

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

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**IN THE FAMILY COURT
AT HAMILTON**

**I TE KŌTI WHĀNAU
KI KIRIKIROA**

**FAM-2018-090-000377
[2021] NZFC 12352**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[EVIE BROOKS] Applicant
AND	[FINLEY KNOWLES] Respondent

Hearing: 7 December 2021

Appearances: S Barber for the Applicant (via telephone)
K Bowe for the Respondent
M Roots on behalf of M Williamson as Lawyer for the Children

Judgment: 7 December 2021

ORAL JUDGMENT OF JUDGE N J GRIMES

[1] These proceedings relate to eight year-old, [Lydia Brooks] and four year-old, [Lewis Brooks-Knowles].

[2] Mr [Knowles] is present with his counsel Ms Bowe and his wife Mrs [Knowles]. Ms [Brooks] is present by phone with her counsel Ms Barber. Finally, Mr Roots is acting as agent for Ms Williamson representing the children.

[3] The parties were in a relationship for six years and separated in January 2018. Temporary protection and interim parenting orders were granted on 6 June 2018, which permitted Mr [Knowles] to have supervised contact at a centre or as approved by the Court. There had been concerns regarding violence and threats, alleged drug use and mental health difficulties.

[4] With Mr [Knowles] completing the Living Without Violence Programme and providing undertakings, the temporary protection order was discharged on 10 June 2019 and a final parenting order was also granted. This provided for Mr [Knowles] to have unsupervised contact with the children each week on Wednesdays overnight and then every weekend. On the first weekend it was from Fridays at 5 pm until Sundays at 10 am. In the second weekend from Fridays at 5 pm until Sundays at 4 pm.

[5] In [late] 2020, Mr [Knowles] relocated to [the Waikato] whereas the children remained in Auckland with their mother. As a result, the parties agreed to vary the arrangements so that Mr [Knowles]'s contact was every weekend from 4 pm on Fridays until 4 pm on Sundays.

[6] The current round of proceedings commenced in November 2021 after Ms [Brooks] unilaterally stopped contact from 23 October 2021, on the basis that whilst Mr and Mrs [Knowles] had their first COVID-19 vaccination, they had decided not to have their second.

[7] On 10 November 2021, Mr [Knowles] filed his without notice application for admonishment, a warrant and to vary the parenting order. This was placed on notice. Ms [Brooks] applied the following day (on a without notice basis) to vary the parenting order, to provide for Mr [Knowles]'s contact to be supervised citing a number of concerns relayed to her by eight-year-old [Lydia]. Her application was also placed on notice.

[8] Ms Williamson was appointed as lawyer for the children.

[9] The parties filed responses to one another's applications. A further application to transfer the proceedings to the Manukau Family Court was also filed by Ms [Brooks].

[10] As Mr [Knowles] had not seen the children since 23 October 2021 an urgent hearing was set down for a one-hour submissions-only hearing today. Mr [Knowles] saw the children on 28 November 2021 after which [Lydia] reported a number of concerns to her mother. As a result, there has been no further contact.

[11] I have worked through those issues with counsel today, who have been able to take instructions. A number of protective conditions will now be in the interim order I am about to make that address the issues raised.

[12] The issues have been:

[13] COVID-19 vaccination:

- (a) As I have explained to the parties, I cannot mandatorily require Mr and Mrs [Knowles] to be fully vaccinated. I am conscious Ms [Brooks] is fully vaccinated and has another young child in her care. It worries her that Mr and Mrs [Knowles] are not fully vaccinated.
- (b) Under s 5(a) of the Care of Children Act 2004 the children's safety must be protected. This includes consideration of their immediate physical safety. COVID-19 is an immediate risk to their safety, that is, because of the number of COVID cases in the community. That is unlikely to change any time soon.
- (c) By law, [Lydia] and [Lewis] cannot be vaccinated against COVID-19 but they are not immune from contracting it. Whilst it is impractical to protect them from having any exposure to the virus, steps to limit the risk should be taken where possible.
- (d) New Zealand is now in a new normal under the COVID-19 Protection Framework known as the traffic light system. The New Zealand

Government and communities have taken steps to limit the risk for children, like [Lydia] and [Lewis], who are under the age of 12 and cannot be vaccinated. There are requirements for teachers and health providers to be fully vaccinated. Vaccination certificates are required to fly, attend hospitality venues, gatherings, indoor and outdoor events, gyms and close contact businesses. Many organisations not mandated by the New Zealand Government to require vaccination certificates are doing so in any event.

- (e) In [Lydia]’s and [Lewis]’s case, the Care of Children Act not only requires the arrangements made for them to be in their best interests and welfare but it is beholden on their parents to be primarily responsible for their care, development and upbringing. With that, comes many benefits as parents but also responsibilities and part of that responsibility is the duty to protect their children’s physical safety.
- (f) As I have said, one of the ways of protecting their safety is limiting their risk of exposure to COVID-19 before contact. It is optimal for parents to be fully vaccinated, but it is beyond my authority to mandatorily require that.
- (g) However, it is within the legal framework of the Care of Children Act that I can make a parenting order on terms I consider that meet the children’s best interests and welfare, which must be my primary consideration.

[14] For these reasons, I will require that unless they are fully vaccinated, Mr and Mrs [Knowles] are to produce a negative COVID-19 test within 72 hours of each contact visit, the results of which are to be relayed to Ms [Brooks] before the visit.

[15] Cannabis use:

- (a) Mr [Knowles]’s evidence is that he does not smoke cannabis in front of the children. However, he does not go so far as to say that he does not

have cannabis when the children are in his care. Mr [Knowles] accepts there will be a condition of the order that there is to be no illicit drug use 24 hours before or during his contact with the children.

[16] Electronic games:

- (a) In relation to the concern regarding the type of electronic games the children can play or movies they watch, there will be a condition of the order that in both households the children are not to be engaged in electronic games or watch movies with an R-rating.
- (b) Further, [Lydia] has voiced on a number of occasions, her desire for her father to be fully engaged with them. She gets upset with his own gaming during contact. Mr [Knowles] indicates that this would be for two hours a day when the children are awake and that he games in the evenings with headphones so as not to disturb the children.
- (c) Given that [Lydia] has been reluctant to see her father and has written a letter to this effect, he is well advised to stay away from gaming during his time with the children and to instead fully engage with them. That is what [Lydia] is needing of her dad right now.

[17] [Lydia]'s anxiety

- (a) In relation to [Lydia]'s anxiousness regarding visiting her father, agreement has been reached for [Lydia] to attend counselling and she is on a waiting-list for that.

[18] Parental supervision

- (a) [Lydia] also disclosed being left unsupervised by a paddling pool and rescuing her baby brother, [Joe]. Mr [Knowles] denies this occurred and denies that the children are left unsupervised. He therefore has no difficulty with a condition that the children will not be left unsupervised near paddling or swimming pools.

[19] The current arrangements mean [Lydia] and [Lewis] have no weekend time with their mother. It is premature to tell whether this is part of the reason why [Lydia] is reluctant to spend time with her father. That will be borne out as these proceedings progress. Therefore, the parties have agreed that over the coming Christmas school holidays the contact will take place fortnightly, but for an extended period of time.

[20] This means that arrangements are firmly set out between now and the first term of the school year in 2022, by which time Ms Williamson will have been able to meet with the children and in particular, ascertain views from [Lydia]. She hopes to convene a round-table meeting and the directions conference on 26 January 2022 will have taken place.

[21] I prevail upon the parents to reflect on what arrangements will best serve the children so that [Lydia]'s reluctance to attend contact will dissipate. To this end, both parties agree that the proceedings should not be discussed in front of the children or with them, and nor should there be any denigration of either party in front of the children.

[22] There are other matters that Ms [Brooks] has raised that concern her. These include hygiene matters, Mr and Mrs [Knowles] spending time in the garage, the children being left to care for [Joe], the amount of dog faeces at the property and when the children have a shower. All are agreed these matters can be addressed at a round-table meeting.

[23] From the evidence I have in front of me I find such matters do not reach the threshold of consideration as a safety concern. That view may well change, dependent on Ms Williamson's further enquiries. Ms Williamson has not been able to ascertain the children's views at this time given the COVID-19 pandemic and the children's ages, making it difficult to try and ascertain views by electronic means. I will, therefore, grant her leave to seek the Court's further directions on two days' notice if any urgent matters arise after she has met with the children.

[24] Against that background, I make the following orders and directions:

- (a) I vary the parenting order dated 10 June 2019 as follows:
- (i) Mr [Knowles] will have contact with the children from:
 - 1. 4 pm Friday 10 December until 4 pm Sunday 12 December. The changeover will take place at the Auckland-Waikato border.
 - 2. There will be contact from 11 am 22 December until 11 am 25 December. The changeover will occur at the border.
 - 3. Commencing 4 pm Friday 31 December until Tuesday 4 pm 4 January 2022, and thereafter every fortnight.
 - (ii) Mr [Knowles] will collect the children from Ms [Brooks] in Auckland and Ms [Brooks] will collect the children from Mr [Knowles] in [the Waikato].
 - (iii) These arrangements will expire on the first weekend after [Lydia]'s school commences in 2022, meaning the arrangements will revert to those in the 10 June 2019 order other than the Wednesday overnight contact that no longer occurs.
- (b) The following conditions attach to this order:
- (i) Within 72 hours of each visit Mr and Mrs [Knowles] are to provide to Ms [Brooks] negative COVID-19 tests.
 - (ii) Neither party is to consume illicit drugs 24 hours before the children are in their care, or whilst the children are in their care.
 - (iii) Neither party is to be under the influence of alcohol to the extent that they would be over the legal limit to drive.

- (iv) The children are not to play or watch electronic games or movies with an R-rating.
 - (v) Mr [Knowles] will not game when the children are in his care, unless the game includes them and is a game that does not have an R-rating.
 - (vi) Neither parent shall denigrate the other parent or their partner, in front of or to the children. There shall be no discussion by the parties or their partners with the children regarding these proceedings.
 - (vii) The children are not to be left unsupervised by paddling or swimming pools.
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- (c) I authorise Ms Williamson to convene a round-table meeting prior to the directions conference in January 2022. That may occur remotely.
 - (d) I confirm the directions conference on 26 January 2022 is to occur in the Huntly Family Court. Timetabling directions can be made about the application for transfer of proceedings.
 - (e) The directions conference scheduled for February 2022 however can be vacated, as all applications are to be considered together on 26 January 2022.
 - (f) Consideration can also be given as to whether a social worker's report is necessary.

- (g) I authorise Ms Williamson to seek the Court's further direction on two days' notice if any urgent matters arise between now and 26 January 2022 that require the Court's immediate consideration. Such memorandum can be referred to me in the first instance.

Judge NJ Grimes

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 14/12/2021