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/

IN THE FAMILY COURT
AT WHAKATANE

I TE KŌTI WHĀNAU
KI WHAKATĀNE

FAM-2020-087-000196
FAM-2021-087-000035
[2021] NZFC 3189

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[POTO KARAUNA] [RUA HENARE] Applicants
AND	[PAITI KARAUNA] [ANEWA WATI] Respondents

Hearing:	8 April 2021
Appearances:	N Bradley on behalf of C Fryer for the Applicants No appearance by or for the Respondents S Clews as Lawyer for the Children
Judgment:	8 April 2021

ORAL JUDGMENT OF JUDGE S J COYLE

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[1] These proceedings concern five children and the arrangements are somewhat complex. The children's parents are Ms [Paiti Karauna] and Mr [Anewa Wati].

[2] The children are in the care of Ms [Poto Karauna] and Mr [Rua Henare]; that is [Melvin], [Leon], [Ellen] and [Bryson] all live with Ms [Karauna], but [Brandi] lives with Mr [Henare]. In saying that, the children see each other each day as the younger children in particular attend the same daycare.

[3] This is an arrangement, as Mr Clews has set out, which has been agreed to by the adults and following a family group conference. Indeed, when the children came to see Mr Clews they were brought not only by the applicants but also by their mother.

[4] Mr Clews has expressed concern that [Brandi] is being raised separate from her siblings. [Brandi] has been pretty clear however, even though she is four, that she wants to live with Mr [Henare] and not with Ms [Karauna].

[5] It is of course a balancing exercise in weighing up welfare and best interests in deciding to make the orders reflective of the current arrangements. I do so recognising that this is an arrangement in which the adults have come to an agreement upon, but also that the sharing of children amongst whānau represents a way of raising children in accordance with Māori tikanga; that is, children are seen to be part of the whānau and not only children of their parents. Thus, whilst this care arrangement may be unusual for Pākehā, it is not for Māori, and is reflective of te ao Māori and tikanga principles.

[6] As superior courts have increasingly recognised, such as in the *Takamore v Clarke* decision of the Supreme Court, tikanga principles now form part of the common law of Aotearoa.[1] The High Court has for some time in the *Barton-Prescott v Director-General of Social Welfare* decision recognised the necessity of recognising obligations under Te Tiriti o Waitangi when considering care arrangements for children[2] and successive decisions in the Māori Land Court, the Waitangi Tribunal, the High Court and Family Courts have recognised that part of the Treaty principles includes a recognition of tikanga.

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1 *Takamore v Clarke* [2012] NZSC 116, [2013] 2 NZLR 733.

2 *Barton-Prescott v Director-General of Social Welfare* [1997] 3 NZLR 179, [1997] NZFLR 642, (1997) 15 FRNZ 501 (HC).

[7] Mr Clews has also raised a concern on the basis of the affidavit evidence around the lack of information around Ms [Karauna]'s partner. Mrs Bradley, who appears today as counsel for the applicants, has indicated that that is an error and that Ms [Karauna] in fact has no partner. Mr [Henare] does have a partner and she acknowledges that the evidence in relation to Mr [Henare]'s partner is non-existent. I have raised that issue with Mr [Henare] directly and he has advised that his partner has no criminal convictions and that she has not had involvement of Oranga Tamariki in relation to any children of hers or who have been in her care. It is regrettable, as Mr Clews has set out, that the type of information that the Court would normally expect is not before the Court in relation to Mr [Henare]'s partner. But I note that the outcome that I have been asked to reflect through the making of orders under the Care of Children Act 2004 was an outcome agreed to at an FGC and presumably if Oranga Tamariki had any concerns around either household they would have been issues raised in the context of the FGC discussions and if they were sufficiently serious Oranga Tamariki would not have been a party to the FGC outcome.

[8] Considering all those factors and the affidavit evidence before the Court I am satisfied that the making of final orders as sought is in the welfare and best interests of each of the children. Against that background therefore I make the following orders and directions:

(a) The application by Ms [Karauna] and Mr [Henare] in relation to [Bryson] is consolidating with the existing proceedings under FAM-2020-087-196.

(b) I make an order granting leave for [Poto Karauna] and [Rua Henare] leave to apply for a parenting order in relation to the five children.

(c) In relation to [Brandi Henare-Karauna], born [date deleted] 2016, I make final parenting order in the following terms:

(i) [Brandi] is to be in the day-to-day care of [Rua Henare].

(ii) [Brandi] is to have contact with [Poto Karauna] at such times and places as the parties can from time to time agree.

(iii) [Brandi] is to have supervised contact with [Paiti Karauna] and [Anewa Wati] as follows:

(1) Supervised by either Ms [Karauna] and/or Mr [Henare] or such other person and on such terms or conditions as determined by Ms [Karauna] and Mr [Henare] from time to time.

(2) If determined by Ms [Karauna] and/or Mr [Henare] at a court approved supervised access centre at the cost of either of the parents.

(d) I make a final parenting order in relation to [Melvin Henare-Karauna], born [date deleted] 2015, [Leon Henare-Karauna], born [date deleted] 2018, [Ellen Henare-Karauna], born [date deleted] 2020 and [Bryson Henare-Karauna], born [date deleted] 2021, in the following terms:

(i) The children are to be in the day-to-day care of [Poto Karauna].

(ii) They are to have contact with [Rua Henare] at such times and places as the parties can from time to time agree.

(iii) They are to have supervised contact with [Paiti Karauna] and [Anewa Wati] as follows:

(1) Supervised by either Ms [Karauna] and/or Mr [Henare] or such other person and on such terms or conditions as determined by Ms [Karauna] and Mr [Henare] from time to time.

(2) If determined by Ms [Karauna] and/or Mr [Henare] at a court approved supervised access centre at the cost of either of the parents.

(e) I make an order appointing [Poto Karauna] and [Rua Henare] additional guardians of all five children.

[9] This being the end of the proceedings Mr Clews' appointment as lawyer for the children is terminated with the thanks of the Court.

[10] Mrs Bradley believes that her clients are being funded by Oranga Tamariki. It seems somewhat ridiculous to require the State (ie, Oranga Tamariki) to pay the State (ie, Ministry of Justice) by way of a cost contribution order. I therefore decline to make a cost contribution order against any of the parties to these applications.

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Judge SJ Coyle
Family Court Judge

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