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

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IN THE FAMILY COURT
AT WHAKATANE

I TE KŌTI WHĀNAU
KI WHAKATĀNE

FAM-2020-047-000032
[2021] NZFC 10298

IN THE MATTER OF	THE FAMILY VIOLENCE ACT 2018
BETWEEN	[JAMIE DONOVAN] Applicant
AND	[CARL CLINE] Respondent

Hearing:	6 October 2021
Appearances:	K Dyer for guardian ad letium D Eades for the Respondent A Kershaw as Lawyer for the Children
Judgment:	14 October 2021

RESERVED JUDGMENT OF JUDGE J P GEOGHEGAN

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[1] The [Donovan] and [Cline] families are related by blood. [Jamie Donovan] and [Helen Cline] are sisters.

[2] Both families live on adjoining blocks of land in a remote part of the [location deleted — location A] on the banks of [a River]. Access to the properties is gained by boat across the river. There are often occasions, particularly in winter, when the river is impassable and access impossible. While each family has a separate landing area for the boats required to transport them across the river, those areas are only 15 metres, or so, apart.

[3] The [Donovan]'s live on an eight-hectare block (the "[Donovan] block") which adjoins the [Cline]s' 10-hectare block (the "[Cline] block"). Access to the [Donovan] block is through the [Cline] block.

[4] Mrs [Donovan] lives on her block with her husband and her five children, [Elaine] aged 17, [Bonnie] aged 15, [Dale] aged 13, [Brendan] aged 11 and [Fred] aged 10. Mr [Cline] is a [profession deleted] and most, if not all, of his work is in [location B]. Accordingly, he is away during the week and spends weekends with his family.

[5] The respondent, Mr [Cline] is 19 years old. He lives with his parents on the [Cline] block. Mr [Cline]'s sister [Abby] also lives on the [Cline] block. Mr [Cline] has a [half-sister] who is 26 and who lives in [location B] and a [full sister] who is 21 and lives in [location C].

[6] Also living on the [Cline] block is [Kerri], the adult sister of Ms [Cline] and Ms [Donovan]. [Kerri] is intellectually handicapped and lives in her own cabin. Her caregivers are [Bonnie] and [Elaine] who spend a significant amount of their time caring for her. [Bonnie] works in her caregiver role for three to five hours in the morning and [Elaine] three to five hours in the afternoon. They stay overnight with their aunty, two nights on and two nights off. They also care for their aunty in weekends with each niece effectively caring in alternate weekends. [Kerri]'s cabin is in very close proximity to the building occupied by the respondent.

[7] Both families moved to this remote area in a deliberate attempt to live "off the grid". Although there is mains electricity running to [Kerri]'s home, it does not run to the other buildings on the property. Although the families live on two separate lots there is no formal subdivision. The land as a whole is owned by a company, the shares in which are owned, effectively, by the adult members of each family.

[8] The attempt to live an idyllic self-supporting lifestyle where both families maintained a close relationship and supported each other, was shattered by two significant events. The first, was in November 2017 when Mr [John Cline], the respondent's father, was arrested and charged with possession of child pornography, in respect of which he was convicted and sentenced to two years and two months imprisonment in July 2018. He was released in September 2020 and, after a period where he was not permitted to live on the [Cline] block, has returned to live there. It appears that he has not reconciled with the respondent's mother and lives in his own accommodation on the block.

[9] Worse was to come.

[10] In January 2019, [Bonnie] disclosed to Ms [Donovan] that the respondent had been sexually abusing her for approximately six years. [Elaine] subsequently confirmed that she also had been abused by the respondent. The matter was referred to the police and at an intention to charge a Family Group Conference (FGC) held on 13 May 2019, Mr [Cline] admitted having raped [Bonnie] on 1 January 2014, having engaged in unlawful sexual connection with [Bonnie] on 1 January 2013, and having also engaged in unlawful sexual connection with [Elaine] on 1 January 2010. A decision was made by the police not to lay charges in the Youth Court because Mr [Cline] had accepted his actions and was willing to participate in the SAFE programme. [Elaine] and [Bonnie] had been evidentially interviewed by Oranga Tamariki (those interviews having been admitted into evidence in these proceedings pursuant to s 9 Evidence Act 2006), which disclosed a wider range of sexual abuse perpetrated against [Elaine] and [Bonnie] by Mr [Cline]. Mr [Cline] was 16 years old at the time of this conference. The FGC plan recorded that Mr [Cline] resided with his grandmother and that he would transition into the care of his grandfather, both of whom lived in [location B]. The plan recorded that all access between Mr [Cline] and

his mother and sisters was to occur away from the property and that once the SAFE assessment had been completed, the FGC would be reconvened to go through the recommendations and formulate a plan for treatment. A second FGC was held in June 2019.

[11] Subsequent to this process, and as a result of counselling undertaken by [Dale], further disclosures were made by [Dale] regarding sexual abuse of him by Mr [Cline]. Mr [Cline] has acknowledged that when he was between 10 and 15 years old he showed pornographic material to [Dale], had [Dale] perform oral sex on him and that he performed oral sex on [Dale], and that when he was aged 12 he penetrated [Dale]'s anus with his penis on one occasion. He acknowledges also he may have told [Dale] not to tell anyone of those incidents.

[12] The impact of this offending has been devastating for [Elaine], [Bonnie] and [Dale]. Evidence has been filed as to the trauma which they have suffered. It is clear that they will suffer ongoing trauma as a result of Mr [Cline]'s offending and will require significant further assistance and counselling to aid in their recovery and to enable them to move forward. All three children requested that they be present at the hearing and were present although some of the evidence became too much for [Dale] who left before the end of the hearing. It took courage for them to attend and I commend them for doing so. I hope that it can, in some small way, assist them in their recovery.

[13] To his credit, Mr [Cline] does not take issue with the evidence as to the very significant toll his offending has taken on his cousins.

[14] In November 2020, Ms [Donovan] made an application for a protection order in favour of all five children against Mr [Cline], in her capacity as their litigation guardian. Mr [Cline] has agreed that a final protection order should be granted in favour of [Elaine], [Bonnie] and [Dale]. Ms [Donovan] does not seek a final protection order in favour of the two youngest children [Brendan] and [Fred]. This case is accordingly not about whether a protection order should be made against Mr [Cline], but rather whether a special condition should be included in the orders pursuant to s 103(1) Family Violence Act 2018 ("the Act"), which prevents Mr [Cline]

from living at, or coming onto, the [location A] block including both the [Donovan] block and the [Cline] block.

[15] Mr [Cline] opposes any such condition and says that there is no valid reason for its imposition. Further, it is argued on behalf of Mr [Cline] that there is no jurisdiction to make the order which is sought.

[16] Section 103 of the Act provides:

> **103 Court may impose special conditions**
>
> (1) In or after making a protection order, the court may impose any conditions that are reasonably necessary, in the court's opinion, for 1 or both of the following purposes:
>
> (a) to protect the protected person from further family violence by the respondent, or the associated respondent, or both:
>
> (b) to address the inflicting of family violence against protected people who are particularly vulnerable (for example, due to age, disability, or health condition).
>
> (2) A condition imposed under subsection (1) may (without limiting subsection (1)) relate to—
>
> (a) the manner in which arrangements for access to a child are to be implemented:
>
> (b) the manner and circumstances in which the respondent or the associated respondent, or both, may make contact with the protected person.
>
> (3) The court may under subsection (1) (without limiting subsection (1)) impose, as a condition of a protection order, a condition specifying a person who, for the purposes of sections 90(b), 91 to 95, and 104, is entitled—
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> (a) to consent on behalf of the protected person; and
>
> (b) to withdraw such consent.
>
> (4) If the court imposes a condition under this section, it may specify the period during which the condition is to have effect.
>
> (5) In the absence of a direction under subsection (4), and subject to section 104, a special condition has effect for the duration of the protection order, unless sooner varied or discharged.

[17] It is clear that s 103(1)(a) is intended to address the issue of "further family violence". In such circumstances it may be readily concluded that the court may have to be satisfied that there is a reasonable risk of further family violence occurring and that the condition will satisfactorily address that risk.

[18] It was the evidence of Mrs [Donovan], that she did not perceive any ongoing sexual threat from Mr [Cline], but that he did not fully comprehend the damage which his offending had caused. As to an assessment of further violence, it was submitted by Ms Kershaw that the court is really not in a position to rule out the possibility of further violence as Mr [Cline] had not completed a final assessment as had originally been anticipated, and that a condition could accordingly be made pursuant to s.103(1)(a). That is a point which I shall come back to later. What I can say is that Mr [Cline] appeared genuine in his self-stated commitment to refrain from further offending.

[19] As to s 103(1)(b), that is a condition which was not present in the previous Domestic Violence Act. Mr Eades submitted that the use of the verb "inflicting" meant that the clear intention of the provision was to address present or future family violence. He submitted that it strained the plain meaning of the words used by Parliament, if the court was not required to come to the conclusion that there was a reasonable likelihood of further violence before imposing a condition pursuant to s 103(1)(b). In other words, the courts focus must be to look to the future rather than the past. Mr Eades submits that the wording of this section could easily have referred to the past infliction of family violence and referred to various sections in the Act which used the word inflict in that sense.[1]

[20] Mr Eades submits that the only conclusion which can be drawn when considering s 103(1)(b), is that the court can only impose a special condition if it is satisfied that the condition is necessary *due to either future family violence [subs 1(a)] or current inflicting of family violence [subs 1(b)].* He submits that to interpret the

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[1] Section 3(b) "from inflicting further violence", s 8(a) a perpetrator of family violence "means a person who has inflicted, or is inflicting, family violence", s 29(1)(a)(i) and (ii) "has inflicted, or is inflicting", s 29(1)(b) "whether there is a likelihood that A will inflict, or again inflict, family violence against B", s 59(d) "the court may make a protection order if it is satisfied that the respondent has inflicted, or is inflicting, family violence against, and the order is necessary for the protection of, the applicant …".

section in a way which enables it to address the consequences of the past infliction of family violence, reads a meaning into the legislation which is simply not present. He submits that his suggested interpretation of s 103(1)(b) is supported and consistent with ss 4, 5 and 6 of the New Zealand Bill of Rights Act 1990 (NZBORA). In that regard, Mr Eades placed particular emphasis on s 6 of NZBORA which provides:

> **6 Interpretation consistent with Bill of Rights to be preferred**
>
> Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning.

[21] Mr Eades submits that in circumstances where there are two possible interpretations of a section, the interpretation that is most consistent with the NZBORA should be preferred. He cites the Court of Appeal judgment in *Moonen v Film and Literature Board of Review*[2] where it was stated:

> [16] The present point is that relevant provisions of the Bill of Rights must be given full weight in the construction of the Act, and in any classification made thereunder. Indeed s 6 of the Bill of Rights requires that where an enactment can be given a meaning that is consistent with the rights and freedoms contained in the Bill of Rights, that meaning shall be preferred to any other. Thus if there are two tenable meanings, the one which is most in harmony with the Bill of Rights must be adopted. Section 5 when read with s 6 fulfils a similar role. An enactment which limits the rights and freedoms contained in the Bill of Rights should be given such tenable meaning and application as constitutes the least possible limitation. Where an unjustified and unreasonable limitation nevertheless results, because no other meaning or application is tenable, such limitation, why constituting breach of s 5, nevertheless prevails by dint of s 4.

[22] An application of this approach, it is argued, means that the court is prevented from adopting a wide interpretation of s 103(1)(b) "to read into it a referral to the past infliction of family violence". If that is accepted, then the court needs to restrict itself to the present or future infliction of family violence, something which is simply not a factor in this case.

[23] Mr Eades submits that the mere presence of Mr [Cline] on the [location A] property cannot constitute psychological abuse. While his entry on to the [Donovan] block could, in the broadest sense, be considered a trespass that would come within

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2 *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9.

s 11(1)(b)(iii) of the Act (which refers to presence on or in any land or building in circumstances which constitute trespass), his presence on the [Cline] block could not constitute trespass. Additionally, his mere presence on the property cannot constitute a threat of physical abuse, sexual abuse or abuse of a kind stated in paragraphs (b) to (f) of s 11 or intimidation or harassment as defined by s 11(1)(b). In that regard, Mr Eades relied on the observation of Gendall J in *Lowe v Huang*[3] where he stated:

> [14] Psychological abuse may take an infinite variety of forms. Obviously it requires some behaviour on the part of the perpetrator directed ultimately at another. Whether or not such behaviour amounts to psychological abuse is a question of fact. It is to be determined in the context of all the surrounding circumstances, historically as well as proximal present, as they relate to the abuser and victim. Psychological abuse typically plays on a victim's mind and emotions, and often does not involve physical contact. What is generally, if not exclusively, been required as a component of psychological abuse his action on the perpetrator rather than simply the presence of the perpetrator alone.

[24] As to the issue of trespass, although the families live on two separate blocks, those blocks are not subdivided and accordingly, it is possible that the [Donovan]'s could be considered to be lawful occupiers and therefore able to trespass Mr [Cline]. It is not necessary for me however to determine this particular issue.

[25] For Mrs [Donovan], Ms Dyer submitted that the introduction of s 103(1)(b) shows a clear intent by Parliament to expand the circumstances in which the court can make special conditions as part of a protection order in order to further the legislative intentions of the legislation. The particular vulnerability of children is something explicitly recognised by s 4(d) and (e) of the Act. Interpretation of the provision of the Act must be guided by reference to ss 3 and 4.

[26] Section 3(1) provides that:

> **3 Purpose of this Act**
>
> *Purpose*
>
> (1) The purpose of this Act is to stop and prevent family violence by—
>
> (a) recognising that family violence, in all its forms, is unacceptable; and

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3 *Lowe v Huang* HC Wellington CIV-2004-485-2630, 28 February 2007.

(b) stopping and preventing perpetrators from inflicting family violence; and

(c) keeping victims, including children, safe from family violence.

[27] Section 3(2) provides that the court, in exercising a power conferred under the Act, must be guided in the exercise of that power by the purpose of the Act. Section 4, which sets out the principles guiding the achievement of the purpose of this Act, includes s 4(k) which provides that:

> …
>
> (k) arrangements that support the ongoing safety and well-being of a victim of family violence should whenever practicable be sustained (for example, employment, education, housing, or community involvement):

[28] In that sense therefore, a clear purpose of the Act is forward looking.

[29] Ms Dyer referred to two cases which involved special conditions under the previous domestic violence legislation which referred to residential conditions.

[30] In *NHG v GTM*[4] the parties were cousins and were living in separate dwellings close to each other on the same block of Maori land. They both held an interest in the land. Judge von Dadelszen imposed a special condition on a final protection order that the respondent was not to enter a certain block of land despite the fact that his home of some 10 years was located on it. Judge von Dadelszen, in considering whether or not to make such a condition considered whether s 18 of NZBORA which preserved the respondent's right to freedom of movement and residence over-road the clear jurisdiction in other legislation including s 27 of the Domestic Violence Act which empowered the court to impose any conditions that were reasonably necessary to protect the protected person from further domestic violence. In making the residential condition, his Honour stated:

> [8] It seems to me that if the circumstances in any particular case establish that, quite apart from the making of the protection order, there needs to be a condition which keeps the parties apart then the court has jurisdiction to put that special condition in place. And if that means that the respondent here cannot live in his own home, then so be it. Having said that, however,

4 *NHG v GTM* [2010] NZFLR 919.

> particularly in the context of a Maori family and the connection which Mr G obviously has to his home, I would be most reluctant to impose such a special condition unless I felt it really was absolutely necessary.

[31] Despite the Learned Judge expressing concern that such a condition would effectively lock the respondent out of his own home, he imposed the condition for a period of six months.

[32] In *N v D*[5] Mr N was the subject of a special condition in a protection order which prevented him from entering or remaining in the Hawkes Bay area while Ms D and the children remained living in that area without the consent in writing of a senior police officer stationed in Hawkes Bay. The case was one which involved a finding by the Judge at first instance that "Mr N was and remained, violent, uncontrolled, unpredictable and dangerous". Again, an argument based on s 18(1) of the NZBORA was presented with a submission that such a condition was in breach of that Act and could not stand. Doogue J had very little difficulty in disposing of arguments. In referring to the Domestic Violent Act 1995 he stated:

> [38] …. The Act is of its very nature concerned with the protection of persons. It provides in the standard conditions under s 19(2) of the Act limitations on the movements of persons against whom a protection order is made. It is therefore clear that the Legislature was passing a statute inherently inconsistent with s 18(1) Bill of Rights Act and in s 27(1) of the Act was providing a power which could give rise to a conflict with s 18(1) of the Bill of Rights Act.
>
> [39] I therefore regard the approach of the Family Court Judge in seeking to reach a balance between the requirements for protection of the respondent and her children and the rights of the appellant under s 18(1) of the Bill of Rights Act as proper and appropriate. I would not have likely interfered with a condition that was clearly enforceable and that conformed with such an approach.

[33] It is difficult to imagine that in replacing the Domestic Violence Act with the Family Violence Act, Parliament intended to limit or diminish the protections previously conferred on victims of family violence.

[34] For the children, Ms Kershaw submitted that the interpretation of s 103(1)(b) promoted by Mr Eades was flawed. The Court of Appeal in *Surrey v Surrey*[6] had "put

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5 *N v D* [2001] NZFLR 491.
6 *Surrey v Surrey* [2010] 2 NZLR 581.

to bed" any argument that it is a requirement for the applicant to prove that future violence is likely, saying at [37]:

> While we accept that even reasonable fears do not automatically lead to the making of a protection order, where a victim's fears are based on having been subjected to a pattern of recent serious domestic violence, as in this case, it is unlikely that a court could rationally refuse to grant a protection order, absent very strong indications that the order is not necessary.

[35] Ms Kershaw submitted that the same reasoning must logically apply when assessing whether a condition is "reasonably necessary" to either "protect from further family violence" or to "address the inflicting of family violence". Ms Kershaw also submitted that while Mr Eades had focused on the word "inflicting", he had ignored the preceding words which are "to address", a term which is significantly different than "to prevent" and which provides the court the jurisdiction to impose special conditions that address the impacts of violence on vulnerable persons. Ms Kershaw repeats the point which I have just referred to that the reforms of the Family Violence Act were designed to provide greater protection of victims, not less. Ms Kershaw referred to a cabinet Social Policy Committee Paper Reform of Family Violence in which the Honourable Amy Adams which stated:

> The DVA currently allows for the court to impose special conditions on protection orders to address particular vulnerabilities and protect the person from further violence. The relevant section (s 27) makes specific reference to access to a child, and contact with victims, is two areas that may be considered. I propose to broaden these considerations to add specific reference to the vulnerabilities of older people and people with disabilities prompting the court to consider relevant factors when issuing a protection order. Examples of conditions that might be imposed may include prohibiting access to bank accounts or other assets, and setting out terms of visits by the respondent, including the ability to prohibit visits.

[36] Ms Kershaw also referred to authorities which had recognised, with reference to the Domestic Violence Act, that the provisions of the Act are to be interpreted to provide protection, not only from actual future violence, but a reasonably held fear of violence, in other words addressing the impact of violence on victims. The Court of Appeal in *Surrey* and *SN v MN*[7] have emphasised, with reference to the predecessor of the Family Violence Act, that the purpose of a protection order is not only to ensure

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7 *SN v MN* [2017] NZCA 289.

safety from the risk of future violence but also to ensure that those protected under the terms of a protection order feel safe from family violence.

[37] With respect to Mr Eades thorough submissions, I come to the ready conclusion that Parliament could not have intended that s 103 of the Act would confer less, rather than greater, protection on a victim of family violence. I conclude that to interpret s 103(1)(b) as suggested by Mr Eades, would be to not only adopt an unnecessarily narrow interpretation of the provision, but one which runs contrary to the clear purposes and guiding principles of the Family Violence Act. I consider that subs (a) and (b) are both forward-looking provisions with s 103(1)(a) designed to enable conditions which prevent further family violence and s 103(1)(b) designed to enable the court to address the consequences of family violence and to provide conditions which are of benefit and assistance to victims of that violence. There may well be cross-overs between the two subsections but in short, s 103 is to be given a broad rather than a narrow interpretation.

[38] It is clear also that the freedom of movement protected under the provisions of the NZBORA cannot gazump the specific purpose of the Act. The authorities considering this issue make that clear. That is not to say that the court should not be cautious in imposing a special condition or should decline or refuse to take account of challenges which may be presented to a perpetrator of family violence by the imposition of a special condition. That is a balancing exercise, but the balancing exercise must be undertaken with the principles and purposes of the Act at the forefront of any considerations.

[39] If I am not correct in my analysis of s 103(1)(b) of the Act, I am satisfied that in any event I would be entitled to impose a condition pursuant to s 103(1)(a) which focuses on protecting victims from further violence.

[40] The principal issue here is that while Mr [Cline] provided a significant amount of documentation with respect to the treatment and counselling that he had undergone, no risk assessment has been provided. In an e-mail dated 2 February 2021, from Ms Laura Ines, a registered psychologist with SAFE, Ms Ines confirmed that she was the psychologist who worked with Mr [Cline] during his time with the SAFE Network

which included nine months of therapeutic intervention. The e-mail described the treatment plan worked on with Mr [Cline] and the fact that Mr [Cline] was initially recommended to attend one year of therapeutic intervention but that his motivation and dedication throughout the programme, saw that reduced by three months. The e-mail recorded that an end intervention report was written and sent to a social worker at Oranga Tamariki upon completion. The court has not been provided with that report.

[41] While the absence of the report does not necessarily permit the court to imply there is some lingering risk of further offending on the part of Mr [Cline] it certainly does not permit the court to undertake an assessment of what risk, if any, Mr [Cline] presents.

[42] Mr [Cline] did provide a copy of a SAFE Network report dated 27 June 2019, which was undertaken at the commencement of his work with SAFE and which made a number of recommendations in respect of the work required to be undertaken. The report referred to four dynamic factors associated with greater risk that were present at the time of that report for Mr [Cline]. Those factors were as follows:

(a) Lack of intimate peer relationships/social isolation.

(b) A high stress family environment.

(c) No developmental practice of realistic prevention plans or strategies.

(d) Complete sexual offence specific treatment.

[43] An additional dynamic factor identified as being partially or possibly present at that time, was an obsessive sexual interest or preoccupation with sexual thoughts.

[44] Three static or historical risk factors were identified, those being factors which cannot be changed. Those factors were:

(a) That Mr [Cline] has sexually abused two or more victims.

(b) Mr [Cline] had sexually abused the same victim two or more times.

(c) That the sexual abuse involved diverse sexual assault behaviours.

[45] Clearly two of the four dynamic factors associated with greater risk are still present, namely lack of intimate peer relationships/social isolation and a high stress family environment. Although Mr [Cline] is clearly comfortable living with his parents, the wider family environment, namely the environment which includes the [Donovan] family, is highly stressful.

[46] Mr [Cline] also annexed a SAFE Network home support and safety plan for him, dated 25 August 2019. That support plan referred to the need for Mr [Cline] to be encouraged to:

> Engage and participate in all activities that promote supportive, pro-social peer relationships with people around his age (both at home and in the community). This could be through family relationships, friendships, interest groups, youth group, or social/sports groups. This is so [Carl] can develop, build and maintain relationship skills, and not become socially isolated.

[47] The reality is that at the present time Mr [Cline] is socially isolated. There is no evidence that he is engaging in pro-social peer relationships or interest groups, youth groups, social/sports groups.

[48] In the support and safety plan there were a number of "safety rules for home" which included a rule that Mr [Cline] was not to return to [location A] until his victims approved. That support and safety plan was prepared by the same psychologist who was the author of the e-mail dated 2 February 2021. No mention was made in that e-mail of the significance, if any, of Mr [Cline] now living on the [location A] property without the approval of his victims.

[49] While I do not doubt that genuineness of Mr [Cline]'s remorse or his desire for rehabilitation, his evidence did demonstrate a lack of insight into the consequences of his offending upon the victims. An example of that came when Ms Dyer put to Mr [Cline] that [Elaine]'s evidence was that she felt upset and uncomfortable knowing that her abuser being so close to her, that she had a panic attack every time she saw Mr [Cline], that she had been diagnosed with post-traumatic stress disorder and

suffered suicidal ideation. The advice of her counsellor was that it was impossible for her to make a full recovery while Mr [Cline] was present at the property. The following exchange occurred:

> Q: So again, despite you having full knowledge of how much distress and anxiety you are causing to [Elaine] you have chosen to stay there anyway, haven't you?
>
> A: Yes.
>
> Q: Do you accept that if you weren't living at the property [Elaine]'s ability to heal would be better?
>
> A: If you say so, yeah.

[50] On the basis of the evidence currently before the court, I consider that the imposition of the condition sought would be reasonably necessary pursuant to s 103(1)(a), as there are a number of clear risk factors which are still present and which therefore present a continuing risk to the victims.

[51] There is clear evidence of the toll which Mr [Cline]'s offending has taken on [Elaine], [Bonnie] and [Dale]. Mr [Cline]'s abuse of them has had a profound and lasting effect. A report from [Elaine]'s ACC counsellor advised of her opinion that it was impossible for [Elaine] to make a full recovery while Mr [Cline] was present on the property. An ACC assessment disclosed her as being in the extreme depression category. She is also placed in a severe anxiety range and has demonstrated suicidal ideation. Her recovery could best be described as extremely fragile. [Dale] has been receiving ACC counselling since June 2019. The evidence of his counsellor was that the abuse suffered by [Dale] is a highly distressing and psychically disruptive event which has resulted in nightmares, intrusive thoughts, sleep disturbance and poor concentration. [Dale] still experiences thoughts of suicide at times when triggered. He has been diagnosed with post-traumatic stress disorder due to the abuse which he has suffered. The counsellor stated that the fact that Mr [Cline] has access to the property "creates an intense unease and disruption to the sense of safety and stability and will continue to hinder [Dale]'s recovery". [Bonnie] has suffered similar distress although has advised counsel Ms Kershaw that Mr [Cline]'s presence did not personally worry her, but she objected to him being on the property because she wanted her family to feel comfortable. There is at least a possibility where [Bonnie] is concerned and given

the fact that she suffered the most extensive abuse, that she has disassociated from the abuse in an endeavour to preserve her psychological safety. Both [Elaine] and [Dale] have been clear however to Ms Kershaw, that they do not wish Mr [Cline] to be on the property. Their views have been clear and consistent.

[52] None of this evidence was disputed by Mr [Cline]

[53] Mr [Cline] does not wish to leave the property. He says that while he is extremely remorseful for the abuse perpetrated against his cousins, he has dealt with it, put it behind him and he is no longer a risk to them. Not only that, but he has taken significant precautions to ensure that their paths do not cross. He has no wish to impose further distress on them. He was not charged with any criminal offences and should be able to get on with his life.

[54] In an affidavit sworn on 22 February 2021, Mr [Cline] stated:[8]

> I get on well with my mum and although I won't live with her, I don't want to not be able to visit her at her home. I have no intention of having anything to do with the applicant or her children.

[55] Clearly that situation changed when Mr [Cline] subsequently returned to live at the property. It is clear, that this return occurred without consultation with, or notice to, the [Donovan] family. It changed because of Mr [Cline]'s particular circumstances namely, the fact that he had resigned from his employment in [location B].

[56] I accept Mr [Cline]'s evidence that steps have been taken to ensure that there is little, if any, contact between Mr [Cline] and the [Donovan] family. A chest freezer on the deck of [Kerri]'s log cabin which was used, presumably by the [Clines], was relocated. A new pathway through the bush has been created to ensure that the log cabin area is bypassed completely, although it still passes within 15 metres or so, of the log cabin. Hedging plants and trees have been planted at the front of the main [Cline] dwelling to create greater privacy. Mr [Cline] lives in what is known as a "tiny home" on the [Cline] block. He acknowledges it overlooks the [Donovan] homestead and can be seen from their property.

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[8] Affidavit of [Carl Cline] 22 February 2021 at para 27.

[57] Of concern to me, was Mr [Cline]'s evidence regarding alternatives to living on the [location A] property. Despite the fact that these proceedings have been before the court for almost a year, it appears that Mr [Cline] has given no serious thought to living elsewhere. He had not spoken with his grandparents or his sisters about the possibility of coming to live with them despite the fact that he must have been aware that his exclusion from the property was a real possibility. The reality of the position however, is that Mr [Cline] had previously lived with his grandfather for a significant period after the offending was first disclosed and obtained employment in [location B]. That indicates that there are possibilities for him in terms of accommodation and employment should he be required to leave. At present he is on a Jobseekers benefit with, in my assessment, no concrete plans to obtain employment.

[58] The reality of the position is that despite the measures that have been taken by Mr [Cline] and his parents to ensure that he is not seen by members of the [Cline] family on the property, that cannot be avoided. He lives in close proximity to [Kerri]'s log cabin where [Bonnie] and [Elaine] are working each day. The path which he takes to bypass the cabin comes within 15 to 20 metres of it. His home can be seen from the [Cline] property and he can see the [Donovan] property from his home. His victims are acutely aware of his daily presence on the property.

[59] Given the very unusual set of circumstances in this case, I am satisfied that it is necessary to impose the condition sought by the applicant to address the inflicting of family violence against the protected persons in this case who I accept are particularly vulnerable, not only due to their age, but also due to the relative isolation of the property. For the reasons given however, I would also have felt justified in making the condition pursuant to s 103(1)(a) to protect the protected persons from further violence.

[60] The final issue to be considered is the terms of the condition. On behalf of Mr [Cline], Mr Eades submitted that if the court found that a special condition ought to be imposed then it should be limited in the following ways:

(a) The condition should cease having effect when [Dale] turns 18 or leaves the property permanently.

(b) The condition should provide a period of time to allow for Mr [Cline] to arrange his affairs in order to leave the property, 5 January 2022 being suggested.

(c) The condition should prohibit Mr [Cline] from living on the property, or coming, at any time, within 100 metres of that part of the property referred to as the [Donovan] block. Any visit to the property would require two weeks' notice to be provided to Mrs [Donovan]. No overnight visit could occur and there could be no more than eight visits in any calendar year.

[61] Mrs [Donovan] indicated that she would be prepared to consent to the condition being discharged upon [Dale] reaching the age of 18 (i.e. on [date deleted] 2026). I consider that I should refrain from providing an expiry date and instead, simply leave it to Mr [Cline] to apply for a discharge of the order when appropriate. It may well be that [Dale] leaves the property prior to 2026 or that, despite such an event, [Bonnie] and/or [Elaine] are still living there.

[62] As to the issue of visits to the property, its remoteness whilst supporting the imposition of such a condition, also means that Mr [Cline] is significantly cut off from contact with his parents.

[63] There is no easy way of resolving the conflict between the needs of the victims on the one hand and the need for the condition to impose the least restrictions possible, other than that the outcome must comply with the principles and purposes of the Act.

[64] With that in mind, I am of the view that it would be appropriate to provide Mr [Cline] with an opportunity to visit his parents on occasion. It will also of course be possible for them to leave the property in order to visit with Mr [Cline]. I consider that the appropriate number of times Mr [Cline] should be able to visit is no more than six times per year and that those visits should not include overnight visits. I consider that it is appropriate also that there be a mechanism in the condition that Mr [Cline] may visit at other times with the express consent of Mrs [Donovan]. That will enable Mr [Cline] to visit his parents should an emergency or other urgent need arise.

[65] It is appropriate also that Mr [Cline] be provided with an opportunity to make enquiries regarding alternative accommodation before being required to leave the property. Mr Eades has proposed that any condition take effect from 5 January 2022, however I consider that that is too generous a period, particularly taking into account the time which has passed since the proceedings were commenced. Given the presence of other family, who are presumably able to provide Mr [Cline] with accommodation, even for a temporary period, a period of six weeks should be sufficient to enable Mr [Cline] to make alternative arrangements.

[66] Before making any orders, I would simply observe that this has been an unspeakably difficult situation for both families. I appreciate that the imposition of the condition sought will have serious implications for Mr [Cline], who clearly relies on his parents for support, and who will now be separated from them. I express the firm hope that [Elaine], [Bonnie] and [Dale] will be able to continue on their path to recovery and will receive all of the support necessary to bring that about and that Mr [Cline] will also receive immediate support from his family which will enable him to obtain what other support, professionally or otherwise, which he requires.

[67] Accordingly, I make the following orders:

(a) All previous temporary protection orders are discharged.

(b) By consent, a final protection order is made against Mr [Cline] in favour of [Elaine Donovan], [Bonnie Donovan] and [Dale Donovan].

(c) That it is a special condition of all protection orders that Mr [Cline] not be permitted to live or be present at, the property at [location A] subject to the following terms:

(i) The condition will come into effect on 30 November 2021.

(ii) Mr [Cline] shall be entitled to visit the property no more than four occasions in any calendar year, provided that he gives two

weeks written notice to Mrs [Jamie Donovan] and that such visits are to occur between 9.00 am and 7.00 pm.

(iii) Mr [Cline] shall be entitled to be present at the property at other times with the express consent of Mrs [Jamie Donovan].

_____
Judge JP Geoghegan
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 14/10/2021

Addendum

Upon the issuing of this judgment it has been drawn to my attention that at paragraph 64 of the judgment I recorded that there could be no more than six visits per year by Mr [Cline] to the [location A] property whereas the orders recorded at paragraph 67(c)(ii) refer to no more than four visits in any calendar year. There has been a clear error in the reference to four visits in paragraph 67(c)(ii) rather than six and I now correct the judgment to record that paragraph 67(c)(ii) is to be as follows:

"Mr [Cline] shall be entitled to visit the property no more than six occasions in any calendar year, provided that he gives two weeks written notice to Mrs [Jamie Donovan] and that such visits are to occur between 9.00 am and 7.00 pm."

This correction is made pursuant to r 204 of the Family Court Rules 2002.