

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

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**IN THE FAMILY COURT
AT LEVIN**

**I TE KŌTI WHĀNAU
KI TAITOKO**

**FAM-2012-054-000865
[2019] NZFC 8312**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[CALVIN BROWN] Applicant
AND	[PENELOPE BYRNE] Respondent

Hearing: 7 & 8 October 2019

Appearances: Applicant not Represented
M O'Sullivan for the Respondent
R Cochrane as Lawyer for Child
P Reid as Lawyer for Assist
A Lyne for Oranga Tamariki

Judgment: 16 October 2019

RESERVED DECISION OF JUDGE D G SMITH

[1] A hearing was held to determine whether the two younger children of the parties, [Natalia Brown], born [date deleted] 2011 and [Hudson Brown], born [date deleted] 2014, should move to live with their mother.

[2] The parties have been before the Court since 2012. On 20 September 2017, I issued a judgment which granted an interim order determining that the day to day care of all the children of the party, that is [Natalia] and [Hudson] together with their older siblings, [Vanessa] and [Taylor], were to remain with Mr [Brown], but providing for contact with Ms [Byrne] on a fortnightly basis.

[3] There have since been two variations to that order directed to the contact arrangements with Ms [Byrne] and there has been a s 31 guardianship order in favour of Oranga Tamariki to ensure that the contact arrangements were workable.

[4] In my decision of 20 September 2017, I stated at para [75]:

If there were not the alienation problems and Ms [Byrne] had the appropriate accommodation, I would grant a parenting order for day to day care for all the children with Ms [Byrne].

[5] It was clear that the two oldest children, [Vanessa] and [Taylor], wanted nothing to do with their mother. They believe that she abandoned them and further, that she assaulted them and did not apologise. I endeavoured to address those concerns in my decision but the older two children's refusal to see their mother remains the same.

[6] Ms [Byrne] has accommodation with a bedroom for [Natalia] and [Hudson] in a tidy property in [location A].

[7] Ms [Byrne] seeks the day to day care of [Natalia] and [Hudson] as she is concerned if they remain with their father, he will also alienate them from their mother, and secondly, that they say they wish to live with her.

[8] Both the parties have filed affidavits and been cross-examined. An updated s 133 report was completed by Mr John Dwyer, an affidavit was completed by Mr [Joseph Dawson], the Headmaster of the school the children attend, and evidence was given by the social worker for Oranga Tamariki who has been involved, not only with supervising change-overs but also of a visit to Mr [Brown]'s home in [location B] on the morning of the second day of the hearing.

Ms [Byrne]'s evidence

[9] Ms [Byrne] relies upon affidavits dated 10 October 2017, 9 November 2018 and 26 September 2019, together with an affidavit from her father, dated 9 November 2018.

[10] The first affidavit related to seeking enforcement of the prior orders. That application has since been withdrawn and the affidavit is of no assistance in determining this application.

[11] In her affidavit from 9 November 2018, Ms [Byrne] gave details concerning her home. It is the home she had at the time of the hearing on 20 September 2017. It is a two-bedroomed property. She has a room set up for [Natalia] and [Hudson], and photographs have been provided showing that it is a neat, tidy unit. She sets out the details of the school she would like the children to move to, and the contact arrangements she suggests for Mr [Brown] to have with [Natalia] and [Hudson].

[12] Ms [Byrne] sets out her reasons for her proposals as:

The children are both showing a need to be with me. They both regularly cry when leaving my care, in particular, [Natalia]. [Natalia] often says out of the blue that she wants and needs to live with me. [Hudson] also shows he needs more time with me and has also asked me if he can just stay with me. This is more than just adjusting to going back, there is real feeling coming from the children, they need to be with me. The children cry when they are first leaving [location A] to return to [location B] after their weekends with me, and they are in tears again once we reach [location B], knowing they are about to leave me.

[13] Further, Ms [Byrne] stated:

[Calvin]'s conduct continues to undermine the children's relationship with me (recent events are detailed below) and if the children do not come to my care now there is a real risk [Calvin] will alienate my relationship with them. This has already happened with [Vanessa] and [Taylor]. For this reason, I believe they must come to my care.

[14] The recent events to which Ms [Byrne] referred related to a misunderstanding concerning a contact weekend which Ms [Byrne] thought had been extended and it appears that Mr [Brown] did not. Regrettably, Mr [Brown] called the police because

the children had not been returned when he thought they would be. This incident was upsetting to the children.

[15] In addition, Ms [Byrne] is concerned that when the children are collected from Oranga Tamariki fortnightly on Fridays, they are often hyped up and behaving badly. [Hudson], she said, had run to her for a hug and then suddenly kicked her. She said this was the same behaviour that happened when the only contact she could get agreed with Mr [Brown] was supervised by [an agency].

[16] In addition, Ms [Byrne] complains that she cannot have phone calls with the children. When she calls, the phone is often not answered, and she had to call two or three times before there was an answer. When she was delayed in calling for say 10 minutes, the phone was not answered at all.

[17] The final concern arose [month deleted] 2018. Ms [Byrne] said [Hudson]'s hair had been cut because it was long and scruffy, and he kept getting nits. Ms [Byrne]'s evidence was she spent a lot of time when the children came on her weekends trying to get rid of their nits. Further, [Hudson] has been mistaken for a girl at times and he did not like it. She said she took both the children to [a hairdresser], and they absolutely loved the attention and care they got.

[18] Ms [Byrne] was supported by an affidavit from her father. His testimony was that when they returned [Natalia] and [Hudson] (he assists with the transport) they regularly are in tears, saying they want to live with Ms [Byrne]. He testified that this information is never sought by Ms [Byrne] and comes out naturally. In his affidavit he stated:

[Penelope] is always positive about the fact that they will see Dad, [Vanessa] and [Taylor], and then it will not be long before they come back down. The children cry as we leave [location A], and once again when we arrive at [location B] before we get out of the car. They ask if we can stop at the park in [location C] and for other stops, apparently to delay the handover as much as possible. They never want to take any of their toys from [Penelope]'s back to [location B]. It is clear to me the children need to be with their mother.

[19] In her affidavit of 26 September 2019, Ms [Byrne] confirms that she is on a waiting list for Housing New Zealand for a larger home. She had been told that if the

children were placed in her care she would be prioritised, and she hopes to secure a three-bedroomed home.

[20] With the contact currently taking place, Ms [Byrne] believes if Oranga Tamariki was not involved, she would not see the children as regularly as [Calvin] makes communication with him impossible.

[21] Ms [Byrne] reinforces the children continue to love their contact with her and are upset when they leave her. Again, it states [Natalia] regularly tells her she wants to live with her and is obviously distressed that she cannot make this happen. Ms [Byrne] says that she was telephoning the children each week, but the phone is no longer operating as far she is aware and she cannot get through.

[22] Ms [Byrne]'s affidavit emphasises that she takes the children to different activities because she is concerned that they do not get exposure to the outside world other than school when they are living with Mr [Brown]. When they are not at school, they are kept at home behind high fences and locked gates. She takes them to the swimming pool in [location A] and the hydro-slide [nearby], to [the beach], bike riding and scooter along the [street deleted], going to Lollipops Playground, movies, [museums], together with beaches around the [location A] area. She has brought [Natalia] an acoustic guitar as she wants to learn to play the guitar. She states if the children come into her care she would like them to do some extracurricular activities such as swimming lessons as they have clearly not had swimming lessons and [Natalia] could do guitar lessons and she would like to do gymnastics. [Hudson], she believes, would enjoy some outdoor sport as he loves soccer.

[23] Her evidence was based on the comments the children make to her, and that the environment at Mr [Brown]'s home had not changed. It remains rundown, in disrepair inside, the shower is broken, and she can still see clusters of scrap piled high behind the fence.

[24] The children continue to have heavy nit infestations and she continues to spend a lot of time on weekends combing nits out of their hair and treating their hair. Further,

the children are always hungry when she collects them on Friday afternoon, so she has sandwiches and crackers, or similar available for them.

Cross-examination of Ms [Byrne]

[25] Ms [Byrne] confirmed under cross-examination that the principle ground for application was that [Natalia] and [Hudson] would be alienated from her if they remained with Mr [Brown].

[26] Ms [Byrne] confirmed that it is two years since Mr Dwyer's original assessment and her concerns first arose, but she acknowledged to Mr Dwyer when he interviewed that the current arrangement has been working really well.

[27] She was concerned however, that if Oranga Tamariki did not remain assisting that the contact may not continue as well in the future.

[28] Ms [Byrne] accepted Mr Dwyer had indicated in his evidence that the current arrangement by and large met or satisfied the children's needs to have a relationship with her as their mother.

[29] Ms [Byrne] did not accept that the children do not want any major tinkering done to the care and contact arrangements. When asked why she did not accept that, her answer was that she "did not accept the way that my kids live in that house". Her answer was that they should be with her. She conceded however, that is going alright at the moment. She is concerned she does not know what the future is going to be like, that there is no stability, no security or trust.

[30] Ms [Byrne] did concede again, that from the children's perspective, the current arrangements are going well.

[31] She reinforced her concerns about alienation by what the children tell her that their father has been telling them, running her down behind her back. Calling her a "faggot" and comments of that nature were, in her view, a start. She accepts however, that apart from that evidence, there is no evidence over the last two years that Mr [Brown] has taken any steps to try and alienate the children from her. She also

accepted there was no evidence that the other siblings had to tried to alienate their younger siblings from their mother. Nonetheless she remains concerned it may happen in the future.

[32] It was put to her there were no care concerns raised in Ms [Byrne]'s affidavits. Nothing had been noted that arose between her November 2017 and September 2019 affidavits. At the time she completed her September 2019 affidavit she had received the s 132 report. She responded every time she picked them up from Oranga Tamariki they had filthy clothes, they were hungry, full of nits – which give her nits as well and she has to go to work. A question about why there had been no notifications to the Ministry, Ms [Byrne]'s response was that she talks to CYFS “all the time and they just talk to me and that’s all I get out of them”. She said that she had raised her concerns all the time in relation to their health and wellbeing. She said:

I shouldn't get my kids coming to me full of nits. Its ongoing for the last three years since I have been having visits.

[33] Ms [Byrne] conceded that nits itself was not enough to warrant change in a child's care arrangements, but her position is it is just one of the many issues. The other concerns that she raised were [Vanessa] doing too much running around and her son should not have gone to school with a lunch box with only raisins and maggots in it.

[34] Ms [Byrne] accepted the children did not appear undernourished.

[35] What Ms [Byrne] did raise was the children's psychological wellbeing with their father putting ideas in their heads, trying to turn them against her. It was put to Ms [Byrne] that what [Natalia] was telling Mr Dwyer, conflicted to what she said to him and what Ms [Byrne] told Mr Dwyer when she met him.

[36] Mr Reid took Ms [Byrne] through the statement made by [Natalia] in Mr Dwyer's report,¹ which contradicted the statement which Ms [Byrne] had made to Mr Dwyer.

¹ Report of Mr Dwyer, paragraph 59, page 146; paragraph 62, page 146; paragraph 80, page 148.

[37] Ms [Byrne] was taxed as to [Natalia] saying that she was aware that her mother wanted her to live with her. Ms [Byrne] denied that she pressured her child. She said it is always her choice, not her father's choice, "it's not mine, it's her choice".² Ms [Byrne] said [Natalia] had said to her a few weeks ago that:

She told her dad she wanted to go live with mum and he said something like, 'oh you'll be lucky' and 'in your wildest dreams', something like that.

[38] Ms [Byrne] reinforced the reasons [Natalia] had given Mr Cochrane, lawyer for child, as to why she would want to live with her mother.

[39] With respect to [Hudson], it was considered by Ms [Byrne] he was too young to have a clear view as to what his views were.

[40] Ms [Byrne] believes her bond with [Hudson] is really good. She also accepted that he likes living with his father and is happy there.

[41] Ms [Byrne] however, has the view that he would be better off with her for his health and hygiene, and for his psychological confidence and self-esteem.

[42] Ms [Byrne] has accepted that moving [Hudson] would be removing him from his whole environment, but she still thinks it would be a better move for the opportunities she can provide him in terms of swimming lessons, karate lessons and similar.

[43] Ms [Byrne] was against the idea that only [Natalia] came to live with her. She was concerned that [Hudson] may not understand what was happening and that he may be bitter because of that separation.

[44] Despite the inconsistencies between [Natalia]'s statements to Mr Dwyer and Mr Cochrane, Ms [Byrne] says that she has always been consistent with her as to her wishing to live with her.

² Refer to page 91, paragraph 27, 28 and 29.

Mr [Brown]'s evidence

[45] Mr [Brown] relies upon affidavits sworn on 7 November 2017, 21 November 2017 (2), 11 December 2017 and 29 October 2018.

[46] The 7 November 2017 affidavit provides no evidence. It indicates he was going to appeal my decision of 20 September and would prove all the allegations in the Judges report were all hearsay and that there was not any proof.

[47] The first affidavit of 21 November 2017, says that CYFS have done two reports on his children and that said that the children are safe and cared for and closed both cases. He states all four children were safe and well looked after in his care. The two younger children are seeing their mother, the two older children have made it clear what they want. He confirms that both older children are doing counselling, and that the two older children have had their schooling affected already from what the Dean has seen with learning and they did not need anyone else to affect their future and wellbeing. A letter from [name deleted], Dean of [school deleted] is annexed to the affidavit, confirming [Vanessa] has been attending counselling sessions and that there had been a meeting with lawyer for child with [Vanessa] at school.

[48] The second affidavit of 21 November 2017 states:

Reasons for orders for visitation to be stopped.

[Penelope Byrne]/[Greg Byrne] after visitation on Saturday 18 November 2017 have advised they want to change visitation to every three weeks on a Saturday and at a later time in the morning due to travelling from [location A] to [location B], I said I can't see why we can't discuss visitation access between ourselves and they both agreed this should start happening, it's what I've been trying to achieve in the last two Court cases that there is better communication between the two of us as this would be beneficial for our children.

[49] The affidavit of 11 December 2017 is an extension of the matters referred to on 21 November 2017. It concerns access arrangements.

[50] The final affidavit of 29 October 2018, requests that telephone calls be stopped, and that Ms [Byrne] keep to orders made and stop making bad comments around the children. Mr [Brown] objects to Ms [Byrne] cutting [Hudson]'s hair and making

comments to the children that he is a dick. In respect to telephone calls, he says that both [Natalia] and [Hudson] have said they do not want to talk to Ms [Byrne]. She hung up and did not ring back for five weeks and when she did ring, he asked why she had not called the children:

I find if she is not going to ring for weeks, kids are left sitting there waiting and I have to travel from [location C] to [location B] to make sure call can happen to have her not ring so asking if calls can be stopped.

[51] The affidavit then addresses his concerns as to the Court order not being kept concerning contact matters.

Mr [Brown]'s cross-examination

[52] Mr [Brown] denied he had been avoiding anybody, it is just that he did not have a phone. It became apparent he does have a phone. It has been packed away somewhere, but he had found it hard to keep the data topped up.

[53] As to the state of [Hudson]'s lunch, Mr [Brown] said that he went and saw Mr [Dawson]:

I actually went in and seen him. He didn't contact me. I went and seen him and he told me about the lunches and I said "Well I don't see how you're putting off that on me when [Vanessa] actually makes the lunches". I didn't reflect [sic] on [Vanessa], I just said that's what she does.

[54] Mr [Brown] says he now checks the bags to make certain that they have a sandwich, chippies, yoghurt and raisins.

[55] Mr [Brown] does not accept Mr [Dawson]'s report of concerns.

[56] Mr [Brown] talked to [Hudson]'s teacher and she got him some nit solution. As soon as she did, he started treating [Hudson] again.

[57] Ms O'Sullivan's cross-examination was primarily directed to the question of the contact that worked in the past and possible contact in the future. That is addressed below.

[58] Mr [Brown] says he does not have the money to pay for half the travel. Mr [Brown] said he will go through the boxes and find the phone, and:

I'll get a sim card and whoever needs it I will supply it to the Court, the sim number, I'll supply it to you, I'll supply it to anyone and there will be a contact number for myself.

[59] Given the paucity of evidence from both parties, but in particular Mr [Brown], I have been forced to put greater reliance on the evidence provided by Oranga Tamariki which was given viva voce during the hearing, Mr Dwyer's updated s 133 report and the lawyer for children's reports.

Oranga Tamariki evidence

[60] Evidence was given by Ms Lewis, who is the social worker supervisor for Oranga Tamariki, and Ms Simpson, who is a core assessment social worker.

[61] Ms Lewis gave evidence as to how the s 132 report had been finalised by Oranga Tamariki. The Ministry has a s 132 report writer who has direct access to CYRAS, which is the Ministry's database, and consults with the social workers that she knows have been involved with any particular case. In doing so, the report writer is following the brief provided by the Court. If the brief requires a visit to interview people, then she completes the report in that way. Sometimes the reports require gathering information rather than directly interviewing people.

[62] The s 132 report provided to the Court in this matter was signed by Ms Apatu, but she gathered her information from CYRAS and the primary information had been gathered by Ms Simpson in her latest report of concern. There had been no engagement with Mr [Brown] by Ms Simpson as she had been unable to talk to him directly. As consequence, the only source of information that was available was the database and Ms Simpson's reports.

[63] The report refers to Ms Montagnani. She accompanied Ms Simpson and provided a second pair of eyes and was a sounding board for Ms Simpson.

[64] It was clarified that Ms Apatu had tried to contact Mr [Brown] but was unable to do so and hence her involvement in using the information on the CYRAS database.

[65] When asked as to why the property had not been inspected, Ms Lewis' replied:

Because the evidence we had before us did not substantiate all the allegations and worries that were presented in the report of concern to a level that would, you know, would require perhaps a place of safety warrant to enable us to enter the premises. I mean that, for us it would have, we would probably have had to look at that level to get into the home. But you're correct, it does – we do continue to worry about the isolation and we're worried that if Mr [Brown] is going to address the concerns we have no way of monitoring that other than through school.

[66] Ms Lewis clarified the involvement of Oranga Tamariki in assisting with contact change overs. They have collected the children from the home and taken to the Oranga Tamariki offices as a neutral and safe place for the children to wait for the mother to come from [location A] to collect them. Secondly, they have been able to contract [a youth support service] to assist with transport, so they have been able to collect the children as well when their social work resource assistance has not been available to do so.

[67] Ms Lewis had received feedback concerning collecting the children. There had been one occasion when the person doing the collecting had to have the children handed to her over the top of the fence because no one was able to unlock the gate. It was evidently [Vanessa] that handed the children over the top of the fence and onto the footpath as Ms Lewis understood it. She also recalled when there was an access that had been cancelled and the children needed to be returned. Once again, they had to be handed back over the top of the fence because the gates were unable to be opened.

[68] Nine times out of 10 the children arrive at Oranga Tamariki offices before their mother does. She states they are not usually in the office for very long, but they are very active, whirlwind children. They can, at times, be delivered a little bit scruffy but Ms Lewis expected that with busy children and the end of the week that that could be expected.

[69] There had been discussion with Ms Lewis and Ms [Byrne] concerning cutting the children's hair and her advice to Ms [Byrne] was that as a guardian she had a right

to make that decision, as did Mr [Brown] when he thought the children needed a haircut.

[70] Ms [Byrne] has kept in good communication with Oranga Tamariki when running late. The children are comfortable in the office, they do not feel threatened and are relaxed.

[71] In response to a question by Mr Cochrane, lawyer for the child, as to whether Oranga Tamariki could continue to be involved in change overs, the response was, if required she was sure they would be able to make themselves available. She noted however, it is a very artificial situation to be in and it would be really ideal for the children to be able to witness their parents handing the children over for access in a calm, civilised manner. In her view, that would reinforce the children a bit of security, good role models and good parenting skills.

[72] Ms Lewis confirmed that there had been no reports of concern from Ms [Byrne] at any stage in relation to the children.

[73] Ms Lewis confirmed on cross-examination that a severe nit problem may require medical intervention rather than just a dose of nit shampoo, but that would not elevate matters to a level of concern for the Ministry.

[74] It was confirmed that therapeutic support counselling had been provided for [Vanessa] and [Taylor]. [Vanessa] had engaged, but [Taylor] had been a bit harder. She thought that [Natalia] and [Hudson] were too young at this stage to really benefit from some proper counselling.

[75] Nicky Simpson then gave evidence on behalf of Oranga Tamariki. She has been a Core Assessment Social Worker for the past five months and prior to that was a Care and Protection Co-ordinator for over seven years. Her evidence related to the report of concern that had been made to the Ministry by Mr [Dawson], headmaster at the school for the children. Ms Simpson's role was to do a core assessment and to do a tamaiti focussed interview with the children, talk to the parents and whānau, organise a hui-a-whanau, and then make a decision whether it needs to go to a family group

conference or to an NGO or to the Children's Team or to be closed out of that report of concern.

[76] The report here came in from Mr [Dawson] at the school which advised they had ongoing concerns specifically for [Hudson] but for [Natalia] as well. The concern said that [Hudson] had said he was hungry. They looked in his backpack and there was a lunchbox there. The lunchbox had maggots in it. It was reported that [Hudson] was coming to the school dirty and that sometimes he needs to be showered and he had nits. The Principal had tried to talk to Mr [Brown] about their concerns and his response was to blame it on [Vanessa].

[77] The report of concern was made on 15 August 2019. In Ms Simpson's assessment she wrote that she was concerned that the four children were living in an unhealthy and unsafe environment that was not meeting their wellbeing and needs and that there could be a barrier to them thriving. There was concern about adult supervision with their father not staying on the property as [Hudson] had said to one of the teachers that Dad stays in [location D] and [Vanessa] cares for him at night. Another concern was that the children do not have access to running water, were living in an unhygienic environment and there was the concern about the lunchbox full of maggots, without access to food and that would affect [Hudson]'s ability to thrive at school.

[78] Oranga Tamariki were advised there was hoarding at the home, that the home environment was quite crowded and detrimental to the overall wellbeing of the children. In completing her assessment Ms Simpson spoke with all four children and with the headmaster, Mr [Dawson]. She attempted to contact Mr [Brown] but was unable to do so.

[79] In her interview with [Taylor], he talked about the fact that he liked living with his father, that he liked that his father took him out fishing and that they did lots of things together. [Taylor] told her that his father cooks and that they have a routine around showering, that they have a bath. [Taylor] however was reluctant to talk to her.

[80] When questioned about the showering routine, [Taylor] said the shower was not hooked up, but they had a bath every second day. They each had a bath and that was kind of all he said. He told her that he did not see his mother because she threw a copper coil at his head and never said sorry. He then closed off and would not speak about her any more. His body language supported that. When he talked about his father and fishing, he got quite animated but not when his mother was talked about.

[81] [Vanessa] said that she really loved her father and that she got on with him and likes doing fun things with him. She enjoys the time after the younger children have gone to bed and she gets to spend time with him alone. She clarified that the property in [location D] was not a home but [business premises – details deleted]. She is concerned about NCEA and said her father helped her with her maths homework. She confirmed that she did jobs and helped her father out, but her father did the cooking and she did not believe that she did anything more in the home, over and above what her friends did.

[82] When asked about her mother, she said “To be honest, she abused me as a young child and I don’t want it to affect me now.” She did not elaborate on that. She then asked, “Can you ask Mum not to cut my brother’s hair.” Ms Simpson was taken, by the way in which that was said. It was like talking to an adult. [Vanessa] wishes to become a [details deleted] and is proud that she has 31 NCEA credits already. She confirmed that she does not want to have anything to do with her mother. When spoken to, [Vanessa] was in full uniform, she had straightened her hair and taken care to be in the correct uniform and was clean. While her uniform was probably a bit worn, most kids uniforms at the time of the year the interview took place, are.

[83] When [Natalia] was interviewed she was really animated. When asked about her home and how things went, she responded, “I respect my Dad and my Mum.” She was a typical seven-year-old in her behaviour. She talked about liking to make cards and drawing pictures and helping her mum and dad and siblings. When she talked about her father, she talked about the dog and that her father always comes and says good night and gives her a kiss on the cheek. She claimed that there were two houses, one in [location B] and one which was Dad’s [business premises – details deleted] in [location D]. She was a little bit confused talking about her father’s [vehicle]. She

was specific about her shower time and what her routines were. In her conversation with Ms Simpson, [Natalia] talked about the fact that she loves her siblings. She did say her older brother can be annoying jumping into bed and behaving silly like big boys do. She told Ms Simpson that she showers every morning, brushes her teeth and her tongue, brushes her hair and then when she got home at night she would put on her pyjamas, her hat and be in bed by 8 o'clock.

[84] [Natalia] and [Hudson] go to a homework club held at school and then either [Vanessa] or their father pick them up at 5 o'clock. When she gets home from school [Natalia] puts her things away, watches television and has a normal sort of evening.

[85] When asked about her mother, [Natalia] said she had been there in the weekend and was quite animated and excited about what she had done. She talked about having pizza and seeing her older brother ([Reece] who lives in Australia) and that she had been to the movies. The only bad thing about being at Mum's was she didn't like the cat scratching her.

[86] When asked about what would make her afraid, her response was in relation to her older siblings fighting or saying hurtful things.

[87] In the interview with [Hudson], he said he had been with his mother and [Reece] over the weekend. He was proud he had a new Spider Man t-shirt and he was proud of his haircut. He was pleased that he didn't have nits. He related to the pizza with his grandparents and the Spider Man sheets that he had been sleeping in.

[88] [Hudson] said that his father goes to the [business premises] in [location D] sometimes and sleeps over there and that [Vanessa] and [Taylor] would look after him. In terms of his favourite things with his father, [Hudson] did not say that he had any favourite things living at Dad's but he wasn't worried or scared about anything. He told Ms Simpson that the shower was broken and that he usually had a bath after [Natalia] went first. He likes living in the [location B] house because there is heaps of food and it has lots of doors. He had big smiles on his face when talking about both his mother and his father and his siblings.

[89] Ms Simpson also interviewed Mr [Dawson] and he reiterated the concerns which have been referred to previously. He said he had tried to talk to Mr [Brown], but he was not very successful. In terms of [Hudson]'s cleanliness, he advised he could be smelly and dirty at times.

[90] Ms Simpson had tried to send texts to Mr [Brown] to discuss matter with him but got no response.

[91] It was confirmed that there had been no contact with Ms [Byrne] concerning the report of concern.

[92] Ms Simpson confirmed under cross-examination by Mr Reid that Mr [Dawson]'s report of concern was in part at least, based upon information he had received third hand. He was however able to talk about the maggots in the lunchbox because he had witnessed it personally. He was aware that the staff had raised the question of nits with him and that some of the staff were showering [Hudson], although he had not done that himself.

[93] Ms Simpson confirmed that it would have been a different or fuller report, had she been able to talk with Mr [Brown] and to inspect his home. Because of that exchange, Mr Reid took instructions from Mr [Brown] and it was agreed that his home would be inspected by Ms Simpson and Ms Lewis at 8.30 am on the second day of the hearing.

[94] Ms Simpson's evidence as to the state of Mr [Brown]'s home was consistent with the report given by Ms Apatu for the 2017 hearing, although it would appear that some of the items that had been stacked up in the home had been removed since that time. She said in the initial report by Ms Apatu there was lots of stuff right up to the top of the walls of both sides of the house and the hallway. It was not a place which had been worked on or cleaned up since then and it could not have been done overnight. Most of the hallway was reasonably clear and normal. The girls' bedroom was a normal teenage bedroom. Mr [Brown]'s room had more stacked up in his room and she talked to him about her concerns as to what would occur in an earthquake.

[95] In the bathroom, the hot tap was turned on and Ms Simpson could see the bath was not blocked. Hot water came out. It was confirmed by Mr [Brown] the shower had never been connected. In the laundry there was a relatively new electric washing machine which was on. In the lounge, there were Mr [Brown]'s clothes on one of the couches and the kids' clean washing on the other couch. In the kitchen, there was food in the cupboards and the fridge. There was additional hot water heating on the wood burner. In the kitchen there was stuff stacked up high and again Ms Simpson raised her concerns about the danger that presented. In the kitchenette area, one of the floors was a bit uneven and needs to be fixed.

[96] Mr [Brown] showed Ms Simpson a communication book that had been started for [Hudson] at school.

[97] In terms of communication, he said he was going to ask a friend to provide his number to school and to anybody that needed it so that they could contact him urgently if needed. The boys' room had some shelves in the room similar to Mr [Brown]'s room and again, concern was raised.

[98] A big sack of potatoes in the kitchen was sighted; there was bread and milk in the fridge half used; all the normal things according to Ms Simpson. Outside there was lots of scrap metal but there is pathways to things.

[99] In Ms Apatu's report when she visited the property in 2017 there was supposed to be an area cleared for the children to play. Ms Simpson said there is a broken trampoline and that Mr [Brown] advised he was organising for one of the neighbour's old trampolines to replace it. She said there was a bit of clear space and you could see the bikes. There is space to play in the bedrooms. They are normal bedrooms with the normal amount of space.

[100] In the bathroom there is piles of soap. The hot water cylinder was a small one, so Mr [Brown] has pots of water boiling on the rangehood to supplement that.

[101] The children had TV and X-Box's and the normal types of things you would expect to see for children.

[102] There was a room (or rooms) that are locked. Mr [Brown] advised they are locked because there was unsafe material and his tools in them.

[103] In the bathroom, nit treatment remedies were noted.

[104] There was nothing in the property, in Ms Simpson's view, that was not capable of being fixed.

[105] A discussion was had by Ms Simpson with Mr [Brown] about some support in the house. Mr [Brown] was reluctant to having people or feeling like people were just there all the time, watching his parenting and not believing he was doing a good job. But he did say that if he had to engage with someone, he would. He asked that he be given time to build a relationship with that person, so that he could work alongside them.

[106] Under cross-examination, Ms Simpson thought that a s 91 support order would ensure consistency in providing resources and assistance for Mr [Brown] and the children. However, she did not see the need for any significant intervention from the Ministry such as a family group conference.

[107] In response to questions from the lawyer for child, Ms Simpson indicated there could be a NGO or community agency involved as opposed to a s 91 order (Barnardos or Birthright supervised services). Whānau Ora was put forward as a possible organisation that could assist Mr [Brown], as opposed to a s 91 order.

[108] In Ms Simpson's view, Mr [Brown] would need to be quite clear about what his level of comfortability is to start with and was prepared to go. The professionals would need to be clear as to their expectations as well. If the relationship should start to fall down, there would have to be a straight-up conversation about that sooner rather than later. Ms Simpson said:

I think there would need to be set ground rules given that Mr [Brown] is so reluctant and so fearful of engaging with an agency and being let down, is what I got from him today.

[109] In discussion with Ms Lewis after the inspection of the home, Mr [Brown] became frustrated and raised his voice. Ms Lewis was talking loudly as well, and Ms Simpson had to dampen the exchange down.

[110] The conclusion of Oranga Tamariki is that having interviewed the children and now seeing Mr [Brown]'s home and had discussion with him, is that it does not warrant any intervention by Oranga Tamariki. It does not reach the threshold necessary for there to be care and protection concerns, nor does it justify the calling of a family group conference.

Section 133 report

[111] Mr John Dwyer was instructed to file an updated s 133 report:

To comment on the advantages and disadvantages to the children of each party's proposal in light of the contract that the children now have with Ms [Byrne].

[112] In response to the brief Mr Dwyer interviewed all four children. [Taylor] was clear that his mother was not part of his family. It was clear that he wished to stay with his dad and with his family (as he defines it). It was clear that he did not like his mother. He said that she hit him and did not say sorry. His father does all the work to look after him. He does not want his mother to return because it is too late.

[113] [Taylor] was positive about each of his three siblings.

[114] It is alright with [Taylor] however if [Natalia] and [Hudson] continued to see their mother.

[115] [Taylor] was adamant that his father wanted them to stay with him. He denied that anybody had spoken to him about his mother not abandoning him and his siblings and that she loved him (despite Lawyer for Child reporting he had done so).

[116] When [Vanessa] was interviewed she said: "I used to have bad dreams quite a bit because of the abuse my mum was showing to me, but they've stopped now." She has a close friend who she feels is almost like a sister to her. She loves her father next, the most. She had positive things to say about her father, but she could not identify a

good thing or not so good thing about her mother. She was adamant she did not want to see her in her home. Again, [Vanessa] made positive comments about her relationship with each of her three siblings.

[117] [Vanessa] said that her father had made it clear that it was ok with him if they wished to go and see their mother when [Natalia] and [Hudson] go.

[118] [Natalia] was positive about who was in her family but did not think her mother was because she lived in [city deleted], (Ms [Byrne] lives in [location A]). She did include her mother as a person she loves. She sees her home as being in [location B]. She then said that she wishes to get swimming lessons from her father and to visit her mum and stay with Dad. It was reported it was a positive relationship with her father and then identified her mother as the person she likes most next. She says we have fun at Mum's and we have fun with Dad too.

[119] Mr Dwyer then confirmed with [Natalia] the current living arrangements are that she lives with her father and siblings and has contact with her mother, that arrangement is working and that she likes it the way it is. She looks to either parent for support when she is in their care. [Natalia] was positive about [Vanessa], although less positive about her two brothers.

[120] [Natalia] confirmed she wants to visit her mother more. When asked how long she would like to see her mother, she initially and spontaneously said forever, and then clarified that she did not want to live with her mother, but just keep visiting her forever.

[121] [Natalia] was aware that both [Vanessa] and [Taylor] wanted to stay at Dad's, but she did not know what [Hudson] would want.

[122] When Mr Dwyer interviewed [Hudson] he spontaneously told him:

Dad hates Mum. That's why he doesn't like her because she moved away, and she kept on growling me when I was a baby."

[123] When asked who was in his family, [Hudson] identified his father and his siblings and then added "actually Mum too".

[124] In response to a question about whom he most likes being with, [Hudson] said my family, not Mum. When asked to clarify why he made that comment, his response was: "Because they're cool". When asked why he did not like being with his mother, his response was "Because she just; gets us guns and horrible stuff and cool stuff". When asked who does not want him to have that stuff, his response was "Dad".

[125] [Hudson] was, however, positive in terms of the visits he has when he stays with his mother, referring to cool, fun stuff.

[126] Mr Dwyer's conclusion was:

[Hudson] said he wants to continue having contact with his mother, although there were some signs of ambivalence in his comments. In my opinion there were some signs of negative influence on [Hudson], from the comments he made to me, in respect of his contact with his mother from his father and his sibling [Taylor]. The observation I conducted with [Hudson] and his sister [Natalia] and their mother's home, supported the notion that [Hudson] enjoys having contact with his mother in her home.

[127] Mr Dwyer interviewed [Penelope Byrne] in her home. She accepted that she had forgotten to call the children for telephone contact at times when she was working and particularly when she could not get to the phone when contact was scheduled. She thought that she had been able to call at the designated time about 60-70 percent of the time. Her concern was that she would ring on time and Mr [Brown] would not answer, or the phone was out of range or inactivated.

[128] Ms [Byrne]'s contact with [Vanessa] and [Taylor] since September 2017 is that she had seen them from a distance twice but has had no communication with them. She did, however, tell [Vanessa] through the fence once that she loved her and missed her. She has sent [Vanessa] and [Taylor] items such as clothing and other things such as deodorants as presents. She thought they had received the gifts but was not sure.

[129] In respect of the question of apologising for her past behaviour, her response was that she was waiting for the opportunity. The longer it is left it looks worse than what it was. Her view was that Mr [Brown] would try to cut her out of the children's lives. She told Mr Dwyer that he is so bitter about his emotions and used the children against her. [Natalia] said to me, Ms [Byrne] reported, "Mum's a faggot". She

believes that Mr [Brown] has said this. [Natalia] has also said “Mum’s an idiot”. Ms [Byrne]’s response was “I know what I think of [Calvin], but I don’t tell the kids”.

[130] Ms [Byrne] was concerned that the children, particularly [Natalia] and [Hudson], do not grow up believing that their mother does not care.

[131] Ms [Byrne] felt that there should be a shared driving between her and Mr [Brown] for contact.

[132] Mr Dwyer asked Ms [Byrne] whether she saw any issues with the children being split and her response was that she did. That is why she proposes [Natalia] and [Hudson] seeing [Vanessa] and [Taylor]. She is concerned about Mr [Brown] manipulating them. Ms [Byrne] acknowledged that her proposal to have [Natalia] and [Hudson] would leave the children being split up. She stated,

I don’t want to do that but in order for them to have a healthy upbringing, not live in that home environment for him to manipulate the younger two like he has the older two”.

[133] Mr Dwyer noted that both [Hudson] and [Natalia] were relaxed, happy and comfortable in their mother’s home and that when they went to see their maternal grandparents the interaction between the children and the grandparents was also very positive. [Natalia] was observed as spontaneously cuddling her mother and also her grandmother.

[134] Mr Dwyer concluded the face to face contact between [Natalia] and [Hudson] and their mother had gone well. The continuation of the current arrangements which is what Mr [Brown] seeks, has the advantage that [Vanessa] and [Taylor] appear to be doing well. There is no reason to suggest that [Natalia] is not doing well. The current arrangement would mean that the four children remained living together.

[135] Mr Dwyer did, however, see that there is a significant risk that both [Natalia] and [Hudson] could over time be influenced against their mother, just as their older two siblings have, and they could lose their relationship with her. There was evidence he thought of signs already that both [Natalia] and [Hudson] were exposed to negative thinking about their mother from their father, and their older brother [Taylor].

[136] Mr Dwyer thought that the proposal by Ms [Byrne] for [Natalia] and [Hudson] to move into her care would be positive for them in that her relationship and the wider maternal family's relationship would remain positive. There would also be continued contact with their older siblings. On the other hand, the four children would not be living together, and [Natalia] and [Hudson] would need to move schools. The disadvantage of both proposals is that at least two of the children need to travel to continue contact with both of their parents. Mr Dwyer is of the view that the travel required would not be a major barrier to [Natalia] and [Hudson] maintaining regular contact with both their parents.

[137] Mr Dwyer was not optimistic that the damage which had occurred in the time elapsed, that [Vanessa] and [Taylor]'s relationships with their mother could be successfully repaired and recovered, irrespective of what care and contact plan is put in place. He has not seen any evidence from Mr [Brown] that he would support such a recovery.

Mr Cochrane's reports

[138] Mr Cochrane met with each of the children on [date deleted]2019. [Hudson] is now age five and is in year one at [school deleted]. He showed off his new haircut, which he had got in the weekend he had just spent with his mother. He was excited having spent time with his older brother, [Reece]. He had favourite things to do at both his mother's house, playing with his toys in his father's house, playing with his game, and he has television in his room at his father's house. He said that his father sleeps at [the business premises – details deleted]. He talked about his Spiderman pillow and bed. He felt more sleepovers with his mother would be good.

[139] [Natalia], now eight, immediately told Mr Cochrane that she wants to spend more time with her mother. She thought moving to Ms [Byrne]'s care with [Hudson] would be a good thing, and that she did not mind changing schools so long as she got to live with her mother. She felt there were more things to do:

We do other things like go out to the pools and go to McDonalds at Mums. At Dad's, we stay home unless we go fishing or go to [location D]. I told Mr Cochrane I really want to live with my mum. Mum wants that too. Dad wants me to stay at Mums if that's my choice.

[140] She said that she wanted to stay at her mother's because it is a clean house, there is a pet cat and they get to go out more often. She likes seeing [Reece].

The law

[141] There is no dispute that this proceeding must be dealt with under s 4, 5 and 6 of the Care of Children Act 2004. The child's welfare and best interests are paramount (s 4) and in considering that, I am required to take into account the principles in s 5 (s 4(2)(a)(ii)).

[142] Section 5 states:

5 Principles relating to child's welfare and best interests

The principles relating to a child's welfare and best interests are that—

- (a) a child's safety must be protected and, in particular, a child must be protected from all forms of violence (as defined in sections 9(2), 10, and 11 of the Family Violence Act 2018) from all persons, including members of the child's family, family group, whānau, hapū, and iwi:
- (b) a child's care, development, and upbringing should be primarily the responsibility of his or her parents and guardians:
- (c) a child's care, development, and upbringing should be facilitated by ongoing consultation and co-operation between his or her parents, guardians, and any other person having a role in his or her care under a parenting or guardianship order:
- (d) a child should have continuity in his or her care, development, and upbringing:
- (e) a child should continue to have a relationship with both of his or her parents, and that a child's relationship with his or her family group, whānau, hapū, or iwi should be preserved and strengthened:
- (f) a child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.

[143] Section 6 requires that children must be given a reasonable opportunity to express their views on matters, and any views expressed, whether directly or through a representative, must be taken into account.

[144] The weight that will be given to a child's views will depend, to some extent, on how old the child is.

[145] As matters stand there is no issue of any child's safety being a concern.

[146] It is accepted that a child's care, development and upbringing is primarily the responsibility of his/her parents, but that does not, as a principle, assist us in resolving this issue.

[147] A child's care, development and upbringing should be facilitated by ongoing consultation and cooperation between his/her parents is accepted. The difficulty here is the inability of the parents to do that is what prevents this matter being resolved.

[148] A child should have continuity in his/her care development and upbringing and needs to be taken into account in the event that there is any change in arrangements.

[149] That a child should continue to have a relationship with both of their parents and their family group was accepted by both parents. In their evidence in chief and in cross-examination they both, if the application for transfer of [Natalia] and [Hudson] to Ms [Byrne]'s day to day care does not occur, are in favour of strengthening the contact which is presently taking place with those two children.

[150] It was submitted that the identity of the children would be preserved and strengthened by allowing them to transfer to Ms [Byrne]. I do not think that is what is intended by s 5(f). That subsection refers to culture, language and religious denomination.

Discussion

[151] This matter continues to be finely balanced. The concern Ms [Byrne] has for [Natalia] and [Hudson] to be alienated does have some basis as Mr [Brown] has managed to convince the older two children as to his views on their mother's actions when she left the home.

[152] Despite my ruling in 2017, that Ms [Byrne]'s actions were appropriate given the abusive relationship that she was in, that has not been accepted by Mr [Brown]. He has no insight as to how his behaviour affects other people.

[153] Notwithstanding the two older children's views, it is clear that over the last two-year period, the positive views of [Natalia] and [Hudson] about contact with their mother has not changed. They enjoy her company. If alienation of those two children from their mother is Mr [Brown]'s goal, then he has failed. I do not perceive that is an issue which is concerning him, unless his views on Ms [Byrne] are specifically raised. It does not appear to be an ongoing issue so far as the younger two children are concerned. The only time that the family are asked about their mother is when there is an application before the Court and lawyers for children, social workers and others interview them.

[154] While Ms [Byrne]'s concerns are understandable, they are not a sufficiently strong basis for making a change to the current arrangement.

[155] The standard of care of the children was an issue, but not specifically referred to by Ms [Byrne] in her application. To be fair to Ms [Byrne], her response to that question about that was how she can know what is going on in the house, is a fair and reasonable one since she has not been back inside nor past the gate since she left.

[156] The evidence of Ms Simpson, the social worker, as to what she observed when she visited the home on the morning of the second day of the hearing, makes it clear that while the home is not ideal in every respect, it does not, in her view, reach the threshold for any intervention by Oranga Tamariki. There are not sufficient care and protection issues to cause concern to the Ministry.

[157] The concerns raised by Mr [Dawson] do raise a concern about Mr [Brown]'s parenting skills. During the hearing, Mr [Brown] was clear he is prepared to accept assistance provided he could form a relationship with the person or persons concerned.

[158] For there to be care and protection orders under the Oranga Tamariki Act 1989 the definition of a child in need of care and protection set out in s 14 has to be met before a s 91 support order can be made. The evidence presented did not come up to that standard. For there to be a s 91 order there would have to be a family group conference. Ms Simpson was clear she did not see, based on her seven years plus experience in that area, there were grounds for calling one.

[159] What weight then do I give to the children's views. [Hudson] is happy where he is and is happy to spend more time with his mother, but he is not clamouring or seeking openly to move to her. He is only five years of age.

[160] [Natalia] has made conflicting statements to various people. Her statements to Mr Cochrane were the strongest but were contradicted in part by the statements that she made to Mr Dwyer.

[161] The impression that I get is that [Natalia] is an open and engaging child who wishes to please. She will be aware at eight years of age, as to her mother's wishes, and she has said so. She would not want to disappoint her mother when speaking with her, but neither does she want to disappoint her father when speaking to him.

[162] It was accepted by all the people that had been in contact with this family, and noted in my earlier judgment, that the four siblings are a tight group. Removing [Hudson] from his older two siblings may have a detrimental effect on him as he would not be in contact with the brother closest to him in age. His oldest brother, [Reece] (half-brother), is 21 years of age and only sees him when he visits from Australia. While [Taylor] has clear views about his mother, he does not appear to interfere with [Hudson]'s need or wish to visit with his mother.

[163] It would also, in my view, cut across [Natalia]'s development if she was to be moved from her other three siblings. I do not think at eight years she understands the effect on her if she did not see [Vanessa] and [Taylor] on a more frequent basis than is proposed.

[164] Noting there are no care and protection issues in Mr [Brown]'s home, this leads me to the conclusion that while Ms [Byrne] has deep concerns as to her children's futures, it is not in their best welfare and interests at this time for any of them to move to her full-time care. I acknowledge she will be very disappointed with this conclusion.

I do think however, that there should be more contact by [Natalia] and [Hudson] with their mother, and Mr [Brown] indicated that he would be prepared for that to occur.

Section 31 order

[165] At the end of the hearing, I asked counsel to provide submissions as to the extent of assistance Oranga Tamariki could provide under the s 31 order under the Care of Children Act 2004 presently in place. Can it be used to obtain the assistance a s 91 order under the Oranga Tamariki Act 1989 would provide?

[166] I am grateful for the prompt response by all counsel. Unfortunately, the submissions confirmed my understanding that a s 31 order cannot substitute for a s 91 support order.

[167] There is a need for the s 31 order to remain. Ms Lewis confirmed that the Chief Executive, as the Court's agent, would still assist with changeovers. Ms [Byrne] confirmed the assistance of Oranga Tamariki in this regard enabled contact to occur without more than minor problems. Additionally, there needs to be monitoring and oversight of Mr [Brown] engaging with community agencies. A direction to the Chief Executive to ensure that occurs is also appropriate.

[168] Similarly, the Chief Executive can assist in ensuring Mr [Brown] locates the telephone he put away, or obtains another one, that it is kept operational and the number is provided to Ms [Byrne] so that regular calls can begin again and there can be text communication when necessary.

[169] The parties were largely in agreement as to increased contact with Ms [Byrne]. Ms [Byrne] wishes to have half of all school holidays but if that is agreed sought three weekly visits rather than the current fortnightly visits due (solely) to the cost of travel. Mr [Brown] made it clear he is incapable of assisting with the travel due to his impecuniosity.

[170] Mr Cochrane raised the issue of three weeks being a long time for [Hudson]. Ms [Byrne] accepted it would be even though she must scrimp to have sufficient money for the travel. I think it needs to be fortnightly at present to ensure the bond of both [Hudson] and [Natalia] is maintained. It is possible Ms [Byrne] may gain more hours of work now there is some certainty as to arrangements.

Orders

[171] The following orders are made:

1. The Interim Parenting Order of 21 September 2017, as varied on 21 February 2018 and 4 December 2018, is discharged.
2. A final parenting order is made placing the day to day care of all children with Mr [Brown] and for contact with Ms [Byrne] unsupervised as follows:
 - (i) Contact for all children is to be fortnightly from [date deleted] October 2019. [Vanessa] and [Taylor] may not attend if that is their wish on any occasion.
 - (ii) Pick up is to be from Mr [Brown]'s home at 4:00 pm by a Oranga Tamariki social worker to their offices in [location C] where Ms [Byrne] will pick the children up on or before 4:30 pm.
 - (iii) Return is to be to Mr [Brown]'s home at 5:00 pm on [day deleted]
 - (iv) Ms [Byrne] is to arrange transport for the pickup from Oranga Tamariki and to drop the children off back at their father's home on [day deleted].
 - (v) The children are to spend the first week of each school term holiday with Ms [Byrne], pick up being via Oranga Tamariki on the [day deleted] at the end of term as above. [Vanessa] and [Taylor] may not attend if that is their wish on any occasion.
 - (vi) In 2019 the children are to spend the first three full weeks of Christmas holidays with Ms [Byrne] beginning on the last day of school via Oranga Tamariki as above and ending at drop off

to Mr [Brown] at 5:00 pm on the third [day deleted] of the holidays. [Vanessa] and [Taylor] are to decide whether they wish to attend all or any part of that time.

- (vii) In 2020 the children will spend the last three weeks of holidays with Ms [Byrne] beginning on the evening of the third [day deleted] of the holidays with pick up at 4:00 pm from Mr [Brown] by the social worker and Ms [Byrne] picking the children up by 4:30pm from Oranga Tamariki. [Vanessa] and [Taylor] are to decide whether they wish to attend all or any part of that time. The children are to be returned by 5:00 pm to Mr [Brown] on the [day deleted] three weeks later (resulting in the children being in Ms [Byrne]'s care for two Sundays including the day of return).
- (viii) The Christmas holiday period will alternate as above in the following years e.g. 2021 the first period with Ms [Byrne], the second in 2022 and so forth.
- (ix) Fortnightly visits are to recommence on the second [day deleted] after the children return to school from term or Christmas holidays.
- (x) Ms [Byrne] may telephone the children on Wednesdays each week at approximately 6:30 pm with the first such call being on the second Wednesday after this order. Ms [Byrne] is to text Mr [Brown] 10 – 30 minutes prior to the call confirming it will be made. Mr [Brown] is to ensure [Natalia] and [Hudson] are available, and [Vanessa] and [Taylor] if they wish to speak to their mother.
- (xi) Contact arrangements may be varied by the parties if both agree. Any variation is to be recorded in writing or by text.

3. The following conditions apply to the order:
 - (a) Any discussions between the parents as to the children, their needs, medical conditions, schooling and other guardianship matters are to be conducted by text.
 - (b) All correspondence is to be polite and child focussed. There is to be no abusive language by either parent
 - (c) Both parents will speak well of the other in front of the children. Each parent will encourage all children to adhere to this order without commenting as to their own views.
 - (d) Mr [Brown] is to locate or buy his own telephone within five days of this order and is to advise Oranga Tamariki, Ms [Byrne] and the children's schools of the number. He is to ensure it always has sufficient data to operate.
 - (e) Mr [Brown] will engage with all agencies Oranga Tamariki advise him will be beneficial for him and/or the children.
 - (f) While compliance is expected of all parties with this Order any failure by Ms [Byrne] to meet any specific obligation as to contact shall not provide a basis for Mr [Brown] to refuse to comply on future dates and times.

4. The s 31 order placing the children under the guardianship of the Court and the appointment of the Chief Executive of Oranga Tamariki as the Court's agent is to remain varied as follows. The Chief Executive is requested to:
 - (a) Assist with ensuring changeovers for contact take place as set out above and to assist with alternate arrangements should the need arise.

- (b) To ensure Mr [Brown] has a telephone as required by condition (d) of the parenting order
- (c) To advise Mr [Brown] from time to time as to which agencies can assist him with his care of the children and to monitor his compliance. Any non-compliance is to be reported to the Court.
5. Mr Cochrane, as Lawyer for the Children, is to meet with all the children as soon as practicable to explain the outcome of this proceeding. On receipt of his written advice his appointment is terminated with the Court's thanks.
6. If any of these orders made are unclear Mr [Brown] or counsel are to seek clarification within seven days.
7. The file is to be referred to me on 1 November 2019 in box work to confirm the proceeding is concluded. Based on the parties' financial positions there are no orders as to costs.

Judge DG Smith
Family Court Judge

Date of authentication: 16/10/2019

In an electronic form, authenticated pursuant to Rule 206A Family Court Rules 2002.