

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

**IN THE FAMILY COURT  
AT WHANGANUI**

**FAM-2015-083-000059  
[2018] NZFC 7018**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[LEILA REYNOLDS] Applicant
AND	[YASMIN REYNOLDS] First Respondent
AND	[BROWAN GILL] Second Respondent

Hearing: 7 September 2018

Appearances: S A Proctor for the Applicant  
B J Pearce and R Hay for the First Respondent  
No appearance by or for the Second Respondent  
S J Ross as Lawyer for the Child

Judgment: 7 September 2018

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**ORAL JUDGMENT OF JUDGE D G MATHESON**

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**Introduction**

[1] These proceedings concern [Finn]. He was born on [date deleted] 2015 and he is [under four years old]. He lives with his maternal grandmother, [Leila], in [location 1]. She wants to move to live in [location 2] with her partner. Her daughter [Yasmin] opposes that. She has also cross-applied in recent times for the care of the child to be transferred to her. Father, Mr [Gill], has taken no steps. He is currently in prison and that has been for some time because of violence in a domestic setting. That, sadly, is not unusual for him.

[2] I heard evidence and submissions on 3 and 4 September 2018 and now deliver my decision.

### **Background**

[3] The child was born to a fraught relationship between [Yasmin Reynolds] and [Browan Gill] in [2015]. That relationship was marked by domestic violence wherein Mother was dominated by a man whose behaviours in the domestic setting have frequently been before the Criminal Court and have resulted in him being incarcerated. The relationship was also marked by insightless parenting. Arising from [Gill]'s behaviours and incarceration, Mother obtained an interim order as to care in April 2015 which order was made final in May 2015. Those orders identified that Mr [Gill] was not to have any contact with the child. Subsequently, Mother wrote to the Court by way of application, asking for that embargo to be relaxed because in her view Mr [Gill] was someone who should be entitled to have a relationship with her son and her assessment was that he had changed. The Court was not convinced and did not allow that request. Notwithstanding repeated violence perpetrated against her, she stood by Mr [Gill] even in the face of third party warnings and attempted interventions.

[4] In January 2016 when the child was [under a year old] Oranga Tamariki intervened because of concern that Mr [Gill] was engaging with Mother and she seemed unwilling or unable to do anything about it. A s 78 order was made on 15 January 2016. From that point the child has been in the care of Grandmother, [Leila]. She subsequently applied for care and an order was made by consent as to care in her favour on 1 July 2016.

[5] I do note that after the child was uplifted Mother did take the step of making application to the Court for a protection order, but notwithstanding that the independent material of around that time identifies that Mother continued to engage with Mr [Gill].

[6] Up until earlier this year Mother had supervised contact. That has developed throughout this year, however, and contact has been relaxed to include unsupervised fortnightly contact over a full weekend, increasing more recently to include a 10 day

period in [month deleted] wherein the child was in Mother's care although going to daycare for five weekdays in the middle of that.

[7] During the time the child has been in Grandmother's care, he has attended daycare for significant periods of the day and thus has been able to socialize with peers. For the bulk of this year his [older half-sibling] has shared the home with him. The home is in [location 1]. Mother also lives in [location 1]. Father lives in prison and has had no contact with the child and neither has he shown any interest in these proceedings.

[8] In 2016 Grandmother formed a relationship with a Mr [Donald West]. He moved to [location 1] from [location deleted] and worked for some months at [employer deleted] at the beginning of 2017. During the months he worked in [location 1] he resided with Grandmother. The job did not live up to expectations and in the autumn of 2017 Mr [West] relocated to [location 2]. This was his home of birth and he had been brought up there. His parents still live there. He secured good employment as [employment details deleted] and has subsequently purchased a home. His roots are there and he intends to stay there. The home is a spacious one and able to accommodate any number of children. Grandmother and Mr [West] have maintained a long-distance relationship and they want to cement that by way of Grandmother relocating to live in [location 2] towards the end of this year.

[9] Mother is opposed to the child being relocated to [location 2] and holds her hand up as a caregiving alternative. She says that Grandmother can leave and in that event she will look after her little boy.

[10] To assist the Court in its determination the Court retained the services of Mr Gerard Dolan, a reporter for the Court pursuant to s 133. He provided a report to the Court and also gave evidence during the course of the hearing.

[11] Travelling along a parallel plane and for much longer have been proceedings concerning Mother's two older children [Myra] and [Tyler] who are [both under 10]. Their father is a Mr [Montoya]. Mother and Mr [Montoya] have been involved in litigation over a number of years and Grandmother joined in that litigation. From early

2013, Father made allegations of infidelity, alcohol, violence, transience and involvement of Mr [Browan Gill]. Most of such claims were denied by Mother and counter-claims of violence by Mr [Montoya] requiring police intervention were made. Those were found to be established. Mother did acknowledge a relationship with Mr [Gill]. Matters were resolved by way of consent in July 2013, with care confirmed with Mother. By the end of November 2013 Mr [Montoya] was once again seeking the assistance of the Court because of concerns that Mr [Gill] was in the home. Shortly thereafter grandmother [Leila] also sought care of the older children because of concerns about Mr [Gill]'s violence and stalking behaviour.

[12] Child Youth and Family became involved in January 2014. Initially the children lived with their father for a week and then they moved to live with their grandmother [Leila] after a Child Youth and Family hui. There was agreement at the meeting that Grandmother would continue to care for the children but the next day Mother turned up to take the children back which precipitated Grandmother making application to the Court. She was successful and obtained an interim parenting order as to care in her favour and the children remained with her. Mother responded to those proceedings, supporting Mr [Gill]'s involvement and claiming that he was not a risk. Mr [Montoya] pursued care and in the end the matter tracked to a hearing before Judge Sygrove. The issues between Mr [Montoya], Mother and Grandmother were resolved, with Mr [Montoya] gaining care by consent. Grandmother did not pursue care at that time because she was looking to move away to [another] region to continue a relationship that had existed for a decade or more on a long-distance basis.

[13] Mother's involvement with the older children waned and as a result of struggles in caring for [Myra] in particular, the Strengthening Families process became involved in 2015 and 2016. Material I have reviewed identifies that Mother indicated to the Strengthening Families process that she wanted to step back from involvement with the older children to focus on her plan to gain the return of the child the subject of these proceedings. That meant she simply stopped seeing the older children.

[14] A s 132 report commissioned in those other proceedings identified some frailties in Mother's caregiving environment and there were concerns that Mother tended to prioritize herself and her own needs ahead of those of her children. A s 133

report obtained in early 2017 identified that Mother had a long history of being unreliable in her contact with the older children, even when it was organised and supervised, and it was also noted that in the past her associates and behaviour during contact had not set the children and the children's safety as a priority.

[15] A social work report in 2017 noted that Mother had secured significant debt, had had a [personal details deleted] towards the end of 2016 and acknowledged a history of mental breakdown and a suicide attempt. Although there had been some counselling, she harboured resentment towards her mother and counselling lasted only three sessions before Mother disengaged from it. The social worker also noted that Mother had disengaged from the Strengthening Families process concerning the older children.

[16] It is against that background that I need to consider this child's future.

### **Parties' Positions**

[17] As to the parties' positions, the position of Mother in short is that she is committed to re-establishing a relationship with her son. This has been a long-term goal as noted from comments going back to 2015/2016 Strengthening Families records wherein she noted her commitment to developing a care package for him at the expense of the older children. She has been committed to developing contact and believes that by the end of this year when Grandmother is looking to relocate she will be in a position to have the child transitioned into her care. Such an arrangement will allow him to strengthen his relationship with his all-important mother. It will allow him to maintain a relationship with his [siblings] and extended family in [location 1]. It will allow him to continue to engage with his friends at daycare. Mother notes that she has been developing the relationship with her son, with contact moving from supervised for a nominal part of the weekend, to an extended part of the weekend, to the 10 days.

[18] As to her mental health and parenting abilities, she submits that they have matured and developed with the assistance of courses. She has been able to break away from the invasive and dominating power of Mr [Gill] such that she is able to

protect her children from him thereby identifying that she has developed insight in relation to domestic violence. She acknowledges she would benefit from ongoing assistance and support. If the child was to relocate to [location 2] his relationship with her would be diminished. With the child out of sight, Grandmother would in all likelihood not involve her as she should in guardianship matters, and that she suggests has been a pattern in the past. Given the [over four hour] distance between the towns, ongoing contact between extended family and siblings will be problematic and the child will become overtired as a result. Mother is in stable accommodation, having been there for [duration deleted], but does acknowledge that she is looking to move given difficulties with a neighbour. She has income from a benefit and is thus able to support the child.

[19] As to Grandmother, she is committed to the child. Firstly, she sees herself as needing to remain the principal caregiver and identifies that her daughter's frailties are deep-seated and that in her view she lacks the competencies to take on the burden of care. Ideally she wishes to travel to live in [location 2] to be able to cement a relationship with her partner. The child is [under four] years old and has been in her care for almost three years. She is his principal attachment figure. The relationship with Mother is developing but that is only relatively recent. Mother's history is poor, with the involvement with all of her children of Child Youth and Family and she has lived in homes dominated by domestic violence and abandonment of children. A parenting course in 2014 against a removal in 2016, supplemented by a couple of Parenting Through Separation programmes does not cut the mustard as far as she is concerned in terms of Mother's engagement with upskilling.

[20] Independent reports including social workers and psychologists engaged in the other proceedings identify attachment disorders, a lack of insight and an inability to acknowledge the children's needs and a poor level of understanding the requirements of parenting. Mother's history of poor relationships is marked by violence. Violent engagement is not limited to partners and there has been physical violence involving others including neighbours and [details deleted] associates. Violence tends to gravitate to mother. There have also been difficulties with extended family and her lifestyle. In moving to [location 2] the child will have the benefit of living in a home with the support of two adults and have access to the resources of a functioning couple.

The partner is clearly a family-orientated man and he is a man who spoke with credibility and offers commitment to the child. Mother on the other hand still shows signs of frailty, very recently identifying that she planned to travel to live near [city deleted] to take up with a new partner of some eight weeks duration only.

[21] Mr Ross in opening comments at the start of the hearing indicated he was not keen on relocation to [location 2] but concluded the proceedings by acknowledging the hearing process had been useful and indicated that he supported such a relocation. In his view there is only one option as a caregiver and that is Grandmother. The frailties of Mother are deep-seated. He was concerned that permitting Grandmother to relocate would mean that her ability to care for [Myra] might be compromised; however, on reflection he acknowledged that this was a hearing about this child and therefore when focusing on this child he has reached a view that there is no evidence that supports a change of care. Safety calls out for the status quo to be maintained. The background of Mother screams out risk and that is if the child was placed with her as a caregiver, and that word “risk” can sit comfortably alongside just about every principle in s 5. There have been difficulties for Grandmother but not to the same extent as with Mother. He actually is quite positive about the relationship between Mother and daughter, despite themselves. Having reached a determination that the day-to-day care should be maintained as it is, he suggests that a relocation would have some disadvantages for the child not being able to maintain the level of time he has with his mother but that there are significant advantages that would facilitate the child having access to a positive family unit, good role modelling and a positive male figure in the home who is well resourced and Mr Ross considers overall that would be of significant benefit for the child. Thus, he supports relocation.

### **The Law**

[22] As with all such matters, the Court is bound by the provisions of the Care of Children Act 2004 and, in particular, ss 4, 5 and 6.

[23] Section 4 states that the Court must make its decision based on what is in the welfare and best interests of the child. It is this child and this child’s particular circumstances that the Act requires me to consider. In considering what that means

the Court must take into account the principle that decisions should be made and implemented within a timeframe that is appropriate to this child's sense of time. In other words, get on with it.

[24] It is also a requirement of s 4 that the Court take into account the principles set out in s 5. Those are principles that relate to safety, parental and guardian responsibility for care, consultation, co-operation, continuity, continuing relationships with parents and the preservation and strengthening of parental and extended family relationships and identity. Opportunities must be given to a child to express his views and any views expressed must be taken into account.

[25] This is a case that falls within a category of cases known in the texts as "relocation cases." This child has been parked in [location 1] but there is now a request to move him to [location 2]. The leading authorities in such cases are the decisions of *Kacem v Bashir*,<sup>1</sup> *D v S*,<sup>2</sup> and *Stadniczenko v Stadniczenko*<sup>3</sup>. The first is from the Supreme Court and the latter two are Court of Appeal decisions. Those cases simply reaffirm the base blocks of ss 4, 5 and 6 and that in any care decision the emphasis must be on the best interests and welfare of the particular child in the circumstances before the Court, and that those must be the paramount consideration. The Court must work through s 5 principles which are not exhaustive and consider any views of the child. There is no preferential weighting between the various principles that are to be considered. If the Court does that, then it will have met the obligations placed upon it by the authorities and the statute.

[26] Although the current legislation was passed some nine years after this decision, the decision of *D v W*<sup>4</sup>, a decision of Fisher J, has provided guidance down through the years as to matters of this nature. In his decision, His Honour noted a number of factors that may be relevant, some of those overlap with the s 5 principles but they are worth noting. Strength of existing and future bonding, parenting attitudes and abilities, availability for and commitment to quality time with the child, support for continued relationship with the other spouse, security and stability of home

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<sup>1</sup> *Kacem v Bashir* [2010] NZSC 112, [2011] 2 NZLR 1.

<sup>2</sup> *D v S* [2003] NZFLR 81.

<sup>3</sup> *Stadniczenko v Stadniczenko* [1995] NZFLR 493.

<sup>4</sup> *D v W* [1995] 13 FRNZ 336.

environment, availability and suitability of role models, positive or negative effects of wider family, provision for physical care and help, material welfare, stimulation and new experiences, educational opportunity and wishes of the child.

I received a helpful analysis of those factors from Mother's counsel.

[27] Turning then to the s 5 principles.

(a) *Safety*

[28] As to Grandmother, there are no issues of safety for the child in Grandmother's care, either emotionally or physically. I have run a check on Grandmother's partner and I have not located any protection orders against him. He does have a traffic conviction from some considerable time ago but nothing else. Thus, in Grandmother's home, whether in [location 1] or [location 2], I am satisfied that this child will be safe.

[29] I am not so convinced concerning Mother's home. Firstly, I acknowledge that she was the victim of violence perpetrated by Mr [Gill] and violence perpetrated by Mr [Montoya]; however, this is a case about a child and her lack of insight as to the impact of [Gill]'s behaviour on all of her children does raise concern. The State had to intervene on several occasions because of her inability to protect them. Even when Oranga Tamariki and the police attempted to intervene she advocated on behalf of Mr [Gill] and did not make use of the mechanisms that were made available to her to protect the children. [Gill] of course was not her first violent partner and the paperwork identifies her relationship with [Montoya] was a similar one, although not quite to the extent of [Gill]'s domination. As Mrs Proctor noted, Mother seems to attract discord. Mr Ross identified risk. Conflict seems to gravitate towards her. She is in dispute with a neighbour, perhaps not because of her own making but, nevertheless, there is dispute. She is in dispute with her family. The dispute with [Montoya] remains intense at times. My assessment is that there is an inherent risk of volatility that surrounds Mother. Her counsel quite rightly pointed out that there appeared to have been a development of insight as to the inappropriateness of Mr [Gill] and that Mother's approach has matured over the years.

[30] I think also I should acknowledge that Mother did in the very early stages of this little boy's life seek a parenting order in her favour and provisions that Mr [Gill] not engage with the child. But her subsequent attempts to relax the embargo on his involvement and her going to Child Youth and Family and demanding the relaxation of a non-association clause blunted any positive impact of that. A review of the s 133 report of Dr Rai of earlier this year, at paragraph 67, notes that [an expert from a parenting service] confirmed having knowledge that "Ms [Reynolds] is still in contact with Mr [Gill]." I acknowledge that was not put to the test in cross-examination, but that is a worry.

[31] There may be some growing insight, but I note in the s 133 report of Mr Dolan that Mother identified that she had stepped away from education which she had previously identified as a positive marker for her development because of "problems with other students".

[32] The material concerning all children simply reinforces to me that Mother has personality issues and issues with engagement with others. That means that any child living in her home could be subjected to volatile engagement that I consider could compromise the child's psychological safety.

[33] I note also that there were concerns earlier as to mental health. While Mother says that this is an issue that is under control, it is clear to me that personality issues remain of some concern.

[34] I agree with Mr Ross, there is significant risk.

[35] I do, though, believe that Grandmother has a protective instinct and I also consider that Mother's frailties are able to be accommodated within a contact context so long as she restricts her engagement to child-focused engagement and does not develop adult discussion with the child. As Dr Rai noted when observing contact with the older children, "Ms [Reynolds] was well prepared and brought the children some afternoon tea. Both children enjoyed eating and talking to the mother about their day at school and what they will be doing over the weekend."

(b) *Parental and Guardianship Care*

[36] This is also perhaps a convenient point to develop discussion concerning the factors identified by Fisher J in *D v W*.

[37] As to Grandmother, I consider she is able to provide settled and stable care. She has a strong bond with the child and indeed is seen as the primary attachment. That bond needs preservation and strengthening. She has good parenting attitudes and abilities and my observation is that she and her partner are very family-orientated. It may be that in [location 2] she engages in employment but my understanding is that she will be in a household that is committed to family and certainly her history is one of being available for and being committed to her grandchildren when in need. Her care of [Myra] has rescued [Myra], and Dr Rai has identified that that has been a success. Indeed, she is seen as the person best able to meet [Myra]'s needs.

[38] I acknowledge that at times grandmother and daughter have sparked, but there is support for a relationship with Mother and that has developed further this year.

[39] The commitment to extended family of both Grandmother and of Grandmother's partner identifies a strength. Such a commitment has been maintained by the partner since he moved away [to location 1] and is likely to be maintained if Grandmother moves away.

[40] Grandmother's home environment is secure and stable in [location 1] and I believe that such a home life will remain stable and secure and, indeed, more so if she was enabled to travel to [location 2].

[41] I have had an opportunity to consider Grandmother's partner both on paper but more importantly in person in the witness box. He impressed me as being someone committed to positive family values and impressed me as someone who would be an excellent male role model for this little boy. He has had experience of living in the home with the child, and various comments made identified to me a good connection.

[42] I think that being brought up in this home will, as Mr Dolan noted, give the child access to the resources of a functioning couple. Grandmother has already shown an ability to provide for the physical care of the child. Mr [West] is in good responsible

employment and the child will have his material welfare attended to if he is living in [location 2].

[43] I believe that this couple will also be able to provide stimulation and new experiences and in my view a move to [location 2] will open a door of opportunity to break away from the humdrum of conflict in his life to date here in [location 1].

[44] There is no doubt that he will be able to engage in educational opportunity, and whilst he was seen as too young to express any significant views on point, I think that the material identifies that he enjoys living with his grandmother.

[45] As opposed to that, I acknowledge that Mother does have a developing bond but I think that bond is secondary to Grandmother.

[46] Mr Dolan acknowledged that Mother could parent this child, but that is in a narrow sense and he noted that it was the broader aspects of things that might be happening around Mother's adult relationships such as where she is living and so on, that cause concern as to her competencies as a caregiver. As Dr Rai noted, Ms [Reynolds] has been consistent in more recent times in attending to contact visits with her older children and a relationship has been established between them. That was not the case for a year or so but it is the case now. However, she went on to note that she lacked insight in believing that she could provide for the day-to-day care of her daughter, [Myra]. I accept that this is a different child but her lack of insight about that other child's needs and, indeed, her abandonment of the two older children for a couple of years identifies a failing, in my view, in parenting attitudes and abilities and commitment.

[47] Mother says that she is available for the child but my worry is that even to this day there are frailties and that was revealed in her evidence that she had recently engaged with a chap who works and lives in the [location deleted] region, and she was looking to move there, to work there and take the child there. The relationship was but eight weeks old. I think that history identifies that Mother looks to Mother's needs first and then looks to accommodate the children within that environment rather

than looking to set an environment for children and accommodating her own needs around that.

[48] I have concerns that Mother has alienated herself from her extended family group and as a result has tended to align with others of a less positive social nature. This in turn has led to her home at times being the centre of conflict, both within immediate domestic relationships and with neighbours and fellow students and so on and so forth. That is not helpful to Mother's cause. I do acknowledge she has been in the same house for some two years but, then again, she wants out because it is not satisfactory and there is conflict within the environment.

[49] A positive is that Mother appears to have maintained a positive engagement with her grandparents, and that is a good thing.

[50] Mother is of humble means, but that does not take her out of play as a caregiving option. As Mr Dolan acknowledged, she does have the basic ingredients for care. It is the other stuff that gets in the road that is problematic. I think it is fair to conclude that Grandmother is better placed, particularly with the support of Mr [West] to provide for the material needs of the child.

[51] I have the benefit of considering some five years plus of materials that are before the Court. It seems to me that throughout that time Mother has been stuck in a mire of difficulty and I am wondering how Mother will be able to break out of that to provide stimulation and new experiences to any child in her care and develop educational opportunity to the fullest extent, particularly if her mother is not within the immediate environment. History counts against her in that regard.

[52] Mother's unhelpful pattern of inappropriate adult relationships are a frailty, and her frailty in dealing with stress and her general overall life struggle suggests to me that her credentials as caregiving unit are less strong than those of her mother. Certainly I think she falls well short of establishing that the well-established status quo should be changed.

(c) *Consultation and Co-operation*

[53] The grandmother/mother relationship has waxed and waned over the years. As was commented during the hearing, the parties seem to have been able to agree on a number of issues despite themselves. My observation, though, is that these are two people who are very firm in their views about things and they are not often backward in coming forward in expressing them. I do, though, think that Mother's disengagement from her family, her disengagement from counselling with her mother, her disengagement from Strengthening Families, her conflict with neighbours, her conflict with [other associates] all identify a frailty in her makeup. I accept and believe that at times Grandmother appears to have just gone on and done things without overly engaging with Mother. Against that, though, I consider that Grandmother's longstanding proven commitment to family, supplemented by her partner's longstanding engagement with family identifies that there will be engagement wherever this child is living. There was no suggestion anywhere that I can see that Grandmother has looked to alienate Mother. This year's increase in contact establishes that. Under this heading, Mother has a weakness, Grandmother does not.

(d) *Continuity*

[54] This is usually a significant issue in a relocation context and it is no less so in this situation. This applicant seeks to move away from the known. In this case, a change in caregiver would involve a significant change and that is not going to happen. Mother is simply not able to provide the level of care that Grandmother can. It was interesting as Mother gave evidence to compare the routines adopted in each household. A change in caregiver would involve substantial and disruptive change in routine. Grandmother has indicated that if relocation is not granted, she will stay in [location 1] in any event, notwithstanding the likely impact that would have on her relationship. That identifies a commitment to continuity of care. In that regard, I note that her partner was transparently honest and upfront that if relocation was not permitted the relationship is likely to come to an end or certainly he is not prepared to travel to live in [location 1].

[55] Remaining in [location 1] would mean that the child would remain living in the town he has been brought up. It would mean remaining living in a town near to his mother and his great-grandparents and his [siblings], and would allow him to

continue to go to his same daycare. A change to [location 2] will involve a disruption of daycare, the nature of his engagement with his mother, his great-grandparents and siblings but it will not mean the loss of any of that engagement apart from the daycare. A move to [location 2] will not disrupt the caregiving unit. The caregiver will remain the same and it is my observation that the caregiving of the caregiver is likely to be enhanced as the child will have access to the social capital that Mr Dolan identified is available in the resources of a functioning couple. Grandmother is the primary attachment figure and enhancement of her potential is a positive.

(e) *Ongoing Relationships*

[56] The child is from a broken biological family. He has any number of half-siblings. It is important I think when children are not in the primary care of a parent that linkages back to their biological starting point are maintained if appropriate and safe. In particular, here that means maintaining a connection to Mother, [Myra] and [Tyler]. For the bulk of this year the child has shared his home with [Myra] and prior to that he had regular contact with both she and [Tyler]. Remaining in [location 1] with Grandmother will involve maintenance of a strong connection in that regard. Remaining in [location 1] will also enable the preservation and strengthening of the relationship with Mother which of course throughout this year has also been developing. Remaining in [location 1] will also allow him to remain involved with his family members here. Having said that, I do not consider that a move to [location 2] will wipe all of those relationships away. My assessment, as I have already noted, is that the primary attachment is with Grandmother, and that is not a base that this Court is looking to shake. Mother's will always only be a contact relationship. It is important to underline that. The Court does not see Mother as a viable caregiving unit short, medium or long-term.

[57] The critical relationship is that of Grandmother. A critical aspect of Grandmother's personality and personality of her partner is that they are committed to extended family. [Location 2] is not the ends of the earth. We have evidence that the partner has already established a pattern of engagement with his family in [other locations] notwithstanding he has been living in [location 2]. I cannot see this grandmother not continuing to be committed to her extended family here in [location

1]. She has other children here. She has her parents here. That is her history. She will not change her history. Once she makes a commitment, she sticks to it. One thing that sticks in the mind is her evidence that, of all things, she belongs to [an organisation details deleted] and she could not contemplate moving her whole life because she is committed to [the organization] to [event details deleted]. That may seem something of a whimsical nature but identifies to me a good appreciation of making commitments and sticking to them. The links will be maintained, and I believe that the links will be maintained to a level that is sufficient and appropriate.

(f) *Identity*

[58] This child has a cocktail of a heritage that he should not be afraid of, but to gain and develop a safe overview of it, I consider there may very well be a considerable advantage in him being able to have a fresh, wholesome life away from the ruck of conflict that marked the initial stages of it. To be able to explore his particular biological links – and some of those links are unsavoury – he will need to have a strong base. I consider that his grandmother will be better placed to provide him that base with the support of a suitable male role model, and I believe that her current partner is able to provide that. Lacking in the child's current environment is a significant male adult in a home who is safe. A move to [location 2] will facilitate that being rectified.

(g) *Views*

[59] This is a child who is not too young to express views but certainly any views expressed by a [child under four] are likely to be somewhat haphazard and of dubious worth. The child's lawyer suggested such, but what I do have is the evidence of a strong bond and relationship between Grandmother and child.

**Conclusions:**

[60] In conclusion, then, as I have gone through this assessment it will have become clear that a relocation for this child will involve a disruption of his hitherto known geographical base and it will involve a number of changes to his current lifestyle, through moving from his daycare and the very close proximity of extended family and,

in particular, siblings and Mother. However, he will be moving with a long-term caregiver to whom he is strongly bonded. He will be moving to a home that has already been established and to an environment that offers a great deal in terms of financial security and social capital of a committed two-parent home. Grandmother's partner provided refreshing and credible evidence that he is committed to this little boy, and I accept that. I accept there is some risk as identified by Mother's counsel, but I am prepared to take that risk here because there are considerable advantages for this child in being brought up in a two-parent home. Such an environment will allow him to develop his full potential in a safe way without conflict. Such an environment will involve a happy caregiver and I think it is in his best interests for this to happen.

[61] Accordingly, my conclusions are: Mother is not a caregiving option. As the child's lawyer noted, there is a risk at every turn. Her application for care is therefore dismissed.

[62] Grandmother's care is confirmed, and I further consider that it will be in the best interests of the child that she be permitted to take him to [location 2]. As to the timing of that, I leave to her. She has some issues to consider concerning [Myra]. However, should she choose to leave in the near future then that should be her choice.

[63] I think it appropriate that I make orders as to contact.

- (a) I order that the child is to have no contact with his father without order of this Court.
- (b) As to Mother, she shall have contact as follows:
  - (i) If her mother moves to [location 2], whenever she wishes to travel to [location 2].
  - (ii) Until such time as her mother travels to [location 2] she shall continue to have contact on a fortnightly basis and may have contact for up to seven days during any normal school holiday periods.

- (iii) Once Grandmother moves to [location 2], then the child should be entitled to develop his life in [location 2], free from the burden of travel. A fortnightly regime is, in my view, notwithstanding all parties indicated a willingness to engage with it, financially prohibitive and would involve undue and unnecessary stress on this child. This child is embedded in the home of his grandmother in a long-term placement. Maternal care is not realistic and so the contact does not have to be at such a level as to facilitate the development of that beyond the realistic. Contact therefore should be seen on a preservation plane rather than a strengthening plane, although I have no doubt that regular contact will strengthen the relationship to his advantage. To that end, I consider that contact in [location 1] should be no more than once a month and that effectively will be 12 times a year. I consider that that can include up to seven days in January, April, July and October which will coincide with school holidays in each of those months. In the other months of the year the contact should be on a weekend suitable to Grandmother. That is, weekends in February, March, May, June, August, September, November and December. Should the authorities in charge of education in New Zealand look to change school holiday periods, then the pattern should be changed to accommodate that. There may be reasonable contact at such other times as is agreed.
- (iv) There will be conditions on Mother's contact: On no account should the child be brought into contact with Mr [Gill] at any time. The child also will on no account stay in a home during contact with Mother with another male partner without Grandmother's approval.

[64] That is the end of this matter. My understanding is that both parties have been legally aided and therefore I now direct that there be no contribution towards lawyer for child or s 133 reporter costs. Father has taken no part in the proceedings and as I

understand it he is in custody. I think it would be inappropriate for an order to be made against him as to contribution.

D G Matheson  
Family Court Judge