

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

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**IN THE FAMILY COURT  
AT AUCKLAND**

**I TE KŌTI WHĀNAU  
KI TĀMAKI MAKĀURAU**

**FAM-2017-090-000520  
[2019] NZFC 7525**

IN THE MATTER OF	THE CARE OF CHILDREN ACT
BETWEEN	[ARNOLD AGUILAR] Applicant
AND	[WILLOW AGUILAR] Respondent

Hearing: 12 September 2019

Appearances: C Podwin for the Applicant  
E McCabe for the Respondent  
J McCormick as Lawyer for the Child

Judgment: 12 September 2019

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**ORAL JUDGMENT OF JUDGE L de JONG  
[COCA: vaccination/health/care/contact]**

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***Introduction***

[1] [Laurel] is [two] years old.<sup>1</sup> She is a precious child because [circumstances deleted] before [Laurel] was born<sup>2</sup> and she is the only child these parents have. Her

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<sup>1</sup> Born [date deleted] 2017.

<sup>2</sup> Bundle C of documents p20.

parents are blessed to have [Laurel], but the level of parental conflict suggests they don't always appreciate this.

[2] This three day hearing was organised to decide whether [Laurel] should be vaccinated, whether [Laurel] may receive homeopathic medicines/treatment, whether [Laurel] can attend two different childcare facilities,<sup>3</sup> and to work out what care and contact arrangements are best for [Laurel].

[3] Last week I issued a r 170(1) Family Court Rules 2002 ruling<sup>4</sup> that the vaccination evidence of Mrs [Aguilar]'s two expert witnesses was inadmissible. Since then Mrs [Aguilar] agrees to [Laurel] "being vaccinated to the current NZ childhood schedule,"<sup>5</sup> but on conditions. Mr [Aguilar] does not agree to the proposed conditions and suggests conditions of his own.

[4] I have the benefit of three bundles of documents. I have heard evidence from each parent, and Dr Petousis-Harris a vaccinologist with the Department of General Practice and Primary Healthcare at the University of Auckland.

***What is the relevant background?***

[5] [Laurel]'s parents agree they met in 2012. They married in 2014.<sup>6</sup> [Laurel] is their only child together. Her parents finally separated in 2017<sup>7</sup> when [Laurel] was only [age deleted]. Mr [Aguilar] has since remained in the family home in [location A] and Mrs [Aguilar] continues to live with her own parents in [location B].

[6] Mrs [Aguilar] applied without notice for a parenting order within days of separating.<sup>8</sup> Her application was put on notice.<sup>9</sup> At that time Mrs [Aguilar] wanted to

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<sup>3</sup> Although the s 46R application did not specifically raise the child care facility issue but counsel agree this issue requires determination.

<sup>4</sup> This decision should be read in conjunction with my reserved judgment dated 2 September 2019.

<sup>5</sup> Paragraph 5 of opening submissions filed by counsel for Ms [Aguilar] dated 9 September 2019.

<sup>6</sup> 1 January 2014 – bundle C of documents p4.

<sup>7</sup> 29 August 2017 – bundle A of documents paragraph 2 p14; bundle C of documents p18.

<sup>8</sup> Bundle C of documents p2.

<sup>9</sup> Bundle C of documents p51.

supervise Mr [Aguilar]'s contact.<sup>10</sup> She alleged Mr [Aguilar] was economically and psychologically abusive.

[7] Mr [Aguilar] filed a notice of response. In general terms, he denied being abusive or controlling.

[8] On 29 November 2017<sup>11</sup> an interim parenting order was made by consent on the basis Mrs [Aguilar] had primary care. Under that order Mr [Aguilar] had regular contact over the 2017/2018 Christmas holiday period and thereafter every Wednesday in [location B] from 6.30 pm to 8 pm, as well as each Saturday starting with four hours and building up to six hours by the time [Laurel] was 12 months old. The interim order provided for such other contact as agreed.

[9] In December 2017 Mr [Aguilar] filed an on notice s 46R application regarding immunisations and alternative medical treatment. Mrs [Aguilar] filed a notice of response.

[10] The 2017 interim parenting order was replaced with an interim parenting order made by consent dated 2 July 2018.<sup>12</sup> This provided for Mrs [Aguilar] to have primary care. Mr [Aguilar] had Wednesday contact and graduated Saturday contact increasing progressively to nearly 10 hours. Three conditions were agreed to in respect of medical matters and preventing [Laurel]'s removal from New Zealand.

[11] Another interim parenting order was made by consent on 21 November 2018 that is almost identical to the July 2018 interim parenting order except that it made specific provision for regular 2018/2019 Christmas holiday contact.

[12] At the beginning of this year Mrs [Aguilar] began working at [employment details deleted]. She unilaterally placed [Laurel] in [preschool A] on Mondays and Fridays between 9am and 3.30 pm. [Laurel] is cared for by her maternal grandmother on the other days of the working week.

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<sup>10</sup> Bundle C of documents p7;

<sup>11</sup> Bundle B of documents p97.

<sup>12</sup> Bundle B of documents p102.

[13] At an interim hearing before Judge Manuel on 6 June 2019, the Court was asked to determine which preschool facility [Laurel] is to attend and whether interim contact was to be varied. Judge Manuel remonstrated with Mrs [Aguilar] regarding the unilateral choice of childcare but confirmed the placement at [preschool A]. The effect of Judge Manuel's variation to contact was to continue Wednesday contact but weekend contact was increased from 8am Saturday to Sunday 8am in week one, and from Friday evening to Sunday 8am in week two.

[14] The parties have not resolved relationship property issues and currently await a judicial settlement conference.

***What does Mrs [Aguilar] say?***

[15] Mrs [Aguilar] is aged [over 35].<sup>13</sup> She trained as a [profession deleted] and claims that her family has a "history of autoimmune disease"<sup>14</sup> but that she does not.<sup>15</sup> Mrs [Aguilar] deposes that she has "learning disability – an audio-visual disorder – which means that I can have difficulty processing information when someone is talking.... The disorder also causes me to muddle up my words."<sup>16</sup> For this reason Mrs [Aguilar] will "often write emails to [Mr Aguilar] as I find this the best way to communicate and make myself understood." There was no obvious sign of Mrs [Aguilar]'s learning disability during her evidence.

[16] When Mrs [Aguilar] first applied for a parenting order she alleged the parties had many disagreements late in the marriage and "our stretched finances were at the heart of the matter."<sup>17</sup> She alleged that the situation was not helped by her being on maternity leave and Mr [Aguilar] buying a second investment property that was beyond their financial means. Mrs [Aguilar] alleges Mr [Aguilar] would not approve payment of "natural medicine practitioners"<sup>18</sup> who resolved a hormonal issue she had during her pregnancy that traditional medicine could not. Mrs [Aguilar] says, in the end, she got money from her family for the treatment.

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<sup>13</sup> [DOB deleted] – bundle C of documents p16.

<sup>14</sup> Bundle C of documents p20.

<sup>15</sup> Bundle A of documents paragraph 51 p119.

<sup>16</sup> Bundle C of documents p21. See also bundle A of documents paragraph 22 p111;

<sup>17</sup> Bundle C of documents p18.

<sup>18</sup> Bundle C of documents p19.

[17] Mrs [Aguilar] also alleges Mr [Aguilar] has been “very aggressive and intimidating”<sup>19</sup> to members of her family and his complaints that maternal family interfere in their relationship were unwarranted. Mrs [Aguilar] believes she and her husband have different parenting styles as well.<sup>20</sup>

[18] Mrs [Aguilar] disputes allegations that her sister is an anti-vax activist and deposes that her sister has not influenced her. She deposes that her sister and her husband are in fact vaccinated.<sup>21</sup>

[19] Mrs [Aguilar] also disputes Mr [Aguilar]’s account of what happened at the medical centre when she took [Laurel] to treat reflux and colic but instead Mr [Aguilar] tried to have [Laurel] vaccinated. Mrs [Aguilar] deposed that Mr [Aguilar] “ambushed me, knowing full well that we had not come to any agreement on vaccination. I refused and informed the doctor that I wished to delay for now while I did more research.”<sup>22</sup>

[20] Mrs [Aguilar] accepts Mr [Aguilar] made vaccination a condition to them having a baby but deposes that her email consent was sent “under extreme duress and stress.”<sup>23</sup> Mrs [Aguilar] claims they never reached “a firm agreement” because she “never agreed to vaccinate to schedule or on time. As a compromise I agreed to consider delayed vaccination on a reduced schedule hoping he would then engage in the process of discussion the full benefits and risks of each vaccine and disease to come to the best decision for future children based on their individual needs and circumstances. This was still not good enough for [Mr Aguilar] and he continued to insist on vaccination to schedule and on time.”

[21] For the purpose of this hearing Mrs [Aguilar] agreed at the outset to [Laurel] being vaccinated in accordance with the New Zealand Ministry of Health guidelines but sought directions that:

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<sup>19</sup> Bundle C of documents p19; p21.

<sup>20</sup> Bundle C of documents p22.

<sup>21</sup> Bundle A of documents paragraph 17 p109; paragraph 19 p110.

<sup>22</sup> Bundle A of documents paragraph 21 p111.

<sup>23</sup> Bundle A of documents paragraph 9 p107; bundle A of documents paragraph 21 p110; bundle A of documents paragraph 36 p114.

- (a) No new vaccines are to be administered in the future without consultation.
- (b) All vaccines are to be administered by [medical centre A] where [Laurel] is registered.
- (c) [Medical centre A] is to recommend and catch up the vaccination schedule.
- (d) Both parents can be present when vaccinations are administered.
- (e) The HPV vaccine is delayed until [Laurel] is 16 or sexually active and able to make a decision for herself.
- (f) Prior to vaccination [Laurel] is to be tested to exclude the risk of underlying immune system weaknesses including neuroimmune/inflammatory markers. Blood tests are to be conducted by [medical centre A] or a specialist. The test is to be used as a baseline in the event there is a reaction and an ACC claim is required.
- (g) [Laurel] is to be in Mrs [Aguilar]’s care for 48 hours following vaccination.

[22] For the purpose of this hearing, Mrs [Aguilar] sought clarification about how “alternative homeopathic medicines/treatments” are to be defined. She wishes to be able to use “over the counter type products that have a full list of ingredients and are available over the counter at a pharmacy (and recommended by pharmacists for minor everyday ailments, particularly for children under the age of 12 where in many cases there are no other alternatives).”<sup>24</sup>

[23] As to care and contact, Mrs [Aguilar] observes that she has been [Laurel]’s primary caregiver since birth. Mrs [Aguilar] seeks a parenting order as to primary care in her favour. Mrs [Aguilar] does not favour split weekends. She proposes contact

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<sup>24</sup> Paragraph 7 of opening submissions filed by counsel for Ms [Aguilar] dated 9 September 2019.

every second Friday afternoon or evening, to Sunday evening or daycare on Monday morning, and otherwise continue weekly Wednesday contact at her home until [Laurel] is 5. Contact is also proposed over the Christmas holiday period but not for more than 3 days/nights at a time.

***What does Mr [Aguilar] say?***

[24] Mr [Aguilar] is [over 40]<sup>25</sup> and is [career details deleted].<sup>26</sup> I note this experience was many years ago.

[25] Mr [Aguilar] alleges that Mrs [Aguilar]’s family are very involved in the anti-vax movement. In particular, Mr [Aguilar] alleges that Mrs [Aguilar]’s sister is an “anti-vaccine activist”<sup>27</sup> who was instrumental in having “Vaxxed” screened in NZ<sup>28</sup> and that it was not until [event deleted] that Mrs [Aguilar] began to express concerns about vaccinations.

[26] The vaccination issue was so important to Mr [Aguilar] that he sought an assurance from Mrs [Aguilar] that any child they have together would be vaccinated. Otherwise he was not prepared to have a child with her.<sup>29</sup> An assurance from Mrs [Aguilar] came in the form of an email dated 12 May 2016.<sup>30</sup> It is alleged by Mr [Aguilar] that this was in fact the second time Mrs [Aguilar] had agreed to vaccination. The first was on [date deleted] 2016 when they were holiday in Rarotonga.<sup>31</sup>

[27] Subsequently, Mrs [Aguilar] became pregnant with [Laurel]. Mr [Aguilar] deposes that Mrs [Aguilar] later changed her mind and would not allow [Laurel] to be vaccinated. This allegedly included quite a scene in front of the doctor when Mrs [Aguilar] refused to allow [Laurel] to be vaccinated. It is for this reason Mr [Aguilar] applied for a s 46R order to have [Laurel] immunised and an order that she not be treated by homeopathic or alternative means.

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<sup>25</sup> [DOB deleted] bundle C of documents p17.

<sup>26</sup> Bundle C of documents paragraph 10 p61; bundle A of documents paragraph 11 p65.

<sup>27</sup> Bundle C of documents paragraph 11 p61.

<sup>28</sup> Bundle A of documents paragraph 6 p14.

<sup>29</sup> Bundle C of documents paragraph 9 p61.

<sup>30</sup> Bundle A of documents p23.

<sup>31</sup> Bundle A of documents paragraph 8 p63.

[28] Mr [Aguilar] challenges the assertion that Mrs [Aguilar]’s family have a history of autoimmune disease.<sup>32</sup> However, he accepts he has a very rare liver defect for which he receives lifelong medication.<sup>33</sup> Among other things, this condition compromises his immune system and for this reason “I catch almost every contagious disease I come into contact with.”<sup>34</sup> Mr [Aguilar] understands [Laurel] has a 60% chance of inheriting and developing this condition.<sup>35</sup> Mr [Aguilar] believes it is socially responsible for [Laurel] to be immunised given she attends day care and Mrs [Aguilar] is exposed to contagious diseases because of her occupation.

[29] Mr [Aguilar] seeks [Laurel] to be immunised in accordance with the Ministry of Health guidelines and catch up schedule proposed by the doctor.<sup>36</sup> The particular conditions sought by Mr [Aguilar] at the outset of this hearing include:

- (a) That [Laurel] is vaccinated in accordance with the Ministry of Health national immunisation schedule of vaccines for children (including catch up vaccines that are required) and including all other age appropriate vaccination in accordance with the schedule, as and when they fall due.
- (b) That Mr [Aguilar] is authorised to immediately take [Laurel] to have these vaccinations administered by [medical centre B].
- (c) That Mrs [Aguilar] is not to obstruct or delay Mr [Aguilar] and/or [Laurel] from having these vaccinations administered as and when they occur.
- (d) That Mrs [Aguilar] is not to be present when any of the vaccinations are administered to [Laurel].

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<sup>32</sup> Bundle C of documents paragraph 14 p62.

<sup>33</sup> Bundle A of documents paragraphs 10 & 11 p15. Mr [Aguilar] has also had his gall bladder removed.

<sup>34</sup> Bundle A of documents paragraph 12 p16.

<sup>35</sup> This is disputed by Ms [Aguilar]. She understands [Laurel] has a 50% chance of carrying the mutation – bundle A of documents paragraph 41 p117.

<sup>36</sup> Bundle A of documents paragraphs 37 & 38 p21; p60.



- (e) That [Laurel] is to remain in Mr [Aguilar]’s care for a period of 48 hours following each vaccination to monitor any issues that may arise.
- (f) That [Laurel] is to receive any other Ministry of Health recommended vaccinations that may become available or that she may require in the future.

[30] Mr [Aguilar] remains opposed to [Laurel] receiving any homeopathic medicines or treatments.

[31] Costs are sought in respect of the s 46R vaccination issue given the late change in Mrs [Aguilar]’s position for the purpose of this hearing.

[32] As to the parenting application, Mr [Aguilar] is opposed to a sole parenting order as to primary care. He ultimately seeks shared care. Mr [Aguilar] observes that Mrs [Aguilar] has returned to full time employment and that [Laurel] was unilaterally enrolled at [preschool A] on Mondays and Fridays between 9am and 3.30 pm.

[33] What Mr [Aguilar] now proposes is progressively increasing care from three nights to four nights by the end of this month and week about over the Christmas holidays. From February next year Mr [Aguilar] proposes having [Laurel] four nights in week one, and three nights in week two, with week about in the school holidays. This would be on the basis that Wednesday evening contact is dropped and [Laurel] would attend childcare close to where Mr [Aguilar] lives.

[34] Mr [Aguilar] intends to take [Laurel] to [church deleted] where the parents attended before they separated. One of the few areas these parents are agreed on relates to religious instruction.

***What are the relevant legal principles?***

[35] Under ss 15 & 16 Care of Children Act 2004 (“COCA”), being a guardian involves having the role of providing day to day care (s16(1)(a)); having parental duties, powers, rights and responsibilities (s15(a)); contributing to a child’s

intellectual, emotional, physical, social, cultural and other personal development (s16(1)(b)); and addressing “important matters” effecting a child (s16(1)(c)).

[36] “Important matters” effecting a child include those listed in s 16(2) as to a child’s name, residence, medical treatment, education, culture, language and religion.

[37] Under s 46R(4) this Court can make any order it thinks proper regarding [Laurel]’s medical care and choice of [Laurel]’s childcare. However, a decision regarding these matters must be made with s 4 in mind. This section requires the Court to undertake a child focused enquiry<sup>37</sup> and view [Laurel]’s welfare and best interests<sup>38</sup> as the paramount consideration.

[38] In the context of this paramountcy principle, the s 5 guiding principles and facts of this case must be weighed when determining what is likely to be in [Laurel]’s welfare and best interests.<sup>39</sup> The s 5 guiding principles are important to bear in mind when making a predictive assessment of what is likely to be in [Laurel]’s welfare and best interests. These principles relate specifically to matters affecting [Laurel]’s care, contact, development, upbringing, identity and relationships.

[39] Section 6 is relevant because it requires the Court to take account of [Laurel]’s views.<sup>40</sup> At the age of [two] [Laurel]’s views are limited. I have not met her but her views are before the Court through her parents and through lawyer for child. She is loved by both parents and she loves them. She has an important relationship with her maternal grandmother who cares for her during the week and is primarily responsible for getting her to and from [preschool A].

### ***What is this Court’s decision about vaccinations?***

[40] Mr and Mrs [Aguilar] are loving and caring parents. Mr [Aguilar] is also an intense man who has been determined that [Laurel] is vaccinated. Mrs [Aguilar] has

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<sup>37</sup> Section 4(2) and *Kacem v Bashir* [2010] NZFLR 884 at [18]

<sup>38</sup> “Best interests” is examined in *Brookers Family Law Volume I, CCIntro.02*.

<sup>39</sup> *Kacem v Bashir* [2010] NZFLR 884 at [18], [19] & [35]

<sup>40</sup> *Brown v Argyll* [2006] NZFLR 705 at [49]. The child’s perspective is considered in paragraph *CC6.02(4) & CC 6.02(5) Brookers Family Law 1*

been equally determined except she has wanted to find a way around blanket vaccination because she is anxious [Laurel] will experience an adverse reaction. Before [Laurel] was conceived Mrs [Aguilar] agreed to vaccinating their child but later changed her mind. [Laurel] is stuck between two bloody minded parents who each wish to impose their will on the other.

[41] Since the evidence of Mrs [Aguilar]'s expert witnesses was ruled out Mrs [Aguilar] has agreed to [Laurel] being vaccinated. However, it is clear from her evidence that she remains conflicted. She is still worried about the potential effects on [Laurel] of being vaccinated. She wanted [Laurel] to have more genetic testing and wanted to be able to challenge the future need for vaccinations when [Laurel] is due to receive them. Despite this Mrs [Aguilar] assured the Court she would abide Court orders. At the end of this hearing Mrs [Aguilar] abandoned the need for a baseline testing and is no longer opposed to new vaccines.

[42] The expert evidence from Dr Petousis-Harris is clear. The best practise and best protection for children like [Laurel] is prescribed by the Ministry of Health National Immunisation Schedule of Vaccines for Children. This is an age appropriate schedule.<sup>41</sup> This means, for example, that [Laurel] is now too old to receive the rotavirus vaccine. Where advice is required in respect of children who have not been vaccinated, or where there are any queries, the most reliable expert information accessible to vaccinators is the University of Auckland Immunisation Advisory Centre.

[43] I am satisfied on the balance of probabilities that it is in [Laurel]'s welfare and best interests to be immunised in accordance with the New Zealand Ministry of Health National Immunisation Schedule of Vaccines for Children, including "catch up" vaccines as recommended by the University of Auckland Immunisation Advisory Centre.<sup>42</sup> As I mentioned earlier, this has now been conceded by Mrs [Aguilar].

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<sup>41</sup> Notes of evidence line 7 to 9 p4.

<sup>42</sup> Notes of evidence line 33 p3 to line 2 p4.

[44] I also find that it is in [Laurel]’s welfare and best interests that she is vaccinated in respect of any updated New Zealand Ministry of Health updates to the National Immunisation Schedule of Vaccines for Children.

[45] It is rather timely that this hearing has taken place during an unprecedented measles epidemic in New Zealand, and Auckland in particular. The irony for [Laurel] is that the expert evidence suggests [Laurel] is more at risk of adverse effects of contracting, for example, measles than being vaccinated.

[46] The evidence suggests the most pressing need is for [Laurel] to be vaccinated against measles.<sup>43</sup> According to this morning’s New Zealand Herald there may be a short delay while stocks are replenished. The latest development in this case is that someone at [Laurel]’s daycare has measles. [Laurel] is now required to be quarantined until 21 September. I understand there are no particular concerns about [Laurel] being vaccinated with the measles vaccine in the meantime. Of course the vaccinator will be relying on any advice they receive from the Immunisation Advisory Centre.

[47] Until now Mrs [Aguilar] continued to maintain she wanted a further genetic test for [Laurel] before she is vaccinated. On this point I note the expert evidence is that “there are no validated tests to check if somebody is at greater risk of an adverse event.”<sup>44</sup> There are two contraindicating conditions. The first is an anaphylactic reaction to a vaccine or ingredient in the vaccine. Even with a history of anaphylaxis<sup>45</sup> a vaccine may be dispensed at a special facility such as Starship hospital. In this case there is nothing to suggest [Laurel] will experience anaphylaxis.<sup>46</sup>

[48] The second contraindicating condition only applies to live vaccinations that are not relevant to [Laurel]. This risk may be present where there is “significant immunosuppression such as chemotherapy or immunosuppressive drugs given for a significant condition.”<sup>47</sup>

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<sup>43</sup> Notes of evidence line 24 p6.

<sup>44</sup> Notes of evidence line 9 p5.

<sup>45</sup> A life threatening allergic reaction requires oxygen and adrenalin – notes of evidence p5.

<sup>46</sup> The evidence is that the average vaccination risk is about one per million – notes of evidence line 26 p5.

<sup>47</sup> Notes of evidence line 15 to 17 p5.

[49] The evidence suggests that it is not uncommon for a practice nurse at a medical centre to be the designated vaccinator. The best practise involves a two-step process of reviewing the child's medical history and undertaking a clinical assessment.<sup>48</sup> A fever or illness are not contraindications of vaccinations but it generally not recommended to vaccinate a child who has a high fever until the fever has subsided.<sup>49</sup>

[50] While it is accepted there is always risk<sup>50</sup> associated with vaccines, there is nothing to suggest from [Laurel]'s medical history that she is at any particular risk. Mrs [Aguilar] is concerned various of her family members experience, for example, arthritis and eczema, have reacted to a vaccination or have allergies to antibiotics or gluten. However, the expert evidence is that none of these are contraindications for [Laurel] to be vaccinated.<sup>51</sup>

[51] I have decided on balance that it is in [Laurel]'s welfare and best interests if Mr [Aguilar] takes responsibility for having [Laurel] vaccinated.

[52] I am well aware Mr [Aguilar] has complained about [medical centre A], and one of their doctors, to the Health and Disability Commissioner. I have been provided with a lot of material but not the final report from the Commissioner. Instead Mr [Aguilar] has presented a copy of a preliminary report from the Commissioner. Mr [Aguilar] told me he made further representations to the Commissioner but gave up because he was unhappy about his representations were dealt with. Although I do not have a copy of Mr [Aguilar]'s further representations, I have a copy of an email from the doctor in question. He felt vindicated by the final outcome. I am not so sure the evidence supports the doctor's position.

[53] [Laurel] has been to [medical centre B] before. Her parents attended this centre before they separated. It is appropriate that Mr [Aguilar] arranges for [Laurel] to be vaccinated there or at any other medical centre of his choice. It may be, given the parties' relationship property affairs have not been settled, that there will be a change of address and therefore a need to change the medical centre.

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<sup>48</sup> Notes of evidence line 4 to 6 p10.

<sup>49</sup> Notes of evidence line 12 to 16 p10.

<sup>50</sup> Notes of evidence line 27 p8

<sup>51</sup> Notes of evidence line 19 p17.

[54] The Court's expectation is that Mrs [Aguilar] will make [Laurel] available for Mr [Aguilar] to uplift her and take her to her appointment for vaccination and return her after the treatment. If Mr [Aguilar] has taken the day off to arrange this, I invite the parents to settle on an arrangement which, for example, might involve [Laurel] going to her father the night before and Mr [Aguilar] returning [Laurel] at the end of the day [Laurel] has been vaccinated. In this way Mr [Aguilar] can normalise the day for [Laurel] and attend the medical centre together.

[55] It is important Mrs [Aguilar] understands that she has a legal responsibility to support the order I make and arrangements for [Laurel] to be vaccinated. If she does not there are likely to be serious repercussions. I will leave her to receive legal advice about what those repercussions might be.

***What is this Court's decision about alternative medicine?***

[56] Mrs [Aguilar]'s evidence is that the only alternative/homeopathic remedy she has used to date on [Laurel] is a Weleda Teething Powder as recommended by a pharmacist in place of Pamol.<sup>52</sup> Mrs [Aguilar] wishes to have the option of using homeopathic remedies to treat [Laurel] for minor ailments that do not necessarily require medical attention.

[57] As Mr [Aguilar] says himself, he sees things very black and white. He wants [Laurel] to only receive orthodox medical treatment. He is concerned non-prescribed products marketed in supermarkets and pharmacies have not been scientifically tested.

[58] I have not received the benefit of any scientific or medical evidence about the benefits or risks of alternative treatments or remedies. Mrs [Aguilar] gave evidence of successfully consulting an alternative health practitioner to address a hormonal issue that conventional medicine was not able to resolve. However, she is not seeking this Court's approval for alternative treatment.

[59] Neither parent intends any harm to come to [Laurel]. They only want what is best for her. Mr [Aguilar] seeks an order to exclude any treatment or remedies that

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<sup>52</sup> Bundle A of documents paragraph 42 p117.

are outside orthodox medical treatment methods. Mrs [Aguilar] is not necessarily opposed to this as such but wants some scope to address minor ailments without the cost and inconvenience of necessarily consulting a doctor.

[60] Pharmacists are medically trained. They have a duty of care to their customers, especially to the young and/or medically vulnerable. Having regard to this, and Mrs [Aguilar]'s stated intention, I am satisfied on the balance of probabilities that it is in [Laurel]'s welfare and best interests to receive homeopathic remedies recommended by a pharmacist or medical doctor for minor ailments.

[61] If Mrs [Aguilar] wants [Laurel] to consult, or receive treatments/remedies, from an alternative health practitioner she will need Mr [Aguilar]'s consent.

[62] An issue arose during the course of the hearing about [Laurel] recently attending [medical centre B]. Although [medical centre A] is [Laurel]'s primary medical provider, there is no reason why [Laurel] cannot attend another medical centre, particularly in the case of an emergency. However, it is preferable for [Laurel] that she does not go from medical practitioner to medical practitioner.

***What is this Court's decision about care, contact and daycare?***

[63] The main difficulty [Laurel] faces at present is that her parents live at least 45 minutes' drive from each other on a good day and twice that in peak traffic. This is the reality of her parents separating.

[64] [Laurel] has the very active support of her maternal grandparents and her maternal grandmother in particular. It is little wonder Mrs [Aguilar] plans to stay in the country longer term. She has a job close by that she loves. She has the physical and emotional support of her parents. Her living costs are less than in the city and [Laurel] has the benefit of living in a rural setting close to extended maternal family.

[65] [Laurel] is also fortunate to have the love and support of her parents and extended close knit maternal family. Through her mother [Laurel] has a relationship with her paternal grandfather. [Laurel] has a dedicated father who has regularly

trekked out to her rural home every Wednesday to spend time with her until bedtime. [Laurel]'s maternal family has graciously accommodated this.

[66] [Laurel]'s father would ideally like to share [Laurel]'s care equally with her mother. He has developed an elaborate plan that relies on [Laurel] attending daycare close to where he lives. Mr [Aguilar] believes [Laurel] will cope with this but I am not satisfied she will and neither is [Laurel]'s lawyer. [Laurel] is only [two]. Mr [Aguilar] is concerned that developing his relationship with [Laurel] has been a long, difficult and expensive process. It has been "long" because [Laurel] was only three months old when her parents separated. It has been necessary to progress matters at a rate [Laurel] can cope with. At times [Laurel]'s parents have disagreed about what she can cope with. The process has been "difficult" because the parents live some distance apart, there are still unresolved relationship issues between them, they have not yet started counselling directed by Judge Manuel in June, they have not yet resolved relationship property issues, and they have different but strong views about immunisation.

[67] I find that [Laurel] is likely to be safe in the care of her parents provided she is not exposed to parental conflict. Conditions to the parenting orders will be imposed to minimise this risk. Counselling will also help these parents communicate effectively and positively. It will assist them to develop strategies in dealing with each other, it will help them to work together as long term parents, and it will help them develop a positive approach towards each other.

[68] Mr [Aguilar] is an intense person. Due to this, and his tendency to look at things in very black and white terms, his approach can be abrasive.<sup>53</sup> He presents as remaining angry or upset about their separation and post separation events. No doubt he feels upset the marriage came to an end and there was nothing he could do to save it. Not even his God in whom he places so much trust. Mr [Aguilar] needs to find a way to move on. I urge him to develop his softer side. The side [Laurel] is likely to see a lot of. I suspect from a more recent exchange of text messages that Mr [Aguilar]

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<sup>53</sup> For example, his tone and physical demeanour while giving evidence. Mr [Aguilar] feels so strongly that [Laurel] go to church each Sunday for her spiritual growth that he challenged Mrs [Aguilar]. Mr [Aguilar] views the bible so literally that he feels unable to "swear" on the bible to tell the truth.



has made a real effort to temper his approach. No doubt counselling can assist Mr [Aguilar] develop his interpersonal skills when speaking with Mrs [Aguilar].

[69] Somehow these parties need to learn to trust each other. To think the best of the other rather than the worst. Part of the difficulty associated with this will be due to the parent's respective personalities. Mrs [Aguilar] is a more anxious person than Mr [Aguilar]. Mrs [Aguilar] will need to learn to be more trusting of Mr [Aguilar]'s ability to meet [Laurel]'s needs and she will need to find ways to feel less anxious. It is to Mrs [Aguilar]'s credit that she saw a therapist for several sessions to help her understand [Laurel]'s negative response to changes in care. Hopefully Mrs [Aguilar]'s trust in Mr [Aguilar] will grow as Mr [Aguilar] shows more of his softer side.

[70] There is a need for a long term care and contact plan to be developed, at least until [Laurel] is ready to attend school. Closer to that time the parents will need to discuss and agree on schooling and associated care arrangements. Otherwise they will be back in this Court.

[71] The parenting order set out at the end of this judgment relies on the fact that these parents will continue to live at a distance and that it will not be in [Laurel]'s welfare and best interests to attend two different childcare facilities. [Laurel] is very young. At present she is used to being cared for by her father, mother, maternal grandmother and attends [preschool A] two days a week. In time [Laurel]'s [preschool] hours will be increased as she gets closer to school age. Introducing her to a new additional childcare setting will undoubtedly affect her emotional wellbeing and this is likely to be in a negative way. It will challenge her stability and sense of security. [Laurel] already has four different care providers in the form of her mother, father, maternal grandmother and [preschool A]. The parental relationship is already tense. A new childcare arrangement will add needless stress for [Laurel] and there is a risk this will add to the parental tension. In my view the proposed arrangement for a second childcare facility may suit Mr [Aguilar] but is unlikely to suit [Laurel] or her needs.

[72] This means we are left to consider what is likely to be the best arrangements for [Laurel] taking into account the amount of travel required to support a long term plan. I find on the balance of probabilities that [Laurel]'s welfare and best interests are

more likely than not to be served by her seeing her father each Wednesday, every second weekend, and shared holidays.

[73] Sharing care every second weekend is more sustainable long term. This allows [Laurel] to go away with her parent during the weekend and attend events of her respective parent's choice. The parenting order will provide for weekend contact to extend from Friday to Sunday. I would have made provision for it to extend to Monday if Mr [Aguilar] was able to support that arrangement. At present he cannot because there is no flexibility with his work. If this changes, the Court has an expectation that the parties will utilise a provision within the parenting order that allows for further or other contact agreed between Mr and Mrs [Aguilar].

[74] Provision has been made in the parenting order for a graduated increase in holiday care. Mr [Aguilar] has up to 28 days' leave each year. His work closes down for three weeks over Christmas but this includes some statutory holidays. Mr [Aguilar] will know in advance what holidays he will take. He should communicate this to Mrs [Aguilar] as soon as he knows because the sooner people receive information the easier it is to begin to process, especially for people who have a tendency to be anxious like Mrs [Aguilar].

[75] Although the evidence did not specifically address Christmas holiday arrangements, there have been discussions with counsel and the parties regarding Christmas holiday arrangements.

[76] I note also that during the course of the hearing there was a discussion about the current transport arrangements. At present Mr [Aguilar] has uplifted [Laurel] at the commencement of contact periods and Mrs [Aguilar] has uplifted [Laurel] at the end of contact periods. The parents have agreed to a reverse of this arrangement. This means for weekend contact that Mrs [Aguilar] will be responsible for getting [Laurel] to her father after her meal and bath. I note the parents will have "responsibility" for travel. This does not mean they must be physically present. There will no doubt be occasions where either parent is not available, for whatever reason. It makes sense in those circumstances, for example, that the maternal grandmother is able to drop [Laurel] off if she is available.

[77] The parenting order will also make provision for weekend contact to be extended to include statutory holidays. The shared care arrangement for holiday times will be on the basis that Mr [Aguilar] will give at least six weeks prior notice of his holidays. The graduated arrangement provides for three nights on and three nights off, working towards an arrangement where it is week-about.

[78] The provision for week about contact will commence once [Laurel] turns four. However, this does not prevent the parents agreeing on the week about arrangement continuing earlier. The arrangement I have structured within the parenting order takes account of [Laurel]'s situation as it presently stands. Like any parenting order, it is a working document and is open to the parents to review and agree on changes. What is important is that it is adjusted to suit what [Laurel] is able to cope with. The orders set out at the end of this judgment provide a default position.

[79] As to the Christmas arrangement, Mrs [Aguilar]'s family traditionally get together on Boxing Day. After hearing submissions, I have determined that the Christmas Day arrangement will commence from 9.30 am on Christmas eve to 2pm on Christmas Day in Mr [Aguilar]'s care. This arrangement will remain in place each year and the shared holiday contact will work around that and the fact that Mrs [Aguilar] will have [Laurel] from 2pm on Christmas Day to 5pm on Boxing Day. This does not prevent, for example, [Laurel] being with her father before the morning on Christmas eve or with her mother after 5 pm on Boxing Day.

[80] I am satisfied the orders outlined at the end of this judgment are safe in terms of s 5(a), that they are consistent with the principles identified in s 5(b) & (c), that they provide continuity of [Laurel]'s care, development and upbringing in terms of s 5(d), and that they preserve and strengthen family relationships and [Laurel]'s identity in terms of s 5(e) & (f).

[81] After discussion with counsel I intend to vary the directions Judge Manuel made in June this year for the number of approved counselling sessions. It transpires that the registry have not yet activated Judge Manuel's June direction. Hopefully this further direction will ensure counselling is arranged.

[82] There remains a potential issue between the parties regarding costs. On the face of the matters, it seems to me that the issue of costs should lie where they fall. I am open to receiving submissions if that position is not accepted by either parent. A timetabling arrangement will therefore be made. Once the timetabling period has expired the file is to be referred to me but I note that my leave arrangements are such that I will only be available for one week in December. Otherwise the issue of costs will need to be addressed early in the new year.

## **ORDERS & DIRECTIONS**

[83] The following orders and directions are made

- (1) All existing interim COCA orders are discharged
- (2) A final s46R order is made that [Laurel] is to be vaccinated in accordance with the NZ Ministry of Health national immunisation schedule of vaccines for children, including “catch up” vaccines as recommended by the University of Auckland Immunisation Advisory Centre and any NZ Ministry of Health recommended children vaccinations from time to time under any updated NZ Ministry of Health national immunisation schedule of vaccines. This is on the basis that Mr [Aguilar] is authorised to arrange for [Laurel] to be immunised at [medical centre B] or medical centre of his choice.
- (3) A final s46R order is made that Mr & Mrs [Aguilar] are authorised to treat [Laurel] with homeopathic products recommended by a pharmacist or medical doctor.
- (4) A final s46R order is made that [Laurel] is to be enrolled at and attend [preschool A] until she starts school, or as agreed by Mr & Mrs [Aguilar], or as otherwise ordered by the Court.
- (5) A final parenting order is made as to day to day care in favour of Mrs [Aguilar] reserving contact to Mr [Aguilar] as follows

- (a) each Wednesday from 6.30pm to 8pm at Mrs [Aguilar]'s home but not in terms of paragraph 5(c) & (d).
  - (b) by 7pm on Friday to Sunday 5pm every second weekend but not in terms of paragraph 5(c) & (d). Weekend contact is extended to include statutory holidays.
  - (c) three nights on/three nights off whenever Mr [Aguilar] is on holiday until 6 February 2020, and thereafter four nights on/four nights off until 6 December 2020, and thereafter five nights on/five nights off until 6 February 2021, and thereafter six nights on/six nights off until 6 December 2021, and there after seven nights on/seven nights off. These arrangements are subject to paragraph 5(d). Mr [Aguilar] is to give at least 6 weeks advance notice of such holidays to Mrs [Aguilar].
  - (d) from 9.30am on Christmas eve to 2pm on Christmas day (and with Mrs [Aguilar] from 2pm Christmas day to 5pm Boxing day).
  - (e) Such further or other contact agreed by Mr & Mrs [Aguilar]
- (6) The following conditions to the parenting order shall apply
- (a) Mrs [Aguilar] shall be responsible for dropping [Laurel] off to Mr [Aguilar] at the beginning of each contact period and Mr [Aguilar] shall be responsible for returning [Laurel] to Mrs [Aguilar] at the end of each contact period except in terms of paragraph 5(a)
  - (b) neither parent will belittle, denigrate or criticise the other to [Laurel] or in [Laurel]'s presence
  - (c) neither parent will question [Laurel] about the other or the other's friends, activities or way of life

- (7) Lawyer for child's appointment shall be terminated and take effect within 28 days.
- (8) Any application for costs is to be filed within 28 days. Any response is to be filed within 21 days thereafter. Any reply is to be filed within 14 days and the file referred to me
- (9) Judge Manuel's direction for counselling is varied by increasing approval for funding to a total of 20 sessions.

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L de Jong  
Family Court Judge