

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

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**IN THE FAMILY COURT
AT HAMILTON**

**FAM-2015-019-000439
[2017] NZFC 8158**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[DANIEL HOOPER] Applicant
AND	[ABIGAIL BARBER] Respondent

Hearing: 9 October 2017

Appearances: M Chambers for the Applicant
R Sutton for the Respondent
M Williamson as Lawyer for the Child

Judgment: 9 October 2017

ORAL JUDGMENT OF JUDGE G S COLLIN

[1] [Daniel Hooper] and [Abigail Barber] are the parents of [Devon] born on [date deleted] 2010. Currently there is in force a parenting order dated 26 January 2016. This provides that [Devon] is in the care of both parents on an alternating basis week-about with change-overs occurring after school. Mr [Hooper] seeks to vary the parenting order because of his concerns that Ms [Barber] is using methamphetamines and as a consequence is unable to safely parent [Devon].

Issues

[2] The issues for the Court to determine are:

- (a) Whether or not Ms [Barber]'s contact should be supervised.
- (b) If it is supervised, who the supervisor should be.
- (c) Whether her contact should remain week-about or be altered.

[3] Following the interim hearing on 27 September 2017 I varied the parenting agreement providing to Ms [Barber] contact supervised by her parents. That order only lasted until today. I indicated that today I would deal with the issue and provide a judgment. The delay in providing a judgment was caused by the fact that the hearing continued until late in the evening and no time was available to deliver a decision.

[4] Essential to the issue in dispute is the extent to which Ms [Barber]'s use of methamphetamines, and the allegations that she has been dishonest to the Court, and to others regarding her use of methamphetamines, should impact upon the orders that the Court makes and, therefore, her care of [Devon].

Background

[5] Mr [Hooper] has been expressing concerns that Ms [Barber] has been using methamphetamines and placing [Devon] at risk as a consequence. He has also expressed concerns regarding the presence of other drug users within Ms [Barber]'s home and the potential of exposure of [Devon] to domestic violence.

[6] On 24 February 2017 Mr [Hooper] filed an application as a result of information he had received that [Devon]'s safety was being compromised by what was occurring within the home environment. However, unable to prove that Ms [Barber] was using methamphetamines, Mr [Hooper] indicated that he would discontinue his application. The Court did not do so.

[7] Ms [Barber] indicated that she was prepared to provide a hair follicle test. Mr [Hooper] agreed that he would fund the cost of that test. On 30 June 2017 Ms [Barber] filed an affidavit in which she said, "I agreed to have a hair follicle test at the expense of [Daniel Hooper] to reconfirm that I do not take any drugs." Ms [Barber] reiterated that she did not agree to a change in the current parenting order because [Devon] would be affected in numerous ways. She was concerned that [Devon]'s routine not be changed during [their] schooling years and maintain that [Devon] was happy when in her care. She further said that she provided a good, safe, clean home for her [child] and that [Devon] was her main priority. Ms [Barber] stated in her affidavit, "I do not agree that I use any drugs and have provided supporting evidence as confirmation marked A to C." Attached to the affidavit was a hair follicle test result completed by the Drug Detection Agency. This indicated negative results for all drugs including methamphetamines.

[8] Lawyer for child, Ms Williamson, became concerned that the test results produced may not correctly reflect the actual results. She brought this to the attention of the Court who directed that further enquiries be made by Ms Williamson.

[9] On 18 August 2017 Ms [Barber] filed an updated affidavit. Attached was a correct copy of the Drug Detection Agency report. This indicated a positive result for methamphetamine use. At paragraph 6 of that affidavit Ms [Barber] states, "I am deeply ashamed for my actions. I have now taken legal advice and fully understand the ramifications of my actions."

[10] What clearly emerged is that Ms [Barber] deliberately changed the test results that had been produced. The original document filed by her indicated that results were negative. A closer examination of the document indicates that in the section which shows drugs tested the testing for methamphetamines has been removed. In order to

falsify the document very careful steps must have been taken by Ms [Barber]. The doctoring of the document is a careful, well-thought out and deliberate attempt to falsify a document, and in doing so, to mislead the parties and the Court.

[11] In her affidavit Ms [Barber] seeks to explain the reasons for altering the document. She says:

- (a) That when she got her test results she panicked and was extremely worried about the effect of a positive test for methamphetamine on the care arrangements for [Devon].
- (b) She was worried about the impact on her employment.
- (c) She was concerned about the impact on her parents who had already lost a child, Ms [Barber's sibling], to drug overdose.

[12] At the end of her affidavit she states at paragraph 13, "I acknowledge that by attempting to mislead the Court I have erred significantly. I offer the Court my deep remorse and sincere apology. I accept that what I did was wrong".

[13] On 22 August 2017 Ms [Barber] filed a further affidavit. Attached to that was a voluntary urine test result for drugs, again undertaken by the Drug Detection Agency. This test was completed by Ms [Barber] on 19 August and produced a negative result for all drugs including methamphetamines.

[14] Although Ms [Barber] does not specifically say so, and noting that she was not required to provide that test by the Court or anyone else, clearly the intent of her affidavit and the urine test was to reassure the Court that although she had misled the Court by falsifying the initial test results, she was now clean of methamphetamines and could be trusted to resume the care of [Devon].

[15] On 15 September 2017 Mr [Hooper] filed a further affidavit. He expressed concerns that on the evening of 19 June 2017 he received a phone call from [Devon] saying [Devon] was home alone at [Ms Barber]'s house. Mr [Hooper] immediately drove to the home of Ms [Barber] and found [Devon] there home alone. After he

arrived two men arrived in a car, parked at the top of the driveway and exited the vehicle. Mr [Hooper] observed one man to go to the front door and the other to the back door. Mr [Hooper] was there and observed [Devon] being asked by one of the men if [Ms Barber] was home. [Devon] replied, "No but my dad is here." The men left. Mr [Hooper] called the police. About 10 minutes later Ms [Barber] arrived home apparently with another person in the car, but who was not observed by Mr [Hooper]. According to Mr [Hooper] he was abused by Ms [Barber] who called him a "fuck wit" in front of [Devon].

[16] Mr [Hooper] also states that he believed Ms [Barber] has been using methamphetamines and that he suspected that she was dealing in drugs. He expressed his concern that [Devon] is no longer safe in her unsupervised care, and indicated that he did not accept that her parents would be appropriate supervisors as they were too closely aligned with her, and had shown themselves to be blind to her continuing use of drugs.

[17] In determining day-to-day care the Court must have regard to [Devon]'s welfare and best interests. In particular the Court is required to have regard to any issues of safety which may impact [Devon]'s care. The Court must consider in this case whether or not contact should be supervised, if so by whom and how much contact should occur. In reaching a decision the Court must have regard to [Devon]'s particular circumstances.

[18] There is a no challenge that Mr [Hooper] can provide [Devon] a stable environment and that he is prepared to resume [Devon]'s full-time day-to-day care. There are no safety issues apparent in the home of Mr [Hooper] which require the Court's determination.

[19] In respect of Ms [Barber] there are six issues which emerge:

- (a) Firstly, Ms [Barber]'s use of methamphetamine, which she says is recreational only. Her evidence is that she does not use methamphetamine when [Devon] is in her care nor that she has at any time used it in the home. She denies drug dealing. As it transpires I

have a difficulty in giving any weight to her evidence. Her credibility is significantly compromised and I am suspicious that her use of methamphetamine, and the extent to which it occurs, is far more frequent than she is willing to acknowledge.

- (b) Secondly, as I have indicated, Ms [Barber]'s credibility is clearly an issue. In her affidavit evidence she stated on a number of occasions that she is not using methamphetamines. In her oral evidence she seeks to explain this by saying at the time of the swearing of the affidavits she was not. This is at best an attempt to mislead the Court and at worst an outright lie. Clearly she was using methamphetamines during the course of the current proceedings. Having obtained a positive hair follicle test, Ms [Barber] deliberately and cleverly altered the documents and produced to the Court a negative result when in fact the test was positive. In doing so she deliberately set out to mislead the Court. The document is a forgery and she has clearly perjured herself by providing evidence that she was free of methamphetamines when she was not.

- (c) Thirdly, by 9 August 2017, Ms [Barber] was well-aware of the Court's concerns, which were shared by lawyer for child and by Mr [Hooper], regarding her methamphetamine use and her falsification of documents. On that day directions were made setting these matters down for an interim hearing. At the same time a minute was made referring the false documentation to the police for the purposes of prosecution. Also by that time Ms [Barber] had expressed to the Court her deepest apologies for falsifying documentation and misleading the Court. However, what emerged in the course of cross-examination was that Ms [Barber] could still not provide a clean hair follicle test. She accepted that she had used methamphetamine subsequent to 9 August, on about 24 August. In addition to that she had by that time also produced the clean urine test. While not directly dishonest, there is a deceptiveness about Ms [Barber]'s evidence. The clear urine test was provided to the Court as a reassurance that despite the mistake she had

made she had now made progress and was no longer using methamphetamines. As I have said, she was asking the Court to trust her that she was now on the right track. However, only a few days after providing the test, and shortly after being in Court offering sincere apologies for misleading the Court, she used methamphetamines again. In those circumstances any reassurances provided by her cannot be given any weight.

- (d) Fourthly, at the end of cross-examination I enquired of Ms [Barber] whether or not she had any criminal convictions. None have been disclosed in her affidavit evidence and convictions were not known to counsel. Ms [Barber] confirmed that previously, namely on [date deleted], she had appeared in the District Court and had been sentenced to one charge of possession of methamphetamine and one charge of possession of a pipe. The offending related to events from [early] 2017. Nowhere in Ms [Barber]'s affidavit is any reference made to the fact that she was facing criminal charges. Although she does not state anywhere that she had no criminal convictions nor is there any denial that she was facing such charges. Given the nature of the allegations made against her, the concerns expressed by Mr [Hooper] and by lawyer for child, and the issues that were before the Court, Ms [Barber]'s failure to disclose that she was before the Court for drug offending is a deliberate attempt to mislead the Court by omission.
- (e) Fifthly, Ms [Barber] proposes that if contact is supervised that her parents supervise it. Her parents gave an affidavit and her mother, Mrs [Barber], was cross-examined. Mrs [Barber] confirmed that she had a close relationship with her daughter and was certain that Ms [Barber] would have been open and honest with her regarding criminal convictions or methamphetamine use. Ms Williamson cross-examined her as to her knowledge about what Ms [Barber] was doing on [the date of her court appearance]. Mrs [Barber] told her that Ms [Barber] had gone back to her flat to clean and empty it. It was on that day that Ms [Barber] was in Court being sentenced on the methamphetamine

charges. Furthermore, in reply to questions from counsel Mrs [Barber] indicated she would be surprised if on that day Ms [Barber] was in Court and indicated she would be surprised to learn that her daughter had any convictions. What emerged was a picture of Ms [Barber] failing to disclose to her mother that she had been arrested for drug-related charges, had appeared in Court only a few days prior and had been convicted. The first Mrs [Barber] knew was when she was being cross-examined in Court that day. This is simply another example of Ms [Barber] failing to disclose important information, in this case to her mother.

- (f) These events raise further doubts regarding Ms [Barber]'s honesty and ability to be trusted to disclose events which are important and which may impact on day-to-day care of [Devon]. It also raises doubt as to the honesty and integrity of Ms [Barber]'s sincere and deep apology to the Court for falsifying documentation.

- (g) Sixthly, Mr [Hooper]'s version of the home alone event is quite different to that provided by Ms [Barber]. Ms [Barber] insists that she left the home for only a short time to pick up another friend, and left [Devon] in the care of the two men that were at the house when Mr [Hooper] arrived. These two men had apparently come earlier that morning from Wellington. Ms [Hooper] tasked them to look after [Devon] while she was out. This contradicts the information from Mr [Hooper] that the two men arrived in the car after he did, with one knocking on the front door and the other at the back. I accept Mr [Hooper]'s evidence that [Devon] was home alone and potentially put in danger when strangers arrived at the house that were unknown to [them]. I am unwilling to discount the possibility that they were there for purposes relating to drug dealing. Even if I was to accept Ms [Barber]'s version, she did not know the men well enough to know the surname of one, and had to think carefully before being able to identify the surname of the other. Even if I accept her own version, [Devon] had only just met these men who had travelled from Wellington that

day. That Ms [Barber] thought it reasonable to leave [Devon] in their care, notwithstanding her lack of knowledge of them, and the fact that [Devon] has no relationship with them, raises serious issues regarding her care and protection of [Devon]. Either scenario raises issues. Given the serious credibility issues in respect of Ms [Barber]'s evidence, it is not difficult to conclude that Mr [Hooper]'s evidence should be preferred. There is nothing to suggest that he has anything other than a reliable witness whose accounts have proven over time to be correct. I prefer the evidence of Mr [Hooper] that [Devon] had indeed been left alone. This is supported by the telephone call made by [Devon] to [Mr Hooper], expressing concern he had been left behind by [Ms Barber], and Mr [Hooper]'s attendance at the address as a consequence of that. In reaching this conclusion I take in to account that there is no evidence that Mr [Hooper] was inclined to visit Ms [Barber]'s home without invitation, or for the purposes of trying to ascertain what she was up to. Mr [Hooper]'s account is credible and explains his presence at the home. Ms [Barber]'s account is, therefore, rejected. There is no reason for [Devon] to ring [Mr Hooper] if he was cared for in the way that Ms [Barber] suggested.

Should Ms [Barber]'s contact be supervised?

[20] The answer is yes. It is difficult to place any reliance on her evidence, or to be satisfied that she can in any way be relied upon to tell the truth. I have found that [Devon] was home alone, that Ms [Barber] has been using methamphetamines over a period of time (at least six months), has lied regarding her use of methamphetamines, has falsified Court documents, has perjured her evidence and has deliberately or by omission failed to provide the Court, and her own parents, with information directly relevant to [Devon]'s care and matters before the Court. In those circumstances it is not difficult to conclude that Ms [Barber] cannot be trusted to care and protect [Devon] from exposure to drug use and drug users.

Who should supervise Ms [Barber]'s contact?

[21] It is proposed that contact be supervised by Ms [Barber]'s parents. Mr [Hooper] acknowledges that [Devon] has a good relationship with [Mr and Mrs Barber] and that they are protective and safe. Mr [Hooper] trusts them to provide a stable environment and knows that [Devon] will be well looked after and happy if living there.

[22] The concerns are, however:

- (a) Ms [Barber]'s failure to provide them with all relevant information, and to deliberately hide matters which are important; and
- (b) I detect in Mrs [Barber] a reluctance to accept the extent of her daughter's use of methamphetamine, and to minimise the impact of her actions.

[23] I am not entirely certain that Mr and Mrs [Barber] would recognise the symptoms of drug use. Mrs [Barber] acknowledges this. Even if she did, I am not sure whether she would be in a position to intervene. It is difficult to trust Ms [Barber] to be open or honest with her parents regarding events which may impact on [Devon]'s care. She has a recent history of failing to be honest in her disclosures with them, and to deliberately withhold from them information that is highly relevant. In the circumstances it raises concerns as to whether or not Mr and Mrs [Barber] can supervise her care of [Devon].

[24] I also have concerns as to whether or not they may be prepared to make excuses for Ms [Barber]'s behaviours and omissions, without understanding the full extent that the behaviours or omissions could have on [Devon]'s care. Notwithstanding those concerns, but with some hesitation, I do intend to approve Mr and Mrs [Barber] as supervisors for [Devon]'s care, but it will be a condition on contact that they agree to disclose anything of concern to lawyer for child. If they fail to do so contact could be stopped, with any further contact occurring in a supervised contact centre.

How long should contact be for?

[25] The current arrangement has [Devon] in the week-about care of each parent. This arrangement could continue with [Devon] being in the day-to-day care of [Mr Hooper and Ms Barber], on a week-about basis, with the mother's contact at all times occurring at the home of her parents. This would be agreeable to them and would provide a continuity of care arrangements, save only that Ms [Barber] would be required to live with her parents, and could not move with [Devon] pending final determination of the proceedings.

[26] However, it is difficult to ignore that Ms [Barber] has deliberately set out to mislead the Court and has done so both positively, and by omission, with this continuing even following the false documentation being uncovered. The Court is also concerned that Ms [Barber] has placed [Devon] at risk and exposed [Devon] to an unsafe home environment, and placed the needs of herself and others above the needs of [her child]. A further concern is that Ms [Barber] has failed to be open and honest with her mother, and that matters came to the attention of her mother in Court, when her mother was of the belief that Ms [Barber] would tell her the truth.

[27] Continuity of care, and of the current arrangements, must be balanced against the identified risk. Mr [Hooper] can provide long-term stable and safe care. On the other hand Ms [Barber]'s situation is difficult. For reasons that are not entirely clear she has lost her employment. She no longer has her own accommodation. Earlier this year she had a relationship breakup. She is now fully reliant on her parents for accommodation and support. She has only recently been convicted of drug offending. I am concerned that she has exposed [Devon] to an environment in which drugs are accepted as a normal part of life, and indeed Ms [Barber]'s own evidence suggests that she minimises the impact of the use of methamphetamine on herself and others. I suspect that Ms [Barber] has involved [Devon] with meeting other people who are users, or dealers, to a much greater degree than she has been willing to admit.

[28] In balancing the continuity of week-about care, even if supervised by her parents, I take into account her failure to properly disclose her circumstances to her parents, and deliberately or by omission misleading them as to events in her life. In the end I am simply not willing to impose on Mr and Mrs [Barber] responsibility to supervise care on a week-about basis, when in my view supervision would be required

by them at all times when [Devon] was in their care. For those reasons I intend to vary the current order providing that [Devon] be in the day-to-day care of [Mr Hooper] and reducing the contact that [Devon] has with [Ms Barber].

Orders

[29] Against that background I now make the following orders:

- (a) All current orders are discharged.
- (b) [Daniel Hooper] is to have the interim day-to-day care of [Devon Hooper] born [date deleted] 2010.
- (c) [Abigail Barber] will have supervised contact with [Devon] as follows:
 - (i) Commencing on Friday [date deleted] at [time deleted] and every second weekend thereafter from [time deleted] on Friday until [time deleted] on Monday.
 - (ii) Every [day deleted] from 3.00pm until 7.00pm.
- (d) [Devon] will be in the care of [Mr Hooper] from [time deleted] Christmas Eve to [time deleted] on Christmas Day and with [Ms Barber] from [time deleted] Christmas Day until [time deleted] Boxing Day when [Devon] will return to [Mr Hooper].
- (e) Ms [Barber]'s contact with [Devon] will be supervised by her parents, Mr and Mrs [Barber], one of whom is to be present at all times.
- (f) If Mr and Mrs [Barber] are unable to be present at any contact visit contact will be cancelled for that [day] or that weekend; no make up time will be provided. It will be a condition of the supervised contact:
 - (i) That Ms [Barber] not be under the influence of any drugs.

- (ii) That one or other of Mr [Barber] or Mrs [Barber] be present at all times.
- (iii) That [Devon] not stay at anyone's home other than the home of Mr and Mrs [Barber] or otherwise as agreed by Mr [Hooper] in conjunction with them.
- (g) That there be such other contact as agreed between Mr [Hooper] and Mr and Mrs [Barber]. If such further contact is to be agreed, it is to be supervised on the same conditions with Mr and Mrs [Barber] being present at all times. This will enable [Devon] to have additional holiday contact during the Christmas period if this can be safely arranged between Mr [Hooper] and Mr and Mrs [Barber].
- (h) That Mr and Mrs [Barber] are to advise lawyer for child and Mr [Hooper] if there is any breach of the supervised contact order.
- (i) Ms [Barber] is to advise lawyer for child and Mr [Hooper] if:
 - (i) She is charged with any further criminal offending.
 - (ii) She is for any reason investigated by the Ministry for Vulnerable Children, Oranga Tamariki.
 - (iii) She moves out of the address of Mr and Mrs [Barber].
- (j) Pickups and drop-offs to school will be undertaken by Ms [Barber] but one or other of her parents must be present.
- (k) Pickup and drop-offs that are not at school are to be occur with Mr [Hooper] picking up from the home of Mr and Mrs [Barber] unless otherwise agreed between himself and either Mr [Barber] or Mrs [Barber].

Directions for finalisation

[30] A directions conference is to be allocated on 6 December at 3.15 pm for the making of any further directions to advance this matter to a hearing.

[31] I reserve the right to amend this decision. The intent and effect of the directions I made shall however remain the same.

G S Collin
Family Court Judge