

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

**NOTE: PURSUANT TO S 139 OF THE CARE OF CHILDREN ACT 2004, ANY  
REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND  
11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION,  
PLEASE SEE [https://www.justice.govt.nz/family/about/restriction-on-  
publishing-judgments/](https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/)**

**IN THE FAMILY COURT  
AT CHRISTCHURCH**

**I TE KŌTI WHĀNAU  
KI ŌTAUTAHI**

**FAM-2021-009-000184  
[2021] NZFC 3733**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[ALICIA WESCOTT] Applicant
AND	[MICHAEL WESCOTT] Respondent

Hearing: 20 April 2021

Appearances: C Clarke for the Applicant  
H Daley for the Respondent  
A Gartner as Lawyer for the Child

Judgment: 20 April 2021

---

**ORAL JUDGMENT OF JUDGE R J RUSSELL**  
**[as to an application whether a relocation occurs under s 46R and for a  
parenting order under s 47 of the Care of Children Act 2004]**

---

**Introduction**

[1] These are proceedings under the Care of Children Act 2004 between [Michael Wescott] (“Mr [Wescott]”) and [Alicia Wescott] (“[Ms Wescott]”) in respect of their child, [Matthew] (“[Matt]”), born [date deleted] 2020, now aged 15 months. In

particular, there are applications filed by each of [Matt]’s parents seeking to resolve a dispute between guardians under s 46R, and there is also an application seeking a parenting order.

### **Brief background**

[2] The parties began their relationship in 2014. They subsequently married then separated in [date deleted] 2020. At this time, [Matt] was four months of age.

[3] In about May 2020 [Ms Wescott] began to express her wish to travel to [a town in the Waikato] where her mother and father reside for the particular reason that her mother was thought to be suffering from [a terminal illness] and did not have long to live. Mr [Wescott] did not oppose that move and so accordingly [Ms Wescott] began making plans to leave Christchurch and relocate to [the Waikato town].

[4] Following separation in [date deleted] 2020 [Ms Wescott] had continued to live in the relationship home at [Christchurch]. Mr [Wescott] had moved to live with his sister in [Christchurch].

[5] [Ms Wescott] is a [profession deleted] who is almost fully qualified. She had been employed as a [profession deleted] prior to [Matt]’s birth and was still on maternity leave around the time of separation. She recommenced work before giving notice to her Christchurch employer in January 2021, in accordance with the plans she had made to relocate.

[6] The former relationship home in Christchurch was sold although the proceeds of sale have not yet been able to be divided pursuant to a relationship property agreement.

[7] [Ms Wescott] proceeded with her plans with the agreement she thought she had with Mr [Wescott] through until 10 February 2021 when an altercation occurred between Mr [Wescott], his mother, and [Ms Wescott] in her home. The details of what occurred are not important, but this seems to have been a catalyst for Mr [Wescott] to change his mind about the proposed relocation. He then filed proceedings in this court

seeking to prevent the relocation. Two days later [Ms Wescott] filed an on notice application for permission to relocate. On this date Judge Harrison made an interim order providing for [Matt]’s place of residence to be in [the Waikato town] from 8 March 2021 which was in accordance with the plans [Ms Wescott] had made. [Ms Wescott] then travelled to [the Waikato town] on 14 March. She continues to reside there with her mother and father. She has ongoing support from her sister who lives either in [two locations] and [Ms Wescott] has obtained employment on contract with [an employer in the Waikato].

[8] Ms Gartner has been appointed at an early stage of these proceedings to represent [Matt]’s interests and has filed reports as required of her.

[9] Following Judge Harrison’s decision, an appeal was lodged to the High Court. Justice Dunningham considered those proceedings and dismissed them for lack of jurisdiction to deal with an interim relocation order. Her Honour referred the issue of the interim relocation order Judge Harrison had made back to this court for hearing as to whether the order should be made final.

[10] On 23 March 2021 Judge Duggan approved the interim contact agreement which the parties had reached and directed a hearing about whether [Matt] should be permitted to relocate to [the Waikato town] as a final order.

[11] I am giving this decision orally immediately following the hearing so each party knows the outcome before they leave the courtroom. I reserve the right to edit the written decision as to the form and content, but not as to its reasoning and outcome.

### **The evidence**

[12] Both parties have filed affidavits which sets out their position on the issues in dispute. [Ms Wescott] has filed one affidavit and Mr [Wescott] has filed three affidavits. Both parties have been cross-examined by counsel over the half-day this case has taken to hear, during which they have answered a number of questions from counsel and also from me.

*The case for Mr [Wescott]*

[13] In summary, Mr [Wescott] confirms he continues to be employed by [employer deleted] as a [position deleted] based in Christchurch. He is settled, happy and content in his employment which is shift work on a roster. He works day shifts followed by night shifts and then has daytime periods off on a set cycle. His roster has been exhibited to his evidence. His roster sets out his work schedule for a 12 month period. There is, therefore, a certain degree of predictability and certainty about his work commitments, although these cannot be dovetailed into weekend periods with any degree of certainty.

[14] Mr [Wescott] has family in Canterbury and the lower South Island. His mother and stepfather live in [a town in Canterbury]. His sister, with whom he resides, lives in Christchurch. They live in a three bedroom home which has a third bedroom which is available for [Matt] to sleep in. He has another sister who also lives in Christchurch. He has a father who lives in [Otago] with his partner. This is a family with whom Mr [Wescott] remains closely connected and it is clear from his evidence he attaches a considerable degree of importance to the support he receives from them.

[15] Mr [Wescott] accepts he did not actively oppose [Ms Wescott]'s intentions to relocate with [Matt] to [the Waikato town] for the reasons she had advanced, namely the state of health of her mother. He accepts following the period of separation he had very little to do with [Matt] and it appears little, if any, contact occurred from April 2020 for the rest of that year. This meant [Ms Wescott] was left having to solely care for and support their child. Mr [Wescott] is frank that he was not ready to become a father and his evidence is [Ms Wescott]'s pregnancy with [Matt] was not something which was planned and being a father was not an impact he initially wanted in his life.

[16] Mr [Wescott]'s position on this has however changed and he now wants to play an active part in the upbringing of his son. His proposal is that [Matt] should return to live in Christchurch. His preference is that [Matt] reside with his mother and that she should return with him. From there he seeks to have contact during the periods of time when he is not working. His evidence is that the contact he seeks would not be for the entire duration of these off-work periods because the stresses of his

employment means that he needs to have some “downtime” in order to deal with the stress and strains that a [profession deleted]’s work has. As his first preference he, therefore, seeks to have [Matt] return with his mother to Christchurch. If [Ms Wescott] was not prepared to return, Mr [Wescott] promoted [Matt] living with him with the support of his mother and sister. He would continue to work and his family would carry the responsibility of looking after [Matt] when he was at work or, alternatively, [Matt] would be put in day-care. He proposed contact arrangements for [Ms Wescott] to have the care of [Matt] in the event she elected to remain in [the Waikato town].

[17] Mr [Wescott] accepted communication between [Ms Wescott] and himself following the separation had been problematic and attributed much of the conflict and his lack of willingness to have contact with [Matt] to what he saw as [Ms Wescott]’s desire to effect a reconciliation of the differences in their relationship.

[18] Mr [Wescott] acknowledged he could make enquiries of [his employer] to see whether he could transfer within the [profession] to become stationed in [the Waikato town] or alternatively in Hamilton or Tauranga. It is clear from his evidence he does not want to be a [profession deleted] in [the Waikato town] which he would be required to do if he moved there, nor did he have any willingness or wish to transfer to either Hamilton or Tauranga or any other North Island place close to [the Waikato town] in order to more closely participate in the upbringing and development of his son. He attached the principal reasons for this to the need for him to derive support from his Christchurch and South Island based family.

*The case for [Ms Wescott]*

[19] [Ms Wescott] gave evidence and confirmed the background as I have recorded it. She confirms she wishes to remain in [the Waikato town] but has no indefinite plans to live in that town. She has employment with the only [profession deleted] in [the Waikato town]. She is required by her contract to work three and a half days a week but she is also on call and is required to work at other times. Her evidence is that [profession deleted] in [the Waikato town] have a heavy workload and there is a general shortage of [profession deleted], particularly in rural areas.

[20] At the moment she and [Matt] live with her mother and father. Her mother's [illness] has stabilised but is still something of "a work in progress". Her earlier fears that her mother did not have long to live do not appear to have been borne out but it is clear that her mother still has something of a journey to deal with her [illness deleted] diagnosis. She continues to receive treatment for her [illness deleted] condition which [Ms Wescott] has outlined, and her future prognosis is unclear. Having said this, [Ms Wescott]'s mother appears to be still able to be actively involved in the home as does her father. [Matt] has been living in their home and, as has been reported by counsel for child's agent, appears to have settled satisfactorily in [the Waikato town]. He has been enrolled in preschool and is settling well there. He is developing normally and appropriately for his age and [Ms Wescott]'s evidence is that [Matt]'s height and weight charts exceed Plunket expectations. There are no health or other special needs I need to have regard to.

[21] [Ms Wescott] does not wish to return to Christchurch. While she has friends she has met in this city, there is no family or wider support network which is available to her anywhere in the South Island. She initially came to the Canterbury area in order to complete her training as a [profession deleted]. While here she met Mr [Wescott] and they commenced their relationship and ultimately married. This was the primary reason why she remained in Christchurch, particularly given Mr [Wescott]'s connections with his family and his employment here. [Ms Wescott] made the best of the situation she could without the direct support of her family during the period the parties were living together.

[22] It is clear the parties' separation during months following [Matt]'s birth was instigated by Mr [Wescott] suddenly and it seems without much warning to [Ms Wescott]. It has taken her some time to come to terms with what occurred. She has been breastfeeding [Matt] until recently and this had been a limitation on Mr [Wescott]'s ability to have extended periods of time with [Matt]. [Ms Wescott]'s evidence is that while she has supported and encouraged contact with [Matt], it was something Mr [Wescott] had not been willing to do. This is perhaps best illustrated by Christmases and birthdays of 2020 and 2021 where it seems Mr [Wescott] had not acknowledged those special days with [Matt].

[23] Communication between the parties remains fraught and the evidence of text messages that I have received, particularly from Mr [Wescott], which are derogatory and abusive in nature, really do the parties no credit. The nature and quality of the communications I found to be surprising.

[24] [Ms Wescott]'s proposal is that the handwritten agreement which the parties negotiated and signed at a round-table meeting on 11 March 2021 before she left for [the Waikato town] should be implemented. This sets out the contact times the parties agreed for Mr [Wescott] to have the care of [Matt] when he visits the Waikato and for other times from March 2021 through until January 2022.

[25] [Ms Wescott]'s proposal is that from January 2022 onwards she would continue to cover the costs of Mr [Wescott]'s air travel to and from Hamilton for a further 12-month period. She acknowledged she was prepared to fund the travel pursuant to their handwritten agreement. The contact proposed from January 2022 onwards envisaged [Matt] would be brought to Christchurch for one month in every three at her expense and there would be other contact for Mr [Wescott] to have contact with [Matt] which would fit in with his work roster, preferably on a monthly basis. She had no proposals for any further contact times or terms past the end of 2022.

### **The child**

[26] As I have recorded, [Matt] is now aged 15 months of age. His interests in these proceedings have been appropriately and competently represented by his counsel, Ms Gartner, who has filed reports and cross-examined the witnesses as required. In her reports she records the background and the parties' proposals which I have summarised. She submitted neither party's care and contact proposals met [Matt]'s need to have frequent contact with each of his parents. She referred me to the well-known child developmental and psychological principles in the *Family and Conciliation Courts Review* which state that for a child of this age, frequent and regular contact is important for the child to develop their emotional attachments to their parents.<sup>1</sup>

---

<sup>1</sup> *Family and Conciliation Courts Review*, Vol. 38 No. 3, July 2000 297-311, Joan B Kelly and Michael E Lamb.

[27] In the event that neither party was prepared to relocate to the town of the other, Ms Gartner's submission is that [Matt]'s primary attachment will be to [Ms Wescott] given she has been primarily responsible for his care and the relationship they have should not be disrupted.

[28] She filed a report from her agent, Mr Ewan, a barrister from Hamilton, who reported on his enquiries. [Matt] is in good health and attends [a childcare provider in the Waikato]. He started walking when he was about 12 months, has started to talk and confirmed [Matt] appeared settled, happy and comfortable in the environment.

### **The law**

[29] I must and do have regard for the provisions of ss 4, 5 and 6 of the Act.

[30] Section 4 requires me to consider the welfare and best interests of [Matt] as the first and paramount consideration in his individual circumstances. I need to make decisions appropriate to his sense of time. The gender of the parent is not a relevant consideration and the conduct of the parent does not need to be considered unless it is relevant to the welfare and best interests of the child.

[31] I must also have regard to the specific provisions in s 5 when considering what is in the best interests and welfare of [Matt]. In particular, that he needs to be protected from all forms of violence including psychological harm (s 5(a)), that his parents have the primary responsibility for him (s 5(b)), that there should be ongoing consultation and co-operation between them (s 5(c)), that there should be continuity in his care arrangements and there is the right to have a continuing relationship with his parents (s 5(d)), that familial relationships should be preserved and strengthened (s 5(e)), and that his individual identity as a person (including matters of culture, language and religion) needs to be preserved and strengthened (s 5(f)).

[32] I also must have regard to [Matt]'s views under s 6, if any. This does not mean that these views are determinative of what the Court orders should be. I need to have regard to [Matt]'s age, level of maturity and awareness of all of the relevant factors,



and also have regard to the extent that those views might have been subject to manipulation or improper influence.

[33] The Supreme Court in *Kacem v Bashir* considered the application of the principles in s 5.<sup>2</sup> The statements of principle set out by the Court have a general application to all cases being considered under the Act. The following principles emerged:

- (a) The welfare and best interests of the children are the first and paramount consideration.
- (b) The Court must take into account, in a case-specific way, which of the principles specified in s 5 are relevant.
- (c) The focus must be on the particular child or children in his or her particular circumstances with no presumption of what the welfare and best interests of the child may require or what influence the s 5 principles may have on that question.
- (d) The s 5 principles are not an exhaustive list of the matters that may be relevant to the welfare and best interests of the children involved.
- (e) The ultimate objective is to determine what outcome will best serve the welfare and best interests of the particular child or children in his or her or their particular circumstances. In making that determination, the s 5 principles must each be examined to see if they are relevant and, if they are, must be taken into account along with any other relevant matters.

[34] The principles applicable to the relocation of children have been addressed in a number of cases. The leading authority in the area remains the Court of Appeal decision in *D v S*.<sup>3</sup> The principles applicable in the relocation context were summarised by Richardson J at [30]-[38] as follows:

---

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

<sup>3</sup> *D v S* [2002] NZFLR 116 (CA), (2001) 21 FRNZ 331 (CA).

- (a) Freedom of movement is an important value in a mobile community, but subject to the paramountcy principle;
- (b) The approach mandated by s 23 (now s 4 of the new Act) and the emphasis on parental responsibility for the well-being of a child is consistent with the relevant provisions of the United Nations Convention on the Rights of the Child;
- (c) All aspects of the child's welfare must be taken into account;
- (d) The decision-maker must weigh all relevant factors in the balance in order to make the predictive assessment of what will be in the best interests of the child, there being no room for a priori assumptions;
- (e) Section 23(1A) (now s 4(4)) was designed to dispel any gender-based assumptions as to which parent's care would best promote the welfare of a child;
- (f) With reference to relocation, the nature and duration of existing custodial arrangements and the degree of change proposed may require greater weight to be accorded to the status quo;
- (g) Decisions of courts beyond New Zealand are likely to be of limited assistance; and
- (h) In the end, difficult relocation disputes may result in "differing assessments" by different judges. Each case must be dealt with in a personalised assessment within the principles enshrined in s 4 of the Act.

[35] In the decision of *S v O (Relocation)* Wild J considered the following factors to be of relevance:<sup>4</sup>

---

<sup>4</sup> *S v O (Relocation)* [2006] NZFLR 1 (HC), (2005) 25 FRNZ 259 (HC).

- (a) The relocating parent's ability to value the input of the other parent and the ability to encourage and facilitate contact;
- (b) The non-moving parent's capacity to demonstrate an ongoing interest in the child after relocation;
- (c) Conflict between the parents, be it underlying or as a result of the decision to relocate, including the extent and nature of the conflict;
- (d) Practical consequences of relocation or from relocation being declined;
- (e) The distance between the parents' home both now and post relocation;
- (f) The impact of granting or declining relocation on the child's family and social support networks;
- (g) Cultural and spiritual issues;
- (h) The child's previous living arrangements and proposed new arrangements;
- (i) The merit and reasonableness of the parent's wish to relocate;
- (j) The nature and quality of the child's relationship with each parent and how that may be affected by relocation;
- (k) The wishes and needs of the child;
- (l) The effect on the child of granting or declining the application.

[36] In *S v L (Relocation)* Harrison J affirmed the principles to be applied as follows:<sup>5</sup>

[26] The inquiry will be multifaceted, but the factors to be weighed in the balance are only those which are actually relevant to the particular

---

<sup>5</sup> *S v L (Relocation)* [2008] NZFLR 237 (HC).

circumstances. Among those which have been authoritatively recognised are that the decision of the custodial parent on where to live is an important incident of a day to day parenting order; the nature of the relationship between the child and the contact parent; and the closer the latter relationship, and the more dependent the child is upon it for her emotional wellbeing and development, the more likely will be an injury resulting from removal. The reason for the move is important. So, too, is its physical distance. The child's views are relevant where they can be ascertained (*Stadniczenko v Stadniczenko* [1995] NZFLR 493 (CA) per McKay J at 500-501 (see also s 6)).

[27] There is no presumptive weight given to one or more factors. Providing the Judge's decision is based on the welfare of the children and takes account of all material factors, including the need of a particular child for a continuing relationship with a mother or father, there will be no error of law: *D v S* [2002] NZLFR 116 per Richardson J at para [47].

## **Discussion**

[37] A useful starting point for determining the outcome of this case is to consider the various issues or factors identified as being potentially relevant for relocation cases by Wild J in *S v O*:

(a) *The relocating parent's ability to value the input of the other parent and the ability to encourage and facilitate contact*

[38] It is clear from the evidence I have heard that [Ms Wescott] has and will continue to value the input of Mr [Wescott] into [Matt]'s upbringing and development, and I accept her evidence that she is willing to encourage and facilitate contact between them. Mr [Wescott] did not seriously dispute this. [Ms Wescott]'s evidence is she has last year tried to promote contact between [Matt] and his father, and I accept she did this. It is clear for a number of reasons this did not go well. If she were to remain with [Matt] in [the Waikato town], I am satisfied on the evidence I have heard [Ms Wescott] would be a person who is willing to encourage and facilitate ongoing contact, recognising the importance of [Matt] developing and having a good relationship with his father.

(b) *The non-moving parent's capacity to demonstrate an ongoing interest in the child after relocation*

[39] I accept Mr [Wescott] will continue to have an interest in his son's upbringing and development. His son's wellbeing and best interests do not, however, appear to

have been his primary concern. It is clear from the evidence that he has not maintained contact with [Matt] as he could and should have done in the period leading up to the commencement of these proceedings. His evidence is that he was not prepared to consider making any enquiries about him moving to an area closer to [the Waikato town] from where he could have spent increased amounts of time with [Matt] as his work schedule would have permitted. While I accept he may not want to [work details deleted] in [the Waikato town] and may have valid reasons for this, there are major urban centres nearby. Mr [Wescott] has no thoughts of making any enquiry through [employer deleted] about whether a move to those centres is possible. Mr [Wescott] seems to have dismissed this completely as an option, which does say something about his lack of commitment to his child.

*(c) Conflict between the parents, be it underlying or as a result of the decision to relocate, including the extent and nature of the conflict*

[40] I have heard evidence about the conflict between these parents and have seen some of the text messages which they sent as I have noted. Clearly, communication remains problematic. At the very least there should be some FaceTime contact or webcam communications which can and should be put in place for the non-caregiving parent to communicate with [Matt]. The parties are able to have civil face-to-face communications when they want to. My assessment is they are both intelligent people and have the capacity and capability of being good parents, but they still have some work to do on the communication and conflict issues. They have agreed communication between them on parenting and guardianship issues should be by way of text and emails.

*(d) Practical consequences of relocation or from relocation being declined*

[41] If I was to permit the relocation which has occurred to become permanent, it seems on the evidence I have heard that Mr [Wescott] will remain in Christchurch. [Ms Wescott] will remain in [the Waikato town]. If I decline the relocation then [Matt] will need to come back to Christchurch. I do not have the jurisdiction to order [Ms Wescott] to return to Christchurch, although her evidence is she feels she would have to, albeit reluctantly. She would have no immediate accommodation and or employment options available to her. She is tied into a work contract for the [work

details deleted] in [the Waikato town] and would have to give a termination notice and work out the notice period. I accept her evidence it may not be easy to find suitable rental accommodation in Christchurch. There is no immediate cash available to help with the costs of relocating and setting up a house for [Ms Wescott] and [Matt] in Christchurch as it appears to be tied up in disputed relationship property issues.

[42] If [Matt] was to be returned to Christchurch and into the care of Mr [Wescott] and [Ms Wescott] remained in [the Waikato town], both parties agree this would not be in the best interests of [Matt]. [Ms Wescott]'s evidence is she considered it would be hugely upsetting for him, and I accept her evidence in this regard.

*(e) The distance between the parents' home both now and post relocation*

[43] The travel time between Christchurch and Hamilton is one hour, 45 minutes by air. The flight costs range between \$300 to \$500 return. There are also flight options into Rotorua and Tauranga. [Ms Wescott] is prepared to help fund the travel costs to facilitate contact for the next two-year period.

*(f) The impact of granting or declining relocation on the child's family and social support networks*

[44] I have outlined the social support networks available to [Matt]. All of [Ms Wescott]'s family live in the [the Waikato town] area. All of Mr [Wescott]'s family live in the South Island, mostly in the Christchurch area. Wherever [Matt] is residing, his contact with the family members who are not living near to where he lives will be restricted because of geographical distance.

*(g) Cultural and spiritual issues*

[45] There are no cultural or spiritual issues which I need to have regard to.

*(h) The child's previous living arrangements and proposed new arrangements*

[46] I have already addressed this issue. [Matt]'s previous living arrangements prior to relocation were in the relationship home which is no longer available to him or [Ms

Wescott] because it has been sold. Mr [Wescott]'s accommodation in Christchurch with his sister seems appropriate and there is no criticism of this. As I have already recorded, I consider it will not be easy for [Ms Wescott] to find suitable accommodation for herself and [Matt] in Christchurch.

[47] In terms of [Matt]'s accommodation and living circumstances in [the Waikato town], there is no criticism of the living environment there. It seems to be, in all respects, suitable for his day-to-day care, upbringing and development.

*(i) The merit and reasonableness of the parent's wish to relocate*

[48] There is no issue [Ms Wescott] was genuine in her reasons and wish to relocate. It was principally because of the health issues relating to her mother which are, it seems, an ongoing issue and concern her family will need to address and provide support. Mr [Wescott] took no issue with this as being the primary reason for [Ms Wescott] wanting to move to [the Waikato town], and initially agreed to the relocation plans [Ms Wescott] had made.

*(j) The nature and quality of the child's relationship with each parent and how that may be affected by relocation*

[49] Both parties accept the primary bond [Matt] will have is to his mother, for no other reason than that she has been the person primarily responsible for his care. Both parties acknowledge the attachment [Matt] has with his father will not be particularly strong. This is because he had not been spending regular time with [Matt] in the period preceding the move to [the Waikato town], nor since that move occurred.

*(k) The wishes and needs of the child*

[50] There are no special needs for [Matt] as I have recorded, and there are no views which need to be considered under s 6 given the young age of this child.

*(l) The effect on the child of granting or declining the application*

[51] If I grant the relocation application [Matt] will be able to continue to live in [the Waikato town] with his mother and will be able to have contact with his father on the terms which the parties have agreed upon in the written agreement which I have received. If I decline the application and return [Matt] to Christchurch, then the position for [Matt] will be of concern. In particular, if [Ms Wescott] returns, then there is no immediate accommodation available for them, there are employment related issues which she will have to deal with in [the Waikato town] and Christchurch. I consider these issues will mean [Ms Wescott] will be, obviously, a distinctly unhappy primary caregiver being forced back to Christchurch with these issues to address and without the benefit of having wider family support.

[52] If [Matt] was to be returned and [Ms Wescott] remained in [the Waikato town], then both parties agree this would be hugely distressing for [Matt].

[53] A consideration of all of these factors sits comfortably alongside the s 5 principles which the Supreme Court in *Kacem v Bashir* require me to do.

*Section 5 considerations*

[54] Addressing the s 5 principles which the Supreme Court in *K v B* requires me to do:

(a) *a child's safety must be protected and, in particular, a child must be protected from all forms of violence (as defined in section 3(2) to (5) of the Domestic Violence Act 1995) from all persons, including members of the child's family, family group, whanau, hapu, and iwi*

[55] This principle mandatorily requires me to make a parenting order which ensures [Matt] is kept safe. Neither party suggested [Matt]'s time with the other of them needs to be supervised or monitored. I agree there are no safety concerns for [Matt] being in the care of either of his parents. Psychological harm may, however, be caused to [Matt] if he was to be moved out of the day-to-day care of [Ms Wescott] and into the care of Mr [Wescott] in Christchurch should [Ms Wescott] choose to remain living in [the Waikato town]. Both parties acknowledge this could be damaging for [Matt].



*(b) a child's care, development, and upbringing should be primarily the responsibility of his or her parents and guardians*

[56] This principle will be met by the making of a comprehensive parenting order setting out the care and contact arrangements for [Matt]. It will be a minimum, bottom line care arrangement in the Court order which must be followed, and which can be enforced if necessary and there can be consequences for parents who do not comply.

[57] There will be a power in the order for these parents to agree to vary the terms of the order, to cater for one-off or unforeseen events which may occur, and as their circumstances and as [Matt]'s circumstances might change. In this way, the s 5(b) principle will be satisfied.

*(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*

[58] This principle requires parents and guardians of children to consult and co-operate on matters affecting their child. They must learn to put aside whatever personal issues or agendas they may have towards one another, and focus on what is best for [Matt]. They are now in the business of parenting [Matt] through until his teenage years and beyond. They need to learn to look at the world through [Matt]'s eyes and focus on what is best for him. None of what has happened to his parents is [Matt]'s fault, and [Matt] has a right to have a relationship with each of his parents, and it is not either parent's right to take this away from him.

[59] The parties need to learn to communicate on parenting and guardianship issues, and any changes needing to be made to the parenting arrangements, in a safe way. I will address the s 5(c) principle in the communication provisions in the parenting order I am about to make.

*(d) a child should have continuity in his or her care, development, and upbringing*

[60] This principle will be met by confirming [Matt] continuing to be being in the day-to-day care of [Ms Wescott]. All of the evidence shows me [Ms Wescott] is doing

a very good job in providing for the physical, emotional and developmental needs of [Matt].

(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, whanau, hapu, or iwi should be preserved and strengthened*

[61] This principle requires me to make orders which will preserve and strengthen the [Matt]'s relationship with his parents and their wider family. There is no issue or difficulty with the [Matt]'s relationship with his mother or other members of their maternal family. The issue is with Mr [Wescott] and members of his family. This relationship has been considerably weakened following [Matt]'s parents' separation because Mr [Wescott] has had so little contact with him.

[62] As I observed at the hearing, there are never winners in relocation cases. A child will lose, whatever decision is made. If the relocation is successful, the child loses contact with the parent who remains. If the relocation is unsuccessful, the child and relocating parent are forced back to live in an environment and circumstances where that parent does not want to be.

[63] The s 5(e) principle will be met by the father and his Christchurch based family having time with [Matt] in the parenting order I am about to make.

(f) *a child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened*

[64] In this case there is no particular evidence about this issue which I have heard which I need to consider and factor into the parenting order I am about to make.

## **Conclusion**

[65] This is not a case where there has been a unilateral relocation to which the return to the status quo principles are set out by the High Court in *Fletcher v McMillan* and also *Sime v Redshaw* have application.<sup>6</sup> [Ms Wescott] proceeded with a relocation

---

<sup>6</sup> *Fletcher v McMillan* [1996] 2 NZLR 491; *Sime v Redshaw* [2005] NZFLR 511, (2005) 23 FRNZ 912.

plan which was known to Mr [Wescott] to move herself and [Matt] to [the Waikato town] for legitimate reasons. The merits for the relocation have not been seriously in dispute. But for the incident which occurred on 10 February 2020, the reasons for which I do not regard as being particularly relevant, Mr [Wescott]'s consent may not have been withdrawn and these proceedings may not have been filed.

[66] [Ms Wescott] was entitled to proceed in accordance with the plan she had developed and had kept Mr [Wescott] properly and appropriately informed. There was nothing about what she had planned that was a surprise or was unexpected for Mr [Wescott].

[67] She has moved to [the Waikato town] with [Matt] in reliance of the plan which was developed and the position in Christchurch is not immediately retrievable for her. In particular, the home in which she was living in in Christchurch has been sold. She has an employment contract in [the Waikato town] which she is tied in to. She has no immediate accommodation available to her in Christchurch and has no certainty of employment in Christchurch, although I accept finding employment as [profession deleted] in the city would probably not be hard for her to achieve.

[68] Following these proceedings being filed, there was an agreed plan which had been signed by all of the parties and lawyer for child dated 11 March 2021 which provided for contact to occur from [Matt]'s base in [the Waikato town] which Judge Duggan had already approved. [Ms Wescott] has proposed follow-on contact arrangements for 2022 which she has outlined in her evidence. She is earning sufficient income from which she is prepared to fund the travel for the contact to occur. Mr [Wescott] is earning a lesser income from his employment with [employer deleted], although this may increase with the passing of time. The plan, which the parties have agreed to, will require him to meet accommodation and any travel costs within the [the Waikato town] region when he is there.

[69] My view is the agreement the parties have reached could be further fine-tuned by, for example, the parties making alternate trips from where they live, namely for one trip [Ms Wescott] can come to Christchurch with [Matt] and stay with friends, and

for the next trip Mr [Wescott] can travel to [the Waikato town] and see [Matt] there. The parties need to give positive consideration to this option.

[70] I should also record, belatedly in these proceedings, I have received as an agreed exhibit, a memorandum of consent which has been prepared by Mr [Wescott]'s counsel following a round-table meeting which also addresses various contact times and terms which can be included in a parenting order.

[71] I have reached the view the order made by Judge Harrison permitting the relocation by [Matt] to [the Waikato town] should now become a permanent order for the reasons I have outlined in this decision. I have also concluded the times and terms of contact which the parties have agreed upon should be refined into a draft order by counsel after further consultation with the parties and become a final order subject to the provisions of s 139A of the Act.

[72] For the parties' benefit, s 139A of the Act means that the parenting order that is made is not to be revisited within the following two-year period unless there is a material change of circumstance affecting the parties and/or their child. I mention this because the evidence I have heard from both parties today indicates that over the next two-year period either of them may want to reconsider their position for the future care arrangements for their son. They will be entitled to bring a further application in two years' time to have the terms of the parenting order which is made now revisited. In particular, [Ms Wescott] may not want to continue to live in [the Waikato town] and may wish to move closer to Christchurch or, alternatively, Mr [Wescott] may want to reconsider his position about his place of employment and move closer to wherever [Ms Wescott] or [Matt] can live. I am "leaving the door open" to both parties to revisit all of the issues I have heard about today at the expiration of two years, by which time the principal reason for the relocation, namely the health of [Ms Wescott]'s mother and her future prognosis, may become more clear than it is today.

### **Outcome and orders**

[73] I make the following orders and directions:

- (a) I make the interim relocation order made by Judge Harrison a final order under s 46R of the Act. There will be an order permitting [Matt] to permanently reside in [the Waikato town] until such time as a written agreement between the parties or a Family Court order otherwise permits.
- (b) I direct counsel to confer with a view to agreeing on the framework of a final parenting order. Upon agreement being reached, a draft order is to be filed within two weeks of the date this decision is eAuthenticated and referred to me in chambers for approval and decision.
- (c) If no agreement is able to be reached, and no draft order is submitted within this two-week period, the file is to be referred back to me in chambers for a further decision to be issued on the contact provisions to be included in the parenting order.
- (d) The parenting application is adjourned to a case management review by the registrar on 19 May 2021.
- (e) Leave is reserved to either party to seek such further orders or directions as may be necessary to implement the provisions of this order on three days' notice.

---

Judge RJ Russell  
Family Court Judge

Date of authentication: 04/05/2021  
In an electronic form, authenticated electronically.