EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

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/FAMILY-JUSTICE/ABOUT-US/ABOUT-THE-FAMILY-COURT/LEGISLATION/RESTRICTION-ON-PUBLISHING-JUDGMENTS.

IN THE FAMILY COURT
AT TAURANGA

FAM 2017-070-000295
[2017] NZFC 7294

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[LIBBY WHITE] Applicant
AND	[THEO PORTILLO] Respondent

Hearing:	8 September 2017
Appearances:	S Tyrrell for the Applicant Respondent appears in Person E Ross as Lawyer for the Child D Blair as Lawyer to Assist
Judgment:	8 September 2017

ORAL JUDGMENT OF JUDGE S J COYLE

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[1] This matter is before the Court for two matters. There is an application by Ms [White] to discharge a temporary protection order made in her favour on 31 March 2017 and her application for a final parenting order.

[2] The respondent, Mr [Portillo] had filed a notice of intention to appear in relation to the temporary order being made final. He of course consents to the temporary order being discharged.

[3] He has taken no steps in relation to the parenting order matter. Her Honour Judge Cook when the matter was before her on 2 August last consolidated the proceedings, directing that the Care of Children Act 2004 proceedings be heard at the same time as a formal proof hearing in relation to the discharge matter.

[4] Mr [Portillo] was previously represented by counsel, but following his desire to represent himself Judge Parsons appointed counsel to assist under s 95 Evidence Act 2006. Mr Blair appeared at this hearing to conduct cross-examination of Ms [White] on behalf of Mr [Portillo]. This is a matter in which the hearing of evidence has been necessary, as the allegations made by Ms [White] against Mr [Portillo] were serious and involved ongoing violence.

[5] The test as to whether an order is to be discharged or not is a broad discretion invested in a Court. Subsequent decisions have narrowed that down so that the Court has to be satisfied that the order cannot be done without and that the grounds for making an order either remain or do not remain.

[6] The hearing of evidence has been very useful, for what has become apparent during Ms [White's] evidence is that the disclosure that she should have made at the time of the initial application was not made. I make that comment because what is quite clear is that on many occasions she has been violent towards Mr [Portillo] but has not set that out in her affidavit. In making those comments, I do not intend for there to be any criticism levelled against her counsel, rather it is just simply a reality of how things have come out today and the skewed view of life that Ms [White] has.

[7] What this case has clearly demonstrated is the robustness of the research out of the Dunedin longitudinal study, affirmed by overseas studies, that women are as violent in relationships often as men but just in a different manner.

[8] Ms [White] has assaulted Mr [Portillo] on a number of occasions. More recently she pulled-up when he was walking with his new partner and verbally abused him. Her violence has not been as extreme, but it has been violence and should not be minimised in any way whatsoever.

[9] Mr [Portillo] has himself been violent and he acknowledges that. He has either thrown a car seat at Ms [White] or placed it so forcefully on the ground that it caused her to react and to fall across a gate across the stairs, to prevent their daughter [Honoria], from going down the stairs, and injured herself. He acknowledges that on other occasions he has been physically violent.

[10] Such is the irony of the current legislative framework that Ms [White], in obtaining a temporary protection order, could then require Mr [Portillo] to have supervised contact. Yet, she is not required to have supervised care of their daughter [Honoria], notwithstanding that she has been violent herself and acknowledges that she has been violent. It really is part of the inherent gender bias that occurs in relation to the whole domestic violence debate which is brushed under the carpet and not really acknowledged.

[11] The issue for me is, is the protection order still necessary. I have a clear view that it is not. Firstly, Ms [White] does not want it. Secondly, I am quite satisfied that if the Judge who granted the application in the first place had been aware of the full extent of Ms [White's] violence, that he would have been unlikely to have granted the order without notice.

[12] Thirdly and most importantly, Mr [Portillo] has attended a Stopping Violence course. He was able to demonstrate quite clearly in his evidence his insight and several examples of change in his behaviour. For example, when he was with his girlfriend on [date deleted] and was the subject of a verbal barrage from Ms [White], rather than reacting in the way in which he would have done in the past and escalating the conflict

leading to violence, he simply walked away. Similarly with an incident at a hotel in [location and date deleted], when Ms [White] was violent and things escalated, he responded by packing his bags and leaving.

[13] He has therefore demonstrated a clear degree of understanding and insight as to the effect of his violence. Accordingly, I am satisfied that the application by Ms [White] to have the temporary protection order discharged should be granted.

[14] I now turn to deal with the Care of Children Act matters. There is no disagreement between the parties that their daughter, [Honoria] born [date deleted] 2015, remain in the day-to-day care of Ms [White].

[15] There is also agreement as to contact between [Honoria] and Mr [Portillo]. However, given the acknowledged violence by both parties s 5(a) of the Act is relevant. Additionally, the principles in s 5(b) to (f) inclusive are also relevant and the parties' cultural background and the need for both of them to be involved and the decision makings affecting [Honoria].

[16] What is clear to me on the evidence is that the violence in this relationship appears to be centred in the dysfunctional nature of this relationship. Both parties have been in previous relationships. Ms [White] was adamant that in any other relationship she has been in she has not been violent towards her former partners as she was towards Mr [Portillo]. He, similarly, has not experienced violence in his previous relationships. Quite frankly, it seems to be that these parents rapidly worked out which buttons to push and would push them regularly, resulting at times in violence but more often than not resulting in heated and fiery arguments.

[17] Both parties now recognise that it was destructive, not only for [Honoria] for the other children who came into the household. Ms [White] has a [child – gender and age deleted] to a previous relationship and Mr [Portillo] has a [child – gender deleted] to a prior relationship. Both acknowledge that for these three children their exposure to that conflict and violence was unhelpful and unnecessary.

[18] From the steps taken by Mr [Portillo] I am satisfied that [Honoria] is safe in his unsupervised care. I note with concern that Ms [White] has not undertaken any educational courses about her propensity for violence but, in saying that, I accept her evidence that she has only ever acted protectively towards [Honoria]. I believe that she, too, is safe to have [Honoria] in her unsupervised care. Certainly the setting today of clear contact arrangements for Mr [Portillo] will remove a source of conflict.

[19] Against that background and for those reasons:

(a) I discharge the temporary protection order made on 31 March 2017.

(b) I make a final parenting order in relation to [Honoria Portillo], born [date deleted] 2015, in the following terms:

(i) [Honoria] is to be in the day-to-day care of her mother.

(ii) [Honoria] is to have contact with her father Mr [Portillo] as follows:

1. [Care arrangements deleted].

2. Once [Honoria] turns two, every [care arrangements deleted].

3. From 1 April 2018 [care arrangements deleted].

4. [Care arrangements deleted]. But if Mr [Portillo] is unable to meet that commitment due to his work pressures he is to advise Ms [White] by text as soon as practicable.

5. Such other times as the parties can from time to time agree.

(c) The above parenting order is conditional on the following:

(i) Ms [White] is to attend and complete a Stopping Violence Programme for women.

(ii) Both parents are to not consume any alcohol so as to be over the legal limit for driving during the periods in which [Honoria] is in their respective care.

(iii) Neither parent is to be under the influence of any illegal drugs during periods in which [Honoria] is in their respective clear.

(iv) Neither parent is to discuss any adult issues around [Honoria] or make derogatory comments about the other parent to [Honoria].

(v) Neither parent is to expose [Honoria] to any conflict or domestic violence.

(vi) Mr [Portillo] is to be responsible for providing any nappies or food for [Honoria] during the periods in which [Honoria] is in his care.

(vii) The changeover venue shall be at the home of Mr [Portillo] with Ms [White] dropping off and collecting [Honoria], unless agreed otherwise.

(d) This being the end of the proceedings, Ms Ross' appointment as lawyer for [Honoria] is terminated. I also terminate Mr Blair's appointment as counsel to assist the Court.

(e) Both parties have been in receipt of legal aid, although Mr [Portillo] has more recently started acting for himself. Given that the parties have been in receipt of civil legal aid I direct that there be no costs contribution order in terms of the *Re Karaka*[1] decision.

S J Coyle
Family Court Judge

[1] *Re Karaka* [2016] NZHC 183, [2016] NZFLR 64