

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

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**IN THE FAMILY COURT
AT AUCKLAND**

**FAM-2016-004-000332
[2017] NZFC 9235**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[NAOMI REED] Applicant
AND	[MANU POTIKI] Respondent

Hearing: 1 and 2 November 2017

Appearances: R C Gregory for the Applicant
K Young for the Respondent
L Soljan as Lawyer for the Child

Judgment: 17 November 2017

RESERVED JUDGMENT OF JUDGE D A BURNS
[In relation to whether ongoing contact to father is supervised and whether the child is able to change day care centre]

Background

[1] [Tui Potiki] born [date deleted] 2014 is the child of [Naomi Reed] (“mother”) and [Manu Potiki] (“father”).

[2] Mother and father separated in [date deleted] 2015 when [Tui] was one year’s of age. At that time they verbally agreed to a 50:50 shared-care arrangement each providing week about care for [Tui].

[3] Due to ongoing concerns mother applied to the Court and was granted an interim parenting order on [date deleted] 2016 giving her day to day care of the child. The interim parenting order was granted to father. Contact on the condition that it was supervised by a person approved by the Court. By agreement between the parties the child’s paternal grandmother Mrs [Deanna Potiki] has been acting as supervisor.

[4] In [early] 2016 there was a crisis situation with father [medical details deleted]. Father denies that he was seeking to end his life, although in his affidavit he acknowledges that he was very upset (in relation to mother not attending [event deleted] with him) and he had called the Mental Health Crisis team. He was admitted to hospital the next day.

[5] It was agreed by whanau that the father’s time with [Tui] would be supervised. Shortly thereafter [Tui]’s paternal grandparents returned [Tui] to father’s unsupervised care.

[6] A family meeting then took place at which time it was agreed that if father produced a letter from a medical professional to say that he could provide responsible care for [Tui] then unsupervised care would resume. Father produced a letter from [support provider deleted] and 50:50 shared care regime resumed. My understanding is that this was relatively a short period of time after father’s hospital admission.

[7] On [date deleted] March 2016 Child Youth and Family as it then was but now Ministry of Vulnerable Children (Oranga Tamariki) received the first of two confidential notifications in relation to [Tui]. The first notification raised concerns

about father's overdose. In February, self-harming and abuse of drug and alcohol. The second confidential notification was made on [date deleted] April 2016 and raised concerns about father's abuse of alcohol and drugs including methamphetamine, passing out and neglect of [Tui].

[8] On 7 April 2016 mother filed a without notice application for parenting orders which was granted. Since then father's contact with [Tui] has been supervised by paternal grandmother by agreement between the parties. Father has requested that be allowed to visit and spend time with [Tui] at the day care. The paternal grandmother has requested to have [Tui] in her care for weekends and also be able to visit and spend time with [Tui] at day care.

[9] The Court was provided with a s 131A dated 4 May 2016 advising there have been recent notifications made to the Ministry which raised safety concerns for the child. Ms Soljan as [Tui]'s lawyer obtained the CYRAS records which ran to 106 pages and had considerable detail about the nature of the separate notification by confidential third parties and the action taken by Child Youth & Family in response.

[10] The Court subsequently commissioned a s 132 report and that report is dated 26 October 2016. The report sets out a summary and recommendations and the social worker Mr Jamie Prasad made the following recommendations:

Summary and recommendations

There is an evident breakdown in the relationship between Mr [Potiki] and Ms [Reed] which has impacted upon their ability to co-parent and work together to plan and organise for [Tui] in a respectful and cohesive manner.

This initially stemmed from the ending of their own relationship but has been exacerbated by custody matters before the Court, with both parents feeling they can meet the wellbeing of [Tui].

[Tui] is thriving in her current environment with her mother and grandmother, she is well cared for and meeting her development milestones.

It should be noted that Mr [Potiki] has attended a number of services to address the concerns around his mental wellbeing and emotional stability. This demonstrates his willingness to effect change.

However given [Tui] is a vulnerable infant who is completely dependent on an adult to meet her needs I have formed the belief that Mr [Potiki] should demonstrate to the Court that he is able to sustain the changes he has made

over time before unsupervised access is considered. I respectfully recommend this period of time should be decided by the Court.

I am of the view [Tui]'s physical and emotional wellbeing needs are being met under the current arrangement of day to day care with Ms [Reed] and weekend fortnightly supervised access with Mr [Potiki].

I am recommending the following:

- Weekend fortnight supervised access to remain, for a period of time, determined by the Court, at which point the Court may wish to consider a transition to unsupervised access and/or increase the frequency of the access, based upon the stability and consistency demonstrated by Mr [Potiki].
- The Court to determine if Mr [Potiki] requires to undertake a hair follicle test. Mr [Potiki] has reported he is willing to undertake a hair follicle test should he be directed to and he does not have to pay for it.
- Mr [Potiki] and Ms [Reed] to complete a parenting through separation course to support.

[11] Father sought to shift his contact with his daughter to be unsupervised. His mother supported that position. Mr Prasad was made available for cross-examination and at the hearing before me he gave the following additional evidence:

- (a) that Mr [Potiki] has been found by Oranga Tamariki to have subjected [Tui] to emotional abuse. That behaviour indicates a problem of impulse control, which could be a personality issue;
- (b) calling out bitch – page 112 NOE in the context of a Court hearing would give Mr Prasad concern that the respondent's emotional regulation might still be impulsive;
- (c) the respondent knowingly inflicting harm on the other parent (such as sending unwanted [gifts]) highlights a real risk to the child;
- (d) move to unsupervised contact would require Mr [Potiki] to demonstrate to the Court that he has been able to sustain changes made over time, such as managing his mental health, drug use and impulse control;

- (e) there is a risk his behaviour will deteriorate if were no longer “under the microscope” of Court proceedings;
- (f) [multiple] suicide attempts show arguably a pattern and that suicide represents a highest level of risk;
- (g) that children of [0-4] years of age are the most vulnerable children and therefore there is a particular risk for those children from parents who have “difficulty managing their own emotions”;
- (h) it is reasonably common that if drug use is removed mental health issues can remain or take a different form;
- (i) that he said safe unsupervised contact will rather require “open and honest discussion amongst whanau members because the know behaviours of both parents. If they can keep [Tui] in the centre of what it is, grandparents would know the best behaviours of their children and it is really trying to be open and honest about that. Also I guess respectful communication between [Mr Potiki] and [Ms Reed] is a whole bunch of factors really;
- (j) other factors were a degree of insight into past problems and future strategies to keep safe open honest kind of whanau led decisions.

[12] Mother’s position before the Court was that she was prepared at the outset to leave the decision of supervision to the Court. She was unsure but was prepared to accept the responsibility for that decision being taken by the Court. As a result of the evidence given at the hearing and in particular by father, mother’s position changed. By the close of the hearing she was strongly opposed to supervision being lifted and sought to have the status quo of the care arrangements on the same conditions continue.

[13] Ms Soljan’s position prior to the hearing commencing was that she was supportive of contact moving to being unsupervised. As a result of the evidence that

occurred at the hearing she too changed her position and in her closing submissions submits that supervision should continue.

[14] Father's position is that he has done everything that he could do or was capable of doing to address the issues that had been raised by mother, the Ministry of Vulnerable Children and others and there were no longer any ongoing risk issues to justify continuation of supervision. He sought unsupervised contact and a return to the week about shared-care arrangement.

[15] In addition to the issue of supervision a guardianship issue was live between the parties. Father wanted the child's day care in [location 1 deleted] to continue and mother wanted to change to a new day care in [location 2 deleted] so the Court has to determine whether there is or is not a change of day care.

[16] Father's case can be summarised as follows:

- That it is imperative for the child to have a continuing and flourishing relationship with him.
- That he has particular gifts that he can bring to the child and particularly in relation to s 5(f) of the Act. In relation to his knowledge of Tikanga and Te Reo Maori the Court is told that he is fluent in the Maori language. That he can assist and help connect and promote the child in relation to her Maori heritage.
- That he has acknowledged past drug use but points to recent clear drug tests and says that issue is now a past one. He denies attempting suicide both in the incidents that occurred [date deleted] and previously. He says that he has addressed his drug issues by attendance at programmes and it is no longer an ongoing live issue for him. He says that his mental health is stable and he considers a lot of the reports from the psychiatrist which will be referred to later in this judgment is inaccurate.

- That supervision has been continuing for a long period of time and it is not really viable for it to continue any further. He considers that there is nothing more that could be done to address the issues raised and he asked the Court to take into account his genuine steps to address issues and the changes that he has made. He says that the changes are long-term and any previous perceived risk issues are no longer relevant or will not impact on the child.
- He points to the support he has received from [the support provider] and the letter that has been provided.
- That he has addressed issues relating to depression. That there is no current suicidal ideation.
- That he is totally focused on the child, loves her dearly and is very committed to her.
- That he did initially wish for the relationship to continue and had difficulty accepting it had come to an end. He has now moved on with his life and there is no likelihood of any relapse of any emotional dysregulation. He does not consider that the child is likely to be exposed to any ongoing adult issues or any psychological issues as a result.
- He points to the provision of a report clearing the property that he is in of any methamphetamine use.
- That he has attended [an addiction help service]. He has produced a Certificate of Achievement from [the addiction help service].
- That he is engaged with [the support provider].
- That he is engaged with [a Health Board]. He has undertaken a parenting information programme and he has attended [a Parenting Through Separation Course]. All of those steps he says points to a genuine effort by

him to address issues of concern so that he can return to unsupervised which he had for quite a long time before it was stopped.

[17] Mother's case in summary can be summarised as follows:

- She points to the social worker's evidence both in the report and given in Court which are highlighted above.
- She confirms that she remains fearful of the difficulties and risks of a shared-care arrangement and considers that the three days per fortnight is the most contact that is safe and in the child's best interests. That a shared-care arrangement would require good levels of cooperation and communication which is not realistic given the respondent's attitude, behaviour and risk factors for serious depression including drug use which have been highlighted in the hearing. She considers that it is likely that the child will be exposed to psychological issues particularly with respect to father's anger, mental health/personality issues and fixation on the end of the relationship.
- She points to the history of depressive illness, chronic use of alcohol and drugs including a long habit of "two cones" most days and has made a suicide attempt (which is documented but the father still denies). Has acted on self-harm.
- That he has admitted striking the applicant during the relationship and that he has admitted suicidal thoughts.
- That his mental health records indicate an inability to regulate behaviour and emotional reactions and self-reported binges and purges/panic attacks.
- She points to the medical notes describing "longstanding pattern of emotional dysregulation in the context of perceived rejection and substance abuse".

- She points to an example of the need for his mother (paternal grandmother) having to suspend contact whilst undertaking supervision due to his anger and returning the child back to mother.
- She also contends that a number of parts of father's evidence were false and that in particular she refers to two aspects of the evidence which demonstrates that his credibility is at issue. The first is in relation to the delivery of [gifts to her] which was initially denied and then subsequently admitted. And secondly the denial that he used the words bitch whilst in Court which appears clearly in the recording and shown in the notes of evidence.
- She contends that there is a lack of insight and that as a result the child because of her age and vulnerability is going to be at risk unless contact is continued to be supervised.

[18] The child's position. The child is too young to be able to give views on which any weight could be given on the issues before the Court. Ms Soljan has pursuant to the requirements of the Care of Children Act adopted a best interests and welfare approach. As I have indicated above she modified her position as a result of the evidence given in Court particularly the evidence given by father.

Judgment on the issue of supervision

[19] I find that supervision cannot be dispensed with and that the child's contact needs to continue to be supervised. I consider that that position should not be reviewed until two years has elapsed as specified by s 139A of the Act. This will take the child to the age of five and it may be then the Court will be in a position to assess whether father has made changes which mean that supervision no longer needs to continue. I make this determination for the following reasons:

- (a) s 5(a) of the Act requires the Court to place the child's safety as a mandatory requirement. Safety overrides or trumps the other aspects of s 5. In this case the objective of the child continuing and maintaining

a relationship with father can be achieved and safety ensured by the contact continuing to be supervised by the respondent's mother (paternal grandmother). She has given evidence that she continues to be available although of course it is a significant responsibility falling on her and I accept and thank her for her commitment to her granddaughter. Nevertheless I am satisfied that it needs to continue;

- (b) I consider that the steps taken by father have not at this stage given him insight into the effect of his own behaviour and there is a risk to the child of ongoing emotional dysregulation;
- (c) I am satisfied that the child's cultural needs in relation to her identity can be maintained by the contact that is presently occurring supervised by grandmother and this aspect of the child's needs can be addressed (s 5(c)). There are three significant areas which needs to be considered. They are:
 - (i) risk issues arising out of consumption of illicit drugs and alcohol;
 - (ii) the respondent's mental health issues;
 - (iii) psychological risk issues.

Dealing with each issue in turn.

Drugs and alcohol

[20] Both parents have acknowledged the use of illicit drugs including marijuana, methamphetamine, LSD and speed.

[21] I think arising out of father's distress following the relationship with the applicant ending the medical notes contained details of significant alcohol intake for a period leading up to February 2016. I note that this is a period when the child was in father's care on a week about basis.

[22] The child is only three and still remains vulnerable. It follows logically that if a parent is affected by any illicit substance or alcohol that for such a young child who requires constant supervision and attention that that requirement could be significantly compromised.

[23] Father gave evidence pointing to mother's illicit drug use but in my view I do not have evidence before the Court which would demonstrate that her parenting has been compromised. She has given evidence that she has ceased illicit drug use. I observed that she is [details of employment deleted] and her behaviour has been observed on a daily basis by [professionals and members of the public]. If her capacity at employment was impaired I think that is likely to come to the attention of [the employer]. There is therefore a degree of oversight. Mother's evidence was that her consumption was significantly less than father's and I accept her evidence. She did acknowledge that she did use marijuana after the child's birth but denied that she had used any other illegal drugs after birth. It was her evidence that her use of marijuana ceased at the time of separation. I observed that she undertook a hair follicle in July 2016 which showed negative results. I observed that there has been no complaint made by any outside source about her parenting being compromised. She had been interviewed by the social worker and there was no evidence from the department that her parenting was not up to a sufficient standard to justify any intervention.

[24] Ms Soljan's has submitted that father's position is somewhat contradictory. That she points out he stated:

The applicant did use drugs with me on occasions in his affidavit but by the time of the hearing his evidence escalated and said that she was smoking cannabis multiple times per day and that he was there as well.

This shift in father's evidence did not do him any credit. It appears as though he decided to amplify or exaggerate her drug use as a way of countering the allegations against him. His position before the Court at opening was that he wanted the shared-care arrangement to continue and therefore it was implicit in that position that he accepted that the child was safe in her care as a result. This dilemma or contradiction impacted on his evidence and I accept Ms Soljan's submission that he was focusing on diverting attention from his own drug use and issues.

[25] When father was admitted to hospital it appears as though he was extensively interviewed by a psychiatrist and other mental health professionals. Notes were taken. I think at this time following a crisis occurring in his life he is likely to have shown a degree of candour and honesty. The medical reports indicate a significant use of illicit drugs both prior to and during the relationship with the mother. I accept that he has now produced two hair follicle drug tests: one in October 2016 and in October 2017 showing negative results. I am concerned however that without a further period of time of demonstrated drug free life that there is a risk of relapse to the addiction that he previously clearly has had. It is clear that his drug use was chronic and I carefully listened to the answers to the questions about the drug use, I have reached the conclusion that he was minimising the risk of relapse. I consider that he is a person with a significant addiction issue and will require ongoing commitment, possibly assisted by AA both in relation to alcohol and illicit drugs. I find therefore that there is a risk of relapse particularly if a further crisis occurs in his life. I need to be satisfied that his period of abstinence as evidenced by his two hair follicle tests is cemented in place and I think it will take a further two years before I can be satisfied that he has made long-term and sustainable changes to his life. I observed that it was only the early part of 2016 when his life came into crisis following contacting the [details deleted]. This appeared to follow a heavy period of consumption of alcohol, probably exacerbated by his own admitted regular consumption of marijuana. I am particularly concerned that some of the substances that he has taken could have an antagonistic effect on his health and wellbeing. It is imperative that this child grows up realising that living a drug free existence is an option for her and is protected at all times until she is much older from exposure to any behaviour of a negative type induced by consumption of substances or as a poor role model.

[26] As pointed out by both Ms Gregory and Ms Soljan there have been periods where there appears to have been a jealous reaction by father when he has perceived that mother has been socialising with friends and he has withheld the child. Also the Court needs to be satisfied that his addiction issues are under control because it is imperative that the parents be able to communicate if they going to manage a shared-care arrangement and any relapse will impact on that ability to communicate.

Mental health

[27] The Court has been provided with an assessment made as to whether he continued to present suicidal risk following [details deleted]. The evidence from that was largely provided from the respondent himself together with the prior records and notes that have been accumulated over a number of years. It shows that he has had mental health issues for many years. That he was prescribed medication for depression. When he was questioned about his issues in a particular specific aspect of the report addressed to him he became very defensive and sought to minimise the impact of what had been recorded as stating that the report writer had been inaccurate in the recollection. With respect I do not accept the respondent's evidence that the report writer was inaccurate and I consider that what he told Dr Stoyanof and other mental health professionals was accurate. There are particular aspects of the report dated 5 February 2016 which are pertinent. Under the heading "recent events" there was clearly acknowledgment of significant illicit drug use on an ongoing and long-term basis. It showed that his use was chronic. Under the heading "risk" it recorded that there was currently no suicidal ideation although he was struggling to consider the future but was willing to engage with the services to try and move forward recorded that when he was interviewed he was not guarded and open regarding his history. This reinforces my view that what he told the psychiatrist was correct. It also recorded that he was low in mood in adjusting to a relationship breakdown and that he had a long spanning pattern of emotional dysregulation in the context of perceived rejection and substance abuse. It is likely in my view therefore that with the findings made by the Court in this particular case that he will also experience emotional dysregulation and will feel rejected. There is a risk therefore as a result that he will relapse back into substance abuse.

[28] As a result of all the information provided and the assessment made by the psychiatrist a safety plan was entered into. I consider that the diagnosis that was evident in that report and as subsequently confirmed means that there is a risk to the child of reoccurrence of issues where he could become depressed impacting on his ability to safely parent the child or a risk of potential self-harm.

[29] The respondent strongly and adamantly rejected any suggestion that he had attempted suicide but he did acknowledge that he had suicidal thoughts. He described to the Court the circumstances surrounding his contacting the [details deleted]. I

consider that he was minimising his behaviour and showed a lack of insight into the surrounding circumstances. These circumstances were following what he perceived as a rejection by mother in attending [an event]. It was some ten months after the parties' separation. What he described to the [medical team] gave them sufficient concerns that they contacted the police to conduct a welfare check. [The Health Board] Services having spoken with father who disclosed an overdose and called the ambulance. The hospital after speaking with father held a meeting in order to put a safety plan in place. The hospital records record:

He acknowledged that he wanted to die.

[30] When I combine that with his acknowledged drug use as recorded by the psychiatrist this exacerbates the risk issues when there is an underlying mental health issue which can only be added on to by illicit drug use which increases the risk of drug induced psychosis. To some respects the evidence from the psychiatrist was corroborated by paternal grandmother's evidence where she acknowledged that he had previously expressed suicidal thoughts and that he does not like relationship breakdowns.

[31] I consider that there are ongoing risk issues particularly when father becomes more aware of mother's new relationship. He finally comes to terms with the fact that there is no prospect of reconciliation. His sending of the [gifts on their wedding anniversary] clearly indicates an ongoing level of feeling towards her and was an unwise course of action. It indicates to me that there are boundary issues. Father's initial denial and then subsequently admission gives me no confidence that those issues will not reappear.

[32] I also refer to the letter from [the support provider] and [the Health Board Services] which indicate that he was being treated for anxiety from early 2015. That treatment did not prevent the situation coming into crisis a year after his attendances commenced. Father indicates that his job that he undertakes which involves considerable responsibility and safety issues requires him to have regular drug tests which provides some oversight but I detect that there is an ongoing risk of return of these issues.

Psychological issues

[33] The issue for determination is whether the child will be at risk of psychological issues impacting on her safety. Section 5(a) makes it mandatory for the Court to enquire into and determine whether the child will be psychologically safe. Ms Soljan argues that father does not have the necessary parental capacity and presents as an ongoing risk. She relies on a decision of Her Honour Judge Smith in *DAL v NJW*¹ and sets out the legal test adopted by Judge Smith. I set out paragraphs [21] – [23](a)-(f) inclusive of Ms Soljan’s submissions:

21. The father’s general parental capacity will be a relevant consideration.
22. As to the meaning of “parental capacity” I refer to the comments of Judge Smith in *DAL v NJW* where she said:

From a psychological perspective, the concept of parental capacity is wide and clearly beyond the provision of the material and the protection of the child psychologically and emotionally... . It is a wide and complex concept. In my view the psychologist outlined the wide concept of parental capacity extremely well in her first report ... when she said...

Parental capacity is characterised by a number of resilience factors, including putting the child’s needs before the parents’ own needs when necessary; maintaining the parents’ own physical and emotional health so that the parent can maintain the parenting role effectively; maintaining consistency of care within each caregiver’s home and between homes by regular communication; supporting and facilitating the child’s relationship with other caregivers and extended family; co-operating cooperatively; the supervision and management of behaviour and understanding of the child’s developmental stage and needs, providing a safe, predictable environment; providing appropriate socialisation, training and developmental opportunities; an understanding of the child’s risk and resilience factors so the former can be supported and the latter can be maximised.

23. I submit that the following matters are relevant:
 - (a) The father clearly loves his daughter and is devoted to her (as is the mother).
 - (b) There are questions about the extent to which he relied on his daughter for his own sense of emotional wellbeing.

¹ (2012) 29 FRNZ 59.

- (c) He challenged the accuracy of the various professionals involved suggesting that he is evading, rather than addressing unpalatable funds.
- (d) He allowed his own frustrations with CYFS to override the needs of his daughter when he turned up at their offices unannounced and waited for a significant period of time, despite being told that the social worker was unavailable. He had [Tui] with him (aged [under 3 years old] at the time). He acknowledged that he waited at the office, with his daughter, for one and a half hours. He appears to have been oblivious to the needs of [Tui] at this time.
- (e) There is evidence that father has ongoing issues with self-restraint, for example:
 - (i) His outbursts in the courtroom (most notably reacting to mother's revised proposal by blurting out "fucking bitch").
 - (ii) Directing anger at his own mother in July 2016 to the extent that she felt it was necessary to cancel contact to avoid conflict in front of [Tui].
 - (iii) Sending gifts to the mother, [details deleted] on the wedding anniversary.
- (f) His repeated references to the "Marriage vows" in his evidence may suggest that he has a lingering resentment and/or ongoing distress about the breakdown of the marriage.

These submissions are also supported by Ms Gregory who contends in a similar vein.

[34] I accept the submissions made by Ms Soljan and Ms Gregory. The question for me comes down to one of insight. I fully accept that Mr [Potiki] is a very committed parent and loves his daughter dearly. I accept that he has taken significant steps to address issues which impact on his life. However on listening carefully to his evidence I came to the conclusion that at this stage of his life he does not have the necessary insight to shield his daughter from exposure to adult issues unless his contact is supervised. I consider that if he had care on an unsupervised basis there is a risk that he will expose her to adult issues or speak in a denigrating or negative way about her mother. I do not think he will be able to help himself. She is too young and vulnerable at this stage to be self-protective and I consider that for the next two years the contact should continue to be supervised which coincides with the statutory period set by Parliament to prevent further applications being filed to the Court without leave pursuant to s 139A. This will take the child through to about five and a half before

any further applications can be made and it will also enable a further two year period clearly stipulated by the Court for Mr [Potiki] to receive ongoing therapy to try and gain further insight into the effect of his behaviour on the child and his ability to deal with the hurt that has arisen out of the ending of his relationship with the applicant.

Frequency and duration

[35] I consider that the orders in place before the Court at present meet the child's needs and are workable and viable. I do not think the respondent's mother will be available much more time than presently is the case and it seems to be sufficient time to continue to maintain the child's relationship with her father. I am not persuaded there should be any variation of the existing arrangement before the Court on the condition that the contact needs to be supervised at all times by [name deleted] as paternal grandmother. Accordingly the contact order will be on the following conditions:

- (a) father's contact to be supervised by either or both paternal grandparents;
- (b) that no application for variation or discharge of these orders be made until the elapsing of two years from the date of the orders. In the event of any further application to the Court father will need to show that he has completed a psychiatric assessment which demonstrates that he has addressed the issues alleged to his overdose in February 2016 and/or completion of at least six months' counselling with [the support provider] to address those issues;
- (c) that there is to be no consumption of illicit drugs or access alcohol when he has the care of the child or 48 hours prior to;
- (d) that communication between the parents would be by email or text only and for the content of such communication to be short and focus solely on issues regarding the child's care or guardianship issues;

- (e) the changeover occurs to and from day care (and school when applicable) whenever it occurs on a day that the day care is open, otherwise all changeovers to be conducted with the assistance of grandparents and will not involve direct handover between the parents;
- (f) that the parties can phone each other in case of emergency but at all times the communication shall be respectful and child-focused;
- (g) the respondent is to inform the applicant that he is taking the child out of Auckland overnight;
- (h) if the child is sick the parties will inform each other by text. If the child needs a doctor and is within working hours she is to go to her current GP;
- (i) the child is to be allowed to take her comfort blanket with her between homes and have free access to it;
- (j) the child is to be returned to her day care by [day and time deleted] after the respondent's contact.

Day care

[36] The issue for determination by the Court is whether the child continues at the day care in [location 1] that she presently attends or changes to a day care in [location 2] known as [day care 2]. My understanding of mother's position who supports the change is that she works as [employment details deleted]. That she can drop the child to the day care on the way to [work] and pick her up easily on the way back. That at present she relies on her mother getting the child to the day care in [location 1] because it is in the opposite direction to the way she travels to attend [work]. That as a [role deleted] she needs to get to [work] to be able to [details of occupation deleted]. In order for the [location 1] day care to be sustainable she needs the assistance of her mother. This is a significant imposition on her mother to get the child to and from day care. That there are traffic issues and it involves quite a lot more additional travel.

Mother's position is that the two day care centres offer the same cultural input and exposure to te reo and that in terms of their ERO reports they are of a similar standing. Father's position is that the child is settled and well-known at the day care. He regards the day care in [location 1] as the number one in the country. He is doubtful about the quality of the day care in [location 2]. He sees no justification for change. He has a good relationship with the staff and he is able to access it easily from his work and is able to see the child at day care. He is strongly opposed to there being any change.

Judgment on day care

[37] I order that the child is able to change the day care from the beginning of term one 2018 onwards and be able to attend [day care 2] in [location 2] accordingly. I make that order for the following reasons:

- (a) I consider that she should [enrolment dates deleted]. I have not been provided with any evidence from an objective source to distinguish between the two day cares;
- (b) some issues have arisen out of the present day care which have given concern to mother. Father considers that those issues relating to biting incidents have been addressed and relate to one child. I consider that starting at a new day care will enable the child to establish new relationships and hopefully lessen the risk of further biting incidents occurring;
- (c) the main reason I consider it appropriate is that mother will be able to more easily facilitate attendance to and from the day care because she will be able to drop off and pick up on her way to and from work. As she has the majority of the care as a result of the parenting orders made in this case this is a significant consideration and the day care should be one that works for her. She by doing the great majority of the pickups and returns;
- (d) while father has some resistance to the day care it is not that much distance and he can still attend the day care. I got the clear impression from listening to father's evidence that the reasons for opposition were

more adult-focused than they were child-focused. It was more to do with where his work was situated and the distance that he would have to travel to [location 2] rather than what was in the best interests and welfare of the child. I consider that the child will have a lot of pressure alleviated from her because mother will be able to get her to and from the day care relatively easily and in the event that she is unwell she can receive the support of her mother and the whole situation will be more workable and flow more easily;

- (e) I think with father's residence on [location deleted] and rearrangement of his schedule and his work commitments he will be able to travel to the day care and travel [details deleted] probably as easily as going from [location 1]. It might take a bit longer but I think at that time of the morning he will be flowing against the traffic and it will be workable for him once he gets into a routine when he returns the child on a [day and time deleted].

Dated at Auckland this 17th day of November 2017 at

am/pm.

D A Burns
Family Court Judge