

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

**IN THE FAMILY COURT
AT WELLINGTON**

**I TE KŌTI WHĀNAU
KI TE WHANGANUI-A-TARA**

**FAM-2017-054-000146
[2019] NZFC 8144**

IN THE MATTER OF THE CARE OF CHILDREN ACT 2004

BETWEEN [SERENA BENSON]
 Applicant

AND [ROSS SCHWARTZ]
 Respondent

Hearing: 1 October 2019

Appearances: M M van den Bergh for the Applicant
 A L Chapman for the Respondent
 D F Tyree as Lawyer for the Child

Judgment: 1 October 2019

ORAL JUDGMENT OF JUDGE T M BLACK

[1] This case is about [Rufus]. [Rufus] was five in [month deleted]. I have to decide whether he should live in [location A], [location B] or somewhere near [city deleted] in the United Kingdom. Depending on what I decide about those things, I also have to determine what the arrangements should be in terms of what time he spends with each of his parents. That is what the case is about.

[2] What it is not about is these things. It is not about whether these parents love their son. They clearly do. It is not about whether their son loves them. He clearly does. It is not about whether each of them is a good enough parent as that term is understood in the sociological literature. They are clearly more than good enough parents and I just want to be clear about what the case is not about.

[3] This is an oral decision at the conclusion of a hearing, which was occupied yesterday and today. I am not reading this decision out. I am extemporising from notes that I made after the parties excused themselves sometime after 3 o'clock. For that reason, I reserve the right to myself when the decision comes back from typing to amend it to correct any obvious errors, misstatements, omissions, that sort of thing, but any amendments I make to the decision will not affect the outcome or the reasons for the outcome.

[4] The structure of this decision is as follows. Firstly, I will deal with the background, then the hearing process, the positions and submissions of the parties and of lawyer for child, the legal principles that I am required to have regard to, analysis of the evidence set against those legal principles and that will lead me to a result.

[5] By way of background, the parties were in a relationship for about nine or 10 months I think. When Ms [Benson] became pregnant, that was an unplanned pregnancy, and the parties were not living together at that time. At the time of the pregnancy, Ms [Benson] was living in [location A]. She was studying to be a [profession deleted]. After his birth, he was born in [location B], he was cared for initially by Ms [Benson] with assistance from her mum. Mr [Schwartz] was living and working in [location C]. He had regular contact with [Rufus].

[6] In early 2016, Mr [Schwartz]'s job in [location C] came to an end and he moved in with Ms [Benson] in [location A]. The relationship did not survive the cohabitation and came to an end in mid-2016. Mr [Schwartz] bought a home in [location A] in late 2016 and he remains living there.

[7] Ms [Benson] is from England although she lived for a number of years as a child in New Zealand and spent periods of time as an adult living in Australia. In mid-2017, Ms [Benson] wanted to travel with [Rufus] to the UK. Eventually, there was a consent order made about that and when Ms [Benson] returned from the UK, she indicated that she did not intend to return to [location A] and that led to proceedings being initiated by Mr [Schwartz], and a cross-application by Ms [Benson] for relocation.

[8] The parties attended a mediation late 2017. It was agreed that pending the outcome of the substantive proceedings, Ms [Benson] would remain with [Rufus] in [location B] and Mr [Schwartz]'s contact has been increased in stages since that time. Currently, Mr [Schwartz] is having contact with [Rufus] every second weekend from Friday through Sunday. Mr [Schwartz] and his partner, [Abigail], who has three children to a previous relationship, had a [child], [Brook], in [month deleted] of this year. Mr [Schwartz] and [Abigail] do not live together.

[9] In terms of the hearing process, a number of affidavits have been filed. I think the hearing bundle runs to about 430 pages. A number of deponents were not required for the purposes of cross-examination. I have heard evidence in person from the parties, from Dr Garner, the s 133 report writer, from Dr Barry-Walsh, a forensic psychiatrist called by Ms [Benson], and from Ms [Ruell], who is Ms [Benson]'s mother. She gave evidence by way of audio visual link from her home in the UK.

[10] In terms of the hearing process, obviously as well as affidavit evidence, I have had reports. I have had two 133 reports and a number of reports from Mr Tyree. I have had written submissions from counsel for the parties and oral submissions from all counsel, and I have had regard to all of that material.

[11] Turning to the parties' positions. Ms [Benson] wants to be able to move with [Rufus] to the UK. Her proposal is that she would go and live with [Rufus] at her mother's home. Her mother lives in her own home. She has a boarder or flatmate, who is a childhood friend of Ms [Benson]'s and who has lived there for about the last six years from memory. Ms [Benson] has employment lined up if she is allowed to relocate. She proposes that there be Skype contact between Mr [Schwartz] and [Rufus] on a regular basis and proposes that Mr [Schwartz] have face-to-face contact with [Rufus] twice a year, once being a trip to New Zealand over the New Zealand summer and the other being face-to-face time with [Rufus] in the northern summer either Mr [Schwartz] travelling to the UK or [Rufus] travelling to New Zealand.

[12] Ms [Benson] relies on the following matters to support her application for relocation.

[13] Firstly, her mental health. She says that she has suffered indifferent mental health most recently as a result of being required to live in a place which is not home for her and in respect of which she does not have connections. She is away from her family. She wants to be able to have family support to assist her. She says that her mental health is such that if she is forced to remain in New Zealand, there is a risk to [Rufus]'s welfare. She can be relied on, she says, to promote a continued relationship between [Rufus] and his dad. She has shown herself as being able to facilitate contact. She did so most recently, when following an order made by me, Ms [Benson] and [Rufus] had two months in the UK.

[14] She says that I should take seriously Dr Barry-Walsh's cautionary note about risk, take seriously the risk of Ms [Benson] developing a sense of resentment towards Mr [Schwartz] if relocation is not allowed and have regard to Mr [Schwartz]'s conduct in, to use Ms van den Bergh's expression, obstructing visits to the UK for the last two years. He would not consent to a visit last year and opposed a visit this year although, as I have said, I made an order allowing that visit. I am not going to go into the background of that. It is well known to the parties.

[15] Mr [Schwartz], on the other hand, says that I should require [Rufus] to return to [location A] and that there could then be a progression to a form of shared care. While Mr [Schwartz] acknowledges Ms [Benson]'s position that if [Rufus] is required to live in [location A], she will not return there herself but will instead relocate herself to Australia presumptively Sydney. Ms Chapman submits that I should exercise caution when assessing that assertion. Effectively, Ms Chapman invites me to conclude that Ms [Benson] is bluffing and that if push comes to shove, she will not be able to remove herself from [Rufus]'s life in that way.

[16] Ms Chapman acknowledges that the parties have had conflict in the past but points out that both parties are now open to further 46G counselling and that is protective. Ms Chapman relies significantly on Mr Garner's evidence. She says Mr Garner's evidence is that there is a significant risk to [Rufus]'s attachment relationship with his father if relocation is allowed, that the most important relationships that [Rufus] has are the relationships between himself and his parents followed by the relationship that he should develop with his baby [sibling] and that

relationships with other wider family members are less important. The history, asserts Mr [Schwartz], demonstrates that [Rufus'] relationships with his family in the UK have been able to be promoted through indirect means such as Skype and, of course, Ms [Ruell] has been a regular visitor to these shores since [Rufus] was born and there is no reason to expect that would not continue, in fact, that is her evidence this morning.

[17] In relation to the issue of Ms [Benson]'s mental health, Ms Chapman submits that Ms [Benson], or the assessment of Mr Garner, is that Ms [Benson] has so far not allowed her mental health issues to impact on her parenting of [Rufus]. She has done a very good job of parenting [Rufus] and even if her mental health were to decline, Mr Garner's assessment is that she would still be more than a good enough parent. There are some things which Ms [Benson] can do to lessen the risks of her mental health declining and she has given evidence that she would seek help if her mental health did decline.

[18] Mr [Schwartz]'s backup position or second preference is that if I do not order relocation back to [location A] that [Rufus] should live in [location B] with the status quo remaining in terms of contact with some building on that for holiday periods and the potential to review the baseline contact as [Rufus] starts school and settles into school.

[19] Mr Tyree submits that [Rufus] needs a strong relationship with both of his parents and needs to spend time with each parent, and each of his parents need to be in a space where they are able to parent competently and acknowledges that those needs cannot all be met in this case because each of the parties' proposals prioritise one or other of those factors over one or other of the others, so it is a question of where the balance lies. Mr Tyree submits that wider family relationships are important on both sides. Culture and heritage are important on both sides. Ideally, [Rufus'] parents would be able to work together to work through things and that whatever decision I make, [Rufus'] parents and their wider family members will make things as positive as possible acknowledging that at least one, and probably both parents, will be bitterly disappointed with the outcome of this hearing.

[20] In terms of the three options. The [location A] option, Mr Tyree submits there is significantly increased risk or significant risk to Ms [Benson]'s mental health whether she moved to [location A] herself or follow through on what she is saying and moves to Sydney. The [location A] scenario carries, he says, the greatest risks to Ms [Benson]'s mental health and, of course, if Ms [Benson] did follow through and move to Sydney, there cannot be any argument that that represents a significant risk to [Rufus] in terms of the fundamental change in his care arrangements. His mother has always been his primary caregiver and he would be changing into the primary care of his father.

[21] In terms of [Rufus] remaining in [location B], Mr Tyree submits that the risk to Ms [Benson]'s mental health are considerably less. He echoed what Ms Chapman had submitted in terms of Ms [Benson]'s willingness to do some work on mental health issues if they arise. He submitted that Ms [Benson]'s high level of parenting ability is a protective factor and points out that [Rufus]'s relationship with [Brook], his [sibling], would be made more difficult. In the long run, he supports Mr [Schwartz], if the [location B] option is chosen, spending some of his contact time with [Rufus] in [location B]. He submits that there need to be regular annual trips to the UK and submitted that it is positive that Mr [Schwartz] acknowledged that he needs to do some work in terms of how he engages with the Skype communication and that there may be some benefit in reducing the frequency of that from the current three times a week to two times a week.

[22] In relation to the proposal for relocation to the UK, Mr Tyree acknowledges that is the proposal which has the most potential benefit for Ms [Benson]'s mental health. There is some question mark about how long-term that benefit would be, but acknowledges that, putting aside issues of mental illness or disorder, there can be no question but that Ms [Benson] would be much happier living in the UK than in New Zealand, that there would be a benefit to [Rufus] of developing his relationships with his UK family, but he says the costs of those benefits are the risks to relationships between [Rufus] and his father and the inability at any meaningful level to develop a relationship with his [sibling]. Mr Tyree submits that Ms [Benson] will do what she needs to do to support [Rufus]'s relationship with his father if she is in the UK. She has done that in the past and notwithstanding the conflict which has existed and some

of the unfortunate interactions that these parties have had both during the disintegration of their relationship and the time since, Ms [Benson] is able to put her feelings about Mr [Schwartz] to one side and to promote the relationship between [Rufus] and his father.

[23] In terms of the legal issues I have to take into account, they are not, as I said earlier, controversial but I am going to touch on them anyway. The first and most obvious is s 4, which requires me to consider [Rufus]'s welfare and best interests in his particular circumstances and I emphasise in his particular circumstances as the first and paramount consideration. Lawyers know that as the paramountcy principle. It is a fancy way of saying that I have to care what is best for [Rufus] and conversely to not care what is best for either of his parents. This is a child-focussed enquiry, not an adult-focussed enquiry. When I consider what is in [Rufus]'s welfare and best interests, I have to have regard to the relevant s 5 considerations.

[24] Section 5(a) requires me to keep [Rufus] safe. There are no safety issues in this case.

[25] Section 5(b) says that [Rufus]'s upbringing should primarily be the responsibility of his parents. That is relevant in this case because if a relocation to [location A] occurs and his mum moves to Sydney, or a relocation to the UK occurs, then [Rufus] will not be able to enjoy both of his parents being the persons who are primarily involved in his care, upbringing and development.

[26] Under s 5(c), his care, development and upbringing should be facilitated by consultation and co-operation between his parents. There have been glimmers of that. It has been bad more often than it has been good, but I hope that can change. Both parties want it to change and that is a positive thing, and both parties are open to doing some work with the assistance of the 46G counsellor to see if that can be improved.

[27] Under s 5(d), [Rufus] should have continuity in his care, development and upbringing.

[28] Under s 5(e), his relationship with each of his parents needs to be maintained and his relationships with his parents and wider family needs to be preserved at strength. That is relevant because relationships are a central issue in this case.

[29] Under s 5(f), [Rufus'] identity including his cultural identity needs to be maintained, preserved and strengthened.

[30] It will be immediately apparent that there is a tension between those s 5 principles. What I am required to do is to not start from any assumptions for or against relocation, but in a facts-specific way to consider what the advantages of the relocation are, then consider what disadvantages of relocation there are and to undertake a balancing exercise to see whether the advantages outweigh the disadvantages.

[31] In terms of s 6, I am required to give [Rufus] an opportunity to express views. He has had that opportunity through Mr Tyree. He has expressed some views, but given his age, I place no weight on them. I am required to take them into account; he is five. He is not able to conceptualise what a move to another country would mean. He knows the people who are important to him, although he sometimes expresses that differently and his views are of no assistance to me in this case.

[32] Turning to an analysis of the evidence set against those principles. I want to deal, firstly, with the issue of Ms [Benson]'s mental health. I accept without hesitation that Ms [Benson] would be significantly happier living in the UK than she would be living in New Zealand and I do not need a psychologist or a psychiatrist to tell me why. She would be in the embrace of her family and it is clear from her evidence that this is a cohesive family who have a lot to do with each other, are mutually supportive and demonstrate, to borrow an expression from te reo, "aroha ki te tāngata" – love and empathy for others and, it stands to reason, that Ms [Benson] will be happier in that environment than in New Zealand where although she has some family members, they are not her key family members and although she spent a number of years here as a child, I accept that for her, New Zealand is not home.

[33] As Ms van den Bergh acknowledged in her submissions, where a parent relies on adverse mental health to support relocation, the issue is that all other things being

equal in assessing that assertion, relocation would only be in [Rufus'] best interests if his mother is so harmed by having to remain in New Zealand that her emotional and psychological health will deteriorate to the point where it will impact detrimentally on [Rufus] and that is applying *B v B*.¹

[34] In support of that aspect of her case, Ms [Benson] called evidence from Dr Barry-Walsh. Dr Barry-Walsh is well known to this Court and the criminal Court, for that matter, as a forensic psychiatrist. He carried out a number of assessments of Ms [Benson]. He concluded that at the time of his second assessment, the end of last year, Ms [Benson] was suffering from clinically significant mood disorder, anxiety, depression. At the time of his updated assessment leading up to this hearing, he concluded that Ms [Benson] is not so suffering at a clinical level, but still has symptomatology of those issues. He concluded that remaining in New Zealand or being required to remain in New Zealand poses a risk to Ms [Benson]'s mental health. There is a risk that she might develop clinically significant issues again. She has had them in the past. That means that she is more vulnerable to having them again in the future and points out that there is a considerable body of research which shows that having a parent with a significant mental illness, significantly increases risks for children across all number of measures, but including their risk of developing mental illness as adults and also increases the risk of those children being parented in a suboptimal or inadequate way. The research says that because parents who have significant mental illness which is not able to be successfully managed or treated, are generally less available to attend to their children's basic needs. A mother who is unable to get out of bed in the morning is not able to ensure that her child, for example, gets to school on time and having had breakfast. Those are the sorts of issues which can arise.

[35] So I want to deal, firstly, with that risk of relapse; I will use that as shorthand. I accept that there is a risk of relapse if Ms [Benson] is required to remain in New Zealand. Neither I nor Dr Barry-Walsh are able to estimate the likelihood of that risk eventuating. I am certainly not satisfied that it is more likely than not that it would eventuate, but I am satisfied that there is a risk of it eventuating. If it were to eventuate,

¹ *B v B* NZHC CIV-2007-404-005016, 9 May 2008.

then before I could consider whether that risk would flow into a risk for [Rufus], I would need to be satisfied that the relapse of a mental health episode would not or could not be adequately managed by Ms [Benson] and I am not so satisfied. If Ms [Benson] became unwell again, it is more likely than not that she would seek appropriate intervention. She would go to her GP. She would consider some form of therapy. She would consider on her own evidence if things were bad enough taking medication. I should say here that I do not accept any criticism of Ms [Benson] for not taking previously prescribed medication. GPs throughout the western world have become addicted to prescribing anti-depressants for people with mild to moderate depression when the research tells us that medication is only actually useful for people with moderate to severe depression and then best in combination with talking therapy such as CBT. But assuming for the sake of argument that Ms [Benson] did become unwell and that could not be adequately treated, what would the risk be for [Rufus] and Mr Garner's evidence was unwavering on this topic. He said Ms [Benson] is an excellent parent. She is devoted to [Rufus]. She puts her parenting of [Rufus] ahead of other considerations. As he said, she is in some ways her own worst enemy, but his opinion was, and although he was challenged, he did not waver from it that Ms [Benson] would be extraordinary unlikely to allow her distress to impact on her parenting and that even if it did, she would still be parenting at more than a good enough level. So the risk to [Rufus] arising out of the mental health issue is not established.

[36] Looking at the other matters which I need to consider because, of course, that is not the end of the matter. There are still other advantages of relocation and I need to weigh those against the potential disadvantages. The advantages, of course, as I have said, is Ms [Benson] being happier, more settled, more engaged with her community. It is a different thing from assessing the negative mental health issue which is relied on. It is perhaps trite to say that a happier and more engaged parent is likely to be more capable in their parenting.

[37] The issue that I need to pay most attention to is the 5(e) relationships factor. Of course, continuity does not favour relocation but neither does it favour a return to [location A], so I am not much further ahead looking at continuity. Looking at relationships can conveniently, in my view, be divided into two sorts of relationships.

Firstly, the relationships between [Rufus] and his parents and, secondly, the relationships between [Rufus] and other people.

[38] In relation to [Rufus'] relationships with his parents. If there is a relocation to the UK, there is a potential significant impact on [Rufus]'s relationship with his father. If [Rufus] is ordered to go to [location A] and Ms [Benson] goes to Sydney then, as I have said, there is also a potential significant impact on relationship with Ms [Benson].

[39] The focus of the expert evidence has been, of course, on the proposal to relocate to the UK. Mr Garner's opinion and, again while challenged, was not able to be shifted on his expert opinion, was that the level of contact and the type of contact that [Rufus] could have with his father if he is living in the UK and his father is living here, poses a significant risk to the attachment relationship that [Rufus] has with his father. Put simply, and I am always at risk of oversimplifying, Mr Garner's position is that indirect contact, such as Skype and video calling phone contact, is not sufficient to maintain and develop an attachment relationship in circumstances that exist here, and the focus is on this attachment relationship not attachment relationships generally. While a child of [Rufus'] age developmentally might be able to maintain an attachment relationship from a distance such as this, it would be at the lower limits in terms of age for that relationship to be maintained and it would require as a prerequisite that the child had a highly secure attachment relationship with the parent being left behind and [Rufus] does not have that kind of relationship with his father. Mr Garner's opinion, and he was not challenged about this, was that while [Rufus] has particularly over the last year developed more of a secure relationship with his father, it is still vulnerable. Attachment relationships, as Mr Garner explained, require ongoing everyday involvement in a child's life; physical involvement, touch, smell, cuddles, reassurance, the provision of food, those sorts of things and, of course, those things cannot happen in an electronic medium. So Mr Garner's evidence is that there is a real risk to the relationship between [Rufus] and his father if [Rufus] relocates to live in the UK.

[40] For the sake of completeness, I should say that the risk to [Rufus'] relationship with his mother is not as extreme in the sense that he is likely to be securely attached enough to his mother to withstand his mother moving to Sydney without him, but he

would experience the loss of his mother being part of his day-to-day life profoundly and it would, without doubt, do him harm.

[41] In terms of other relationships. I do not consider it appropriate to try and weigh up the merits of the respective wider family relationships. They are different families. They operate in different ways. In most relocation cases, and this case is no exception, the relocation involves the possibility of the bolstering of one set of family relationships in the relocation destination with the risk of a degree of attenuation of existing relationships in the place left behind. This case is no different. I am sure there would be benefit to [Rufus] in having his English family more available to him as part of his day-to-day life. I am sure there are some risks to the relationships between [Rufus] and his paternal family should he relocate, so those matters do not assist me in the balancing exercise.

[42] [Rufus]'s relationship with his [sibling] is in a different category. Ms [Benson] acknowledged that his relationship with his [sibling] is more important than his relationship with his wider family members. Mr Garner's evidence is that it will be difficult but not impossible for [Rufus] to develop an appropriate sibling relationship with [Brook] if [Rufus] is in [location B] and [Brook] is in [location A], but he was very clear that it would be impossible for [Rufus] to develop a normal sibling relationship with [Brook] if he moves to the UK at this point in time particularly having regard to [Brook]'s age; [Brook] is only [under a year] old.

[43] Under s 5(f), I need to have regard to cultural matters. I acknowledge that [Rufus] is of mixed heritage. He, on his mother's side, has English background and family. On his father's side, he is Tamariki Māori and there is really no suggestion that [Rufus]' English heritage cannot be maintained regardless of where he lives, but Mr [Schwartz] submits that it will be more difficult to maintain [Rufus]'s Māori cultural identity at a distance and I agree. I accept that Mr [Schwartz] has not grown up in te ao Māori for reasons which are readily understood and explicable by anyone who has taken the trouble to consider New Zealand's history, but Mr [Schwartz] has over the last decade or so reconnected with his culture. He whakapapa's to [iwi deleted]. He is registered with that iwi as is [Rufus] and, for that matter, [Brook]. He has commenced a journey in te reo. He has commenced a journey in reconnecting

with his whakapapa and with tikanga and te ao Māori and I accept, and he would not suggest otherwise, that that is a work in progress and probably a lifelong work. I accept similarly that Ms [Benson] is supportive of that aspect of [Rufus'] heritage and I accept that if relocation were allowed that Ms [Benson] would do her best to expose [Rufus] to te ao Māori, but her efforts would be, with the greatest of respect, a poor substitute for [Rufus] living that world through his father with whom he was having regular contact, a poor substitute for being able to go onto the marae at [location deleted], a poor substitute for living in a country where te reo Māori is an official language and, despite the pressures it has faced, in a country where I read last week that sales of books in te reo have increased by over 600 percent in the last five years. So in the balancing equation, [Rufus'] status as Tamariki Māori does not favour a relocation.

[44] What other factors do I need to consider? Firstly, there are unusually a no real financial barriers to the relocation occurring and the contact regime that would follow. I accept the evidence of Ms [Ruell] in terms of what she is proposing from the proceeds of sale of the [location A] property. I accept that these parties and their families have the motivation and the means to make long distance travel work from a financial perspective. There are some logistical issues in terms of Mr [Schwartz]'s health and his ability to travel, and his ability to obtain travel insurance. There are some logistical issues around Ms [Benson] travelling to New Zealand with [Rufus], but she says she can work those out and, fundamentally, these are capable and intelligent and reasonably well-resourced people and I am confident that if relocation occurred that they would make the logistics of that work out.

[45] Standing back and seeing where my balance has ended, I am not prepared to order that [Rufus] return to [location A]. The risks are too high. There is a known risk of Ms [Benson]'s mental health deteriorating. There is a known risk of her going to Sydney with the attendant known risk of him experiencing the loss of his mother as his primary caregiver, and those risks considerably outweigh the benefits of some potential for a shared care arrangement to develop and for optimal development of [Rufus]'s relationship with his [sibling].

[46] In relation to the relocation to the United Kingdom, the risks and the known risks of relocation to [Rufus'] relationship with his dad are not outweighed by the benefits of that relocation. The mental health risk of non-relocation I have assessed as being at less than 50 percent and is manageable. The other benefits of relocation do not outweigh the relationship risk with Mr [Schwartz], the relationship deprivation in relation to [Brook], so the impossibility of a normal sibling relationship developing, and the risk to [Rufus'] cultural identity as it relates to his Māori heritage and on that assessment, that means that it is [location B].

[47] In terms of contact, there should not be significant restrictions on Ms [Benson]'s ability to take [Rufus] to the UK for a period of up to eight weeks each year during the northern summer. The benefits to [Rufus] of contact with his family during a holiday with his mum in the bosom of her family far outweigh any disadvantage of him missing a few weeks off school at his age.

[48] The result of this hearing is therefore this.

[49] Mr [Schwartz]'s application for a 46R direction in relation to [location A] is dismissed.

[50] Ms [Benson]'s application for a 46R direction in relation to the United Kingdom is dismissed.

[51] I make a 46R direction that [Rufus]'s place of residence is to be [location B] unless the parties agree otherwise in writing.

[52] The interim parenting order is discharged.

[53] I make a final parenting order. [Rufus] is to be in the day-to-day care of Ms [Benson].

[54] He is to have contact with his father on this basis.

- (a) Firstly, during the school term on a fortnightly basis Friday 4.30 pm to Sunday, 4.00 pm. [Changeover location deleted] is the changeover point. That is the status quo arrangement.
- (b) I simply record both parties' agreement that they will review that arrangement at an appropriate juncture next year with a view to the possibility of Mr [Schwartz] spending some contact time in [location B] and the possibility of it changing to a two out of three arrangement. I cannot be any more precise than that other than to say that the parties have agreed that they will look at it again.
- (c) If a contact weekend falls on a weekend in respect of which the Monday is a public holiday, then it extends to 4.00 pm on the Monday of that holiday.
- (d) Mr [Schwartz] is to have Skype contact twice a week Mondays and Thursdays 7.00 pm. I have taken one of the existing Skype sessions out.
- (e) For summer holidays in 2019, I am going to provide for a couple of periods of five nights, so the 2019/2020 arrangement is discrete to this summer. In the 2019 summer period, Mr [Schwartz] is to have contact from 4.30 pm 22 December for five nights till 4.30 pm 27 December. [Rufus] is then to be with Ms [Benson] until 4.30 pm on 10 January and then to have another five nights contact with Mr [Schwartz] before returning to his mum and the fortnightly contact resumes a fortnight after that return to Ms [Benson].
- (f) In term 1 holidays of 2020, Mr [Schwartz] is to have contact from the Friday after school on the last Friday of the first term, which is 10 April, for five nights ending at 4.30 pm. Changeover for those contacts is likewise, the [changeover location] unless Mr [Schwartz] elects to collect [Rufus] from school which he may do.

- (g) In term 3 2020 and in terms 1 and 3 each year thereafter for the first week of the school holidays, Friday to Friday, either from school at Mr [Schwartz]'s election or 4.30 pm [the changeover location] until the following Friday 4.30 pm [the changeover location].
- (h) For the summer holiday break in 2020 and thereafter, the summer holiday break is defined as being the six week period from the first Friday after school finishes for the year or the Friday that school finishes for the year if it is on a Friday and for the six weeks after that day. In 2020, the first two weeks are with Ms [Benson], second two weeks with Mr [Schwartz] then a week-about. That alternates each year. If Mr [Schwartz] has the last week of January or of the six week period, then the period finishes not on Friday but on Thursday at 4.30 pm. That is to allow [Rufus] to have a few days at home with his mum before he starts the new school year.
- (i) Ms [Benson] may take, and obviously the normal contact provisions are suspended, [Rufus] to the UK not more often than once each year for a period not exceeding eight weeks. That period is to include the July school holidays. Ms [Benson] is to book and notify the dates of travel at least 60 days prior to travel from New Zealand. Mr [Schwartz] is to reimburse Ms [Benson] for [Rufus'] fare. Ms [Benson] is responsible for her travel costs. While in the UK, [Rufus] is to have Skype contact with his father not less than twice a week as is arranged by the parties.

[55] Mr Tyree's appointment as lawyer for child is terminated with the Court's thanks.

[56] This is a case where costs are not appropriate as between the parties and no order for costs is made. The normal CCO process will need to be followed.

[57] Mr [Schwartz], Ms [Benson], as I said earlier, at least one, probably both of you do not agree with my decision. I hope that you can use this as a way of perhaps

drawing the line and moving on with things. I am going to authorise, and I do authorise, a further 12 sessions under the existing 46G referral and I hope you can use that constructively to find a better way of talking with and communicating with each other, and I wish you the best of luck.

[58] Counsel, thank you for your assistance during this hearing and the way in which you have conducted it.

Judge TM Black
Family Court Judge

Date of authentication: 07/10/2019

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