported Ms Eades in her application for contact with Peyton. I am left in the position where little weight can be given to Mr Jonas' affidavit.

[12] Mr Kay gave evidence. I found him to be a credible witness concerned for Peyton's care and willing to make appropriate concessions when required to do so. He has a clear concern for Peyton's care, both to ensure that she has a relationship with her mother and siblings, but also importantly to ensure that she is kept safe when that occurs. Despite some suggestions from Ms Eades that Mr Kay has made additional contact difficult, I do not find that is in fact the case. From what I can ascertain from the evidence Ms Eades has only sought additional contact on two occasions. On one occasion on or about 5 or 6 January Mr Kay was contacted regarding an additional contact visit and agreed. The offer was not taken up by Ms Eades.

[13] On another occasion Ms Eades sought additional contact so that Peyton could meet with her grandmother. Mr Kay facilitated that contact without any hesitation. I accept his evidence that Ms Eades expressed some indifference to exercising the contact and provided Mr Kay with a way out. He however, remained committed to it occurring and ensured that it did by taking Peyton down to the [location deleted] playground for that purpose.

[14] Ms Eades was challenged by Mr Kay as to her lack of interest in contact outside the supervised times. Her explanation that she found it difficult to approach Mr Kay, or had fears that he would refuse, I find not to be credible. As on the only two occasions when Ms Eades sought additional contact Mr Kay appeared to be willing to ensure that it occurred.

[15] Mr Kay also gave evidence of his willingness to transport Peyton to [town 3 deleted] for contact. I do not think there is any particular reason why Mr Kay should have made that concession when Peyton's home has been in [town 4 deleted] and she is ordinarily resident here. The only reason that [town 3 deleted] is a factor in care arrangements is because Ms Eades has moved there notwithstanding that Mr Kay has agreed to transport and to spend five or six hours in [town 3 deleted] during the day to facilitate contact visits. In my assessment this is an indication of Mr Kay's genuineness in facilitating an ongoing relationship between Peyton and her mother.

[16] Mr Kay expressed a number of concerns. Again I find these to be reasonable. He has reasonable concerns regarding domestic violence within the relationship between Ms Eades and Mr Jonas, reasons to be concerned about past alcohol abuse by Ms Eades, a reason to be concerned regarding the risk of Peyton not being returned from contact and also reasonable concerns regarding transport arrangements and ensuring that transportation is safe.

[17] I also accept Mr Kay's concerns as to whether or not Ms Eades can adequately manage three or possibly four young children during contact visits. Conceivably Peyton, Kaden, Neve and the newborn baby could all be present at any one time. Ms Eades acknowledges herself that could be a concern and requests at the end someone else be present to assist her.

[18] In relation to the issue as to whether all contact should be unsupervised or supervised, Mr Kay took I think a child-focused view. Although he was rightly concerned to ensure that Peyton was safe he said that he had to give the benefit of doubt to Dana for the sake of Peyton and that he had to put himself out there, also for Peyton's sake and to take a risk so that the relationship between Peyton and her mother could develop in a more natural way. He was clear that he did not want to withhold contact from Ms Eades and was satisfied that Dana had matured and had shown some changes. He was not prepared to accept 100 percent that there would not be further issues but was prepared to take a risk for the sake of his daughter.

[19] He further acknowledged that Peyton wanted to see her mother and looked forward to going to Barnardos for contact. In order to facilitate contact he agreed that he may allow his house to be used and for Ms Eades to be present there even if he was not. In making that offer he has displayed a degree of trust when past behaviours or conduct by Ms Eades would have given him cause for concern.

[20] Ms Eades gave evidence. I have some concerns as to her ongoing commitment to Peyton and like Judge Otene expressed some concerns regarding Ms Eades' insight into her living circumstances, itinerant nature, the risk of domestic violence and at times her lack of commitment to Peyton and in particular her lack of commitment to ensuring that the Court proceedings are conducted in a proper way. Concerns include:

- (a) That Ms Eades did not engage with the social worker, Ms Fox, despite having a confirmed date for a meeting which was known to her. Rather than participate in the completion of a 132 report, Ms Eades chose to put her own interests ahead of those of Peyton and instead of attending the appointment was arranging matters relating to moving.
- (b) I am concerned the Ms Eades has not made any extra effort to have made time to see Peyton when she could have done. Mr Kay has made offers and has also ensured that requests have been met for additional contact. Ms Eades could have made more of that opportunity.

- (c) I accept that there are issues of housing which have impacted on Ms Eades' ability to provide any sort of stable care. But, despite the fact that she currently has settled accommodation in [town 3 deleted] this is the position that has only lasted for about two months and it is early days.
- (d) There are reasonable concerns in respect of the relationship between Ms Eades and Mr Jonas which has been marked by domestic violence. Although there is nothing reported since July last year it was clear from Judge Otene's decision that the failure by Mr Jonas to take any steps to attend the Living Without Violence programme or something similar was a concern. Notwithstanding that, nothing further appears to have been done.
- (e) There is no evidence that Ms Eades has re-engaged with community supports whilst in [town 3 deleted]. She has expressed her intention to do it this week, or last week, but knowing that the Court case was imminent she should have done it immediately so she could come to Court and make it known.
- (f) It is surprising that Ms Eades did not attend the supervised contact on 29 March 2016 but chose instead to prioritise uplifting furniture from other persons than attending contact with her daughter. A similar comment can be made in relation to her failure to exercise the contact she requested on 5 or 6 January.
- (g) Mr Jonas is not here and he should have been.

[21] In combination I accept that these factors continue to show a lack of insight by Ms Eades into the importance of providing the Court with assurances as to her commitment to Peyton.

## **What should the Court do?**

[22] This matter has now been set down for two hearings in order to determining the making of final day-to-day care or in this case contact orders. In determining contact I think that several questions need to be answered:

- (a) Is Ms Eades now settled? Mr Kay has expressed quite rightly his concerns that Ms Eades is not settled. Ms Eades points out that she now has a [housing details deleted] house in Rotorua and that her situation has improved. In the circumstances I am willing to accept that right now Ms Eades's situation has improved and that there is an opportunity for the itinerant nature of her housing to settle. If she were to move from her current address or outside of the [town 3 deleted] area, further concerns regarding her housing and itinerant lifestyle would arise.
- (b) Can she be reliable in contact? Despite not showing a significant commitment to contact outside the supervised contact areas I accept that there has been a reasonable reliability of contact. For that reason I am willing to accept that Ms Eades could be reliable in meeting any orders made by the Court. Having said that, I accept Mr Kay's evidence that he needs to see an ongoing proof of reliability.
- (c) Are there issues of alcohol that need to be considered? Alcohol has featured heavily in Ms Eades' life and this is acknowledged by her. She is undertaking an alcohol course and has given evidence that her alcohol consumption has significantly reduced. She has also given evidence that the alcohol consumption of Mr Jonas has likewise reduced. I express my concern that Ms Eades' description of alcohol use as only now being, "Once in a blue moon," somewhat minimises the actual alcohol consumption within her household. Initially she described a "blue moon" as being once a month but on further enquiry indicated that alcohol might have been drunk once a fortnight. Although I have no evidence I suspect that the alcohol use is

somewhat minimised. This remains an ongoing issue that should be monitored and protective conditions need to be inserted to ensure that no alcohol use occurs in front of Peyton.

- (d) Are there violence or safety issues? Clearly in the past there have been violence issues in the relationship between Ms Eades and Mr Jonas. I express my concern that there are still risks from what appears to be Mr Jonas' failure to complete a substantial course. I express my concern also that the concerns expressed by Judge Otene do not appear to have been taken up by Ms Eades and Mr Jonas who explain the reduction in the domestic violence simply as a consequence of a reduction in alcohol consumption and a more settled environment. The possibility of future violence remains a risk.
- (e) Other issues. I have some concern regarding Ms Eades not accepting responsibility for a number of events. She appeared to blame others or circumstances for her lack of contact with Peyton and in the course of her evidence sought to blame Mr Kay for difficult relationship that he had with Mr Jonas.

[23] In my assessment Mr Kay has every reason to be suspicious of Mr Jonas, who has been violent to Ms Eades. As I understand the evidence Mr Jonas was also present or involved in the events where Peyton was not returned to the care of Mr Kay. There are legitimate issues of trust which exist but in the circumstances I am confident that they can be dealt with by orders which are enforceable if they are breached. A lack of priority to Peyton's needs is something that I also find to be a factor in determining how contact should occur. I have already indicated my concern regarding failure to take advantage of additional contacts offered, the failure to engage with the social worker, the failure of Mr Jonas to be here and the reasonable point made by Mr Kay that despite being unemployed neither Ms Eades nor Mr Jonas appear to have engaged with Community Services. I accept for that reason the lack of insight found by Judge Otene continues to be an issue.

[24] I have on balance however decided to agree to unsupervised contact. I take into account Mr Kay's protectiveness and what I assess to be his willingness to take steps to ensure that contact occurs safely. I also have no doubt at all that if issues arise during the course of contact Mr Kay will take the appropriate steps to see that contact is suspended or varied. I accept also that Mr Kay wants what is best for Peyton and accept that at the moment unsupervised contact is an appropriate step to take provided that there are certain protections contained as conditions of any order. I accept also that Mr Kay will do what it takes to ensure that contact occurs in a proper and safe way.

[25] Against that background I therefore make the following orders:

- (a) All current orders including the final parenting order made on 23 September 2014 are now discharged.
- (b) I now make a final parenting order:
  - (i) Granting final day-to-day care of Peyton Eades-Kay, [date of birth deleted] 2013 to Justin Kay.
- (c) The respondent Dana Eades is to have unsupervised contact with Peyton on a six week cycle as follows:
  - (i) Week one, on a Saturday from 11.00 am until 2.00 pm with this contact to be in [town 4 deleted].
  - (ii) Week three, on a Tuesday from 10.00 am to 3.00 pm with this contact to be in [town 3 deleted].
  - (iii) Week five, in [town 4 deleted] on a Tuesday from 11.00 am to 2.00 pm.
- (d) It will be a condition of all contact visits:

- (i) That no alcohol or drugs will be consumed by Ms Eades within 24 hours of any contact visit nor at any time during any contact visit.
- (ii) No alcohol or drugs will be consumed within 24 hours of any contact visit or during any contact visit by any other adult present during any contact visit.
- (iii) That if Peyton is transported by Ms Eades it will be in a car with a current warrant of fitness and registration and that Peyton will be at all times properly restrained in a legally approved car seat.
- (iv) If at any time there is a police safety order served on Ms Eades or Mr Jonas, or any protection order, or any criminal prosecution of any breach of the current protection order against Mr Jonas or any Child, Youth and Family Services investigation Mr Kay is to be advised within 48 hours if he is not advised that it would be a breach of the parenting order and may justify a suspension of the contact.
- (v) The contact is to occur at such venues as agreed between the parties. For the first six visits no one other than Ms Eades is to be present without prior agreement of Mr Kay.
- (vi) After six visits Kaden, Neve and the new baby may be present, provided there is one other adult also present with that adult being approved by Mr Kay.
- (vii) I direct the parties to counselling under s 46(g) and authorise four sessions of counselling and express the hope that Mr Jonas may also be present. The purpose of the counselling is to assist the parties in the implementation of unsupervised contact and to help them work together on the

implementations of the conditions that are imposed. At the completion of four sessions of counselling, Mr Jonas may be present at contact visits provided he has engaged in the counselling and attends at least two sessions.

- (viii) Such other contact as agreed also to occur. The first contact visit is to occur with week 1 being 7 May 2016.
- (ix) I direct that no cost contribution order has been made against either party and do so because in the case of Ms Eades she is on legal aid and there is no evidence before me to suggest that there are exceptional circumstances which would justify the making of an award of cost contribution costs against her. In respect of Mr Kay he is self-represented because of the costs of representation. He has the predominant care of Peyton and receives little or no child support from Ms Eades. He is appropriately involved in these proceedings because of genuine issues of concern regarding Ms Eades' ability to care for Peyton in a safe way. He has conducted himself in an appropriate way throughout the course of these proceedings and has done nothing to increase the length of the proceedings or create any delay.

G S Collin  
Family Court Judge