

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

**IN THE FAMILY COURT  
AT PALMERSTON NORTH**

**I TE KŌTI WHĀNAU  
KI TE PAPAIOEA**

**FAM-2009-054-000828  
[2019] NZFC 1586**

IN THE MATTER OF THE CARE OF CHILDREN ACT 2004

BETWEEN [GRACE SHIELDS]  
Applicant

AND [HUNTER BUCHAN]  
Respondent

Hearing: 4, 5 & 6 March 2019

Appearances: M Dobson for the Applicant  
Respondent appears in person  
P Reid as Counsel to Assist  
K Crooks as Lawyer for the Child

Judgment: 13 March 2019

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**DECISION OF JUDGE J F MOSS**

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[1] [Clara] is the only child of the parties. She was born in [date deleted] 2007. She will be 12 this year. She is in Year 7 at intermediate school.

[2] The history of the litigation in relation to [Clara] is complex and has involved multiple applications to the Court, multiple decisions, and changes in the way in which the Court has imposed a legal structure on her parents.

[3] Central to the father's continuing participation in the litigation is his deeply held desire to share the care of [Clara] 50/50 with [Clara]'s mother.

[4] Central to the mother's continuation of litigation is her belief that the father's parenting of [Clara] has exposed her to risks and that his parenting time should now be severely limited. The risks she perceives to [Clara] is that her father will impose his point of view, and his world view on his daughter. Inherent in her concern about his parenting is her fixed belief that the father has influenced [Clara] to believe that she should be in her father's care for half of her time, and that that influence has been active on [Clara] since she was a pre-schooler. She is afraid for [Clara] that the father's other fixed views, which are abusive and insulting of the mother, will also figure prominently in the content of his time with [Clara], which will expose her to such disjointed reality that her psychological wellbeing will be compromised.

[5] Inherent in the father's rigid view that [Clara] should be in his care 50/50 is his belief not only that she wishes to be in his care 50/50, but that she is entitled to have the Court implement her wish. His energy and focus in attempting to force the mother to complement that routine, after the decision of Judge Black in November 2016 led to a suspension of his care of [Clara].

[6] There is no doubt that [Clara] has expressed a wish to share her time between her parents. She has expressed other wishes. She wishes her parents to be happy. She wishes the litigation would stop.

[7] In any dispute related to the division of a child's care and resolution of disputes between guardians the Court must ascertain and take account of the wishes of the child. For [Clara], she has met and been interviewed by three different lawyers for her, two social workers and one Judge.

[8] It is necessary for a full consideration of these proceedings to refer back to judgments of Judge Binns in 2011 and 2012, of Judge Black in 2016, and of mine in 2017 and 2018.

[9] Although, early on, there were practical matters of parent craft which both parents raised concerns about, recently the parenting dispute has focussed on whether the Court will implement the wishes expressed by [Clara] in words, as the father seeks,

or whether the Court will take a broader view of consideration of her best interests as her mother seeks.

[10] There is no doubt that both parents love [Clara] dearly. She knows that. She has good relationships with both of her parents, which are warm, attentive, engaged and appear to offer some richness in diversity to [Clara].

[11] The problem is that each parent holds their views strongly, and there is no possibility of compromise. In the proceedings between 2014 and 2016 this was viewed by the Court as competitive parenting, with a win/lose mentality where the conflict between the parents was seen as the primary adversity for [Clara]. Neither parent was prepared to accommodate the other.

[12] By then, [Clara] had been living nine nights a fortnight with Mum and five nights a fortnight with Dad since 2012. As a pre-schooler, this was an arrangement which recognised and also then enhanced the relationship which [Clara] was able to have with her the father. At the point that [Clara] was three or four years old she had spent more time in the primary care of her mother than of her father. It is a testament to both parents that by the time Mr Coyle, the psychologist retained in 2014, observed [Clara]'s relationship with each parent, he observed an equivalence of attachment. That enables the Court to have confidence that both parents offered a good enough capacity as a parent and used that capacity to engage with and care for [Clara] in a safe and kind way which met her needs.

[13] When the father applied to vary the arrangements in September 2014 he sought to move [Clara]'s care to 50/50, on the basis that that was what she had been seeking since she had been three.

[14] The father said that it was important for the Court to listen to and implement [Clara]'s wishes. The mother said that [Clara]'s express wish reflected her father's wish, and that her best interests required a different consideration of her needs. A careful examination of the early affidavits indicates the father's determination to acquire a half share of [Clara]'s time was first expressed when [Clara] was three. Even if she expressed that she agreed with that idea, at three years old she was not capable

of understanding the concepts of division of time, and her views in relation to division of time and routine were not matters which the Court would take into account, because any expression of that view would inevitably be tainted by parental influence. That conclusion arises from my understanding of the cognitive development of three and four year olds.

[15] However, by the time [Clara] was seven her father asserted her rights to have her expressed wishes for division of time implemented. At that point, his case was based on the obligation of the Court to implement [Clara]'s wishes.

[16] Mr Coyle, assessing [Clara], reported on the equivalence of the relationships with both parents, and recorded pros and cons to a change in the care of [Clara]. He recorded that an advantage in the change to the father's point of view was that it would give effect to [Clara]'s expressed wishes. There were other advantages and disadvantages.

[17] The Court decided,<sup>1</sup> that [Clara]'s care would be divided eight nights to the mother and six nights to the father. The father's oral evidence before me was that the order effected six and a half days in his care and seven and a half days in the mother's care. Having also calculated the effect of shared holidays, he gave evidence that the deficit for him in terms of achieving the 50/50 split was 13 days in the year.

[18] After the release of Judge Black's decision, the father embarked on a campaign to impose on the mother so much that she would agree to a straight 50/50, or week about care regime. He texted, abused the mother, threatened abuse to the child, and confirmed to the mother that he had indeed showed the child affidavit evidence filed by the mother, in order to prove the mother's determination not to permit the child's wishes to be implemented. The mother sought to review the Court's order, on the basis of the father's behaviour. That application was placed on notice, and the father then brought the child to Court, embroiled her in an intemperate exchange both with Court staff and with Court security staff. As a result of that confrontation, the Court suspended the father's contact with [Clara].

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<sup>1</sup> Judge Black, November 2016.

[19] In essence, however, the dispute remained what it had been throughout, which is that the father asserted the child needed to have her expressed wishes implemented, whereas the mother considered that the Court should be taking a broader view and considering her best interests and implementing those. Inherent in the mother's point of view is the proposition that 50/50 sharing of her care is not advantageous to the child, not because of consideration of merits of that sharing, but because the father continued to engross the child in adult issues, and in denigrating the mother.

[20] This focus of the mother has led to an omission of her consideration of the benefit to [Clara] of 50/50 care. She has been, understandably, distracted by the father's strength of attitude, and incomplete presentation of the situation (as she sees it) to an extent that she rejects the 50/50 division mostly on the basis that it will expose [Clara] to a style of parenting for half of her time which is focussed on belittling and denigrating the mother. Put another way, the mother's opposition relates to the effect on [Clara] of the father's parenting style, not on any objection in principle to sharing [Clara]'s care.

[21] After December 2016 the Court suspended the father's contact and required that his ongoing contact would occur at an approved supervised contact provider. For six months, the father did not see [Clara]. From May 2017 the father saw [Clara] at supervised contact as requested. Now, 18 months later, he said that he did that because he understood that the meaning of the Court's Minute of 13 April 2017 was that if he did that, his contact would be restored as it previously had been. He focussed, during the hearing before me, repeatedly on the words in that Minute<sup>2</sup> "resume good contact". The paragraph in fact is more fully quoted, in context, with the five words rather than the three. The relevant five words are "progress towards resuming good contact." The whole minute reads:

[1] Judge Black decided in November 2016 that [Clara] should be in the care of her parents on a shared basis, spending eight nights a fortnight with her mother and six nights per fortnight with her father. She has been a client of the Court since she was a baby. She is now nine years old. There have been many applications made. Mr [Buchan] has relentlessly pursued his claim to equal sharing of his daughter's time. Within days of Judge Black determining the matter, in chambers, and without the evidence being contested, Mr [Buchan] renewed his campaign to secure the care of his

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<sup>2</sup> Minute of 13 April 2017, para [3].

daughter on a 50/50 basis. The text messages which appear in the evidence of Ms [Shields] portray that while disappointed, because she had preferred a 9:5 split, she was clear that [Clara] needed the litigation to finish. She was clear that she could live with the arrangement. She begged Mr [Buchan] to take the same view.

[2] By the end of a month of text messaging, Mr [Buchan] had repeatedly threatened to Ms [Shields] that he would show [Clara] the evidence, including evidence from some years back. On 23 December 2016 he brought [Clara] to the Family Court office. During an exchange between Court staff and Mr [Buchan], [Clara]'s wellbeing was significantly compromised in a situation where her father exposed her to involvement with adult issues and matters relating to the litigation. By that time he had, in many different ways, been informed that [Clara] wished the fighting about her would stop. Exactly what happened at the Court office on 23 December 2016 is not yet determined, and may need to be.

[3] However, it remains clear that it is essential for there to be progress for [Clara] towards resuming good contact with her dad. Her dad seeks an immediate resumption of the division of her care.

[4] The system of [Clara]'s care for a number of years has included substantial time with her father. It is likely that that needs to be resumed in some form or another. However, it is unclear whether the father can now accept the Court's jurisdiction, and comply with orders. The matter is to be set down for a day for hearing. It will be heard on 16 May. Mr [Buchan] is directed to file updated evidence in relation to his proposals not only for the resumption of the care of the child but also for the protection of her from the on-going disputes which have dobbed her care. That evidence is to be filed and served no later than 2 May. The mother is directed to file in response by 8 May. A pre-hearing conference may be necessary. That can occur on 11 May at 3.45 pm.

[22] However, unbeknown to the Court, the father's next 18 months of behaviour was conditioned on those three words in the April 2017 Minute. In light of that, the father's frustration is understandable. However, his refusal to accept a need to challenge his own approaches has led, over that time, to the likelihood of a resumption of shared care becoming diminished. His responses to the mother, and her counsel through that time have continued to demonstrate that the father's attitude to the mother leads to his being abusive towards her.

[23] By May 2017 the father had retained counsel who assisted the father with the filing of an affidavit. Although the affidavit is in the father's name, when he gave oral evidence before me, he said it was an affidavit more written by that counsel than by him. He stood aside from any of the sentiments in that document, which included confirmation that he now perceived that he had acted adversely to [Clara] in taking

her to Court, and that (abbreviating in an extreme way) he would do anything, therapeutically, which the Court thought he needed to do to restore his relationship with his daughter.

[24] In oral evidence before me the father said that he commenced seeing [Clara] at supervised contact as a favour to me. Whatever the motivation, the father began to see [Clara] at supervised contact in May 2017 and continued until August 2018.

[25] In that period of time the Court commissioned a psychological assessment from Ms Orr. Her assessment, dated February 2018, included her optimism that the father had gained some insight. The completion of the assessment occurred while Mr [Buchan] was supported by an advocate who is known to the Court as a helpful broker for fathers who have become alienated from the Court system, and who are struggling to understand the process, and the substantive principles upon which the Court acts. During the course of the assessment by Ms Orr the father wrote to Ms Orr proposing a number of steps and recognising that he needed to undertake therapeutic steps in order to satisfy the obligations of the Court to act on the welfare and best interests of [Clara]. These steps were similar to the ones which were listed in the affidavit of May 2017.

[26] In oral evidence before me, Mr [Buchan] said that letter was written by Mr [Forest], and then substantially edited by him, and that although it was sent, he resiled from many of the propositions within the letter, and had, by the time of the hearing before me, returned to the staunch and rigid point of view that [Clara] needed to be with him 50% of the time.

[27] Valiantly and laudably the father tried his best during the hearing before me to avoid insulting and denigrating the mother. He acknowledged in evidence, and while he cross-examined others, that it was important for him not to denigrate the mother. He said that he understood that would be bad for [Clara]. However, he stuck with his proposition that [Clara] should be with him half the time. He was not able to concede that the events which had occurred between Mr Coyle's report (2014) and now mean that [Clara] needs to have time to develop back to the division of care which he seeks.

He was not able to perceive that the mother's parenting was advancing and enabling [Clara] to grow through her middle years of childhood.

[28] During the course of the hearing, it was also apparent that the father considered that the Court had not adequately taken account of and considered his point of view. On the first day of the hearing this led to a careful reconsideration of matters of access to justice and due process. The transcript of evidence will portray a set of questions from the bench to Mr [Buchan] about the nature of the limits on his capacity to receive and understand written language documents. There are, also, within the notes of evidence a number of questions from other counsel about the father's avoidance of focus on learning the written material and being prepared for the hearing.

### **Due process and access to justice**

[29] In 2012 Judge Binns recorded that the father had difficulty reading some of the Court material, and that he "feigned ignorance".<sup>3</sup> She also recorded that some of his interpretations of information and behaviour were "warped".<sup>4</sup> The Judge also noted that the participation of the father at that point may have been affected by his lack of representation.<sup>5</sup> Both parents were unrepresented at that time.

[30] Although I did not count the number of occasions on which the father has been a litigant in a Court convened by me, in the last three years, it is likely to be more than 10. Although the father's manner tends to indicate that he is following proceedings in a halting way, he has not sought specific assistance, because of literacy or received meaning issues. Briefly (May 2017) the father was represented. He has had extensive contact and communication and negotiation with the counsel for the mother and with counsel for the child. He has not, before the first day of this hearing, raised the issue of a limited capacity to receive and understand written language. He did raise that on day one, despite having, by then, avoided meeting with counsel to assist him in these proceedings who was briefed by the Court as counsel to assist the Court. He had

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<sup>3</sup> Judgment of Judge Binns, 3 October 2011 para 13.

<sup>4</sup> Judgment of Judge Binns, 3 January 2012 para 35.

<sup>5</sup> Ibid para 37.

emailed to the Court in insulting terms about the point of view of that counsel and had recorded that counsel's phone consultations with him.<sup>6</sup>

[31] The Court's obligation to ensure that a litigant is able to participate in proceedings is an extensive obligation. The transcript of proceedings will include the exchange between bench and Mr [Buchan] in relation to the limits upon his capacity.

[32] In the absence of the father having raised this issue previously, and in the absence of it being raised by two psychologists who were retained by the Court, and two previous counsel to assist the Court, retained because the father was not retaining counsel, but was not permitted to cross-examine the mother, because of protection proceedings, I elected to continue the hearing, confident that the father had sufficient capacity. Some allowance was made for the father in terms of that capacity. In particular, the Family Court Co-ordinator spent two hours with the father (approximately) on day two reading aloud the psychological assessment of Mr Coyle and Ms Orr. The Court slowed proceedings in order to enable the father to read, either aloud or to himself, passages of the documents. There were also times when the Court declined to enable that.

[33] Alongside this consideration, I record that the father delayed receipt of the bundle of evidence which was important to his preparation for the hearing. When delivery of the documents was first attempted, he was out of town. This occurred on the Saturday before the hearing. He advised he would be available by about lunch time on Sunday, but after several attempts, phone contacts and trialled arrangements, the documents were not in fact provided to the father until 8.00 pm the night before the hearing. He had been at the beach. He had social events to attend to. All of the material in the bundle had been available to the father previously, but he still professed inadequate knowledge of the documentation on several occasions during the hearing.

[34] The father also sought to file an updated affidavit on the morning of the hearing, despite the Court's directions on Thursday 28 February that each parent would have the opportunity to update their evidence viva voce.

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<sup>6</sup> Previously, the father had been warned about recording Court proceedings in 2012 (Judge Binns' decision of 21 May 2010 para 3).

[35] In order that the matter should proceed, rather than be aborted, I permitted the filing of that material. However, this material did not add to the quality of the Court's consideration of [Clara]'s best interests. It provided chilling evidence of the father's contemporary attitude to the mother, to her supporting friends, to officers of the Court and the Court itself that the father continues to be rigidly determined that his position is the correct position, and the mother's position is psychologically abusive of [Clara]. Further, the father alleges psychological abuse against counsel, the psychologist, and the Court.

[36] I have earnestly attempted to adequately provide for due process for the father. Not only is it his right to be heard, but [Clara]'s best interests require that her father is considered in his best possible light, because his position could be seen as so unreasonable that the Court should not countenance it. That would impose upon [Clara] a risk of Adverse Childhood Experience (ACE) which is researched and related to vulnerability in adolescent and early adulthood. This vulnerability suggests increased risk of a number of sub-optimal behaviours in adolescence, early adulthood, and as a first-time mother. One of the ACE factors is the absence from a child of one parent.

[37] I have considered the nature of the father's cross-examination of the psychologist, and the cross-examination by Mr Reid of the mother, reflecting as it does the father's case. Both illustrate the father's comprehension of the case as a whole, and a strong expression of his own priorities.

[38] I am satisfied that the father adequately understood the material before the Court, contributed to it substantively, and enabled the Court to bring a critical mind to the evidence of others. I had offered the father the opportunity to instruct Mr Reid in to represent him, after the completion of the evidence of Ms [Shields]. In an unusual step to facilitate due process I indicated that the Court would fund Mr Reid, in that role, if Mr [Buchan] undertook to meet his costs. Mr [Buchan] delayed deciding to retain Mr Reid, and finally declined to do that.

### **The father's theme**

[39] The father was not prepared to consider any outcome other than implementation of the views expressed in words by [Clara]. There was no consideration in his evidence that a child's views can be and often, most valuably, are discerned from behaviour and the subtext of spoken word. The father portrayed no understanding that a child's expressed words may be impacted, developmentally. The father's evidence displayed no understanding that his actions in November and December 2016, will have impacted adversely on [Clara]. The father denied that his communication to the mother and her counsel, which includes derogatory and abusive statements, will have had an adverse impact on her, and therefore on [Clara]. He continued to accuse the mother of being overprotective. These views have predominated the proceedings for some years.<sup>7</sup>

[40] The father believes that the Protection Order which was made in 2018 was based on the Court making an adverse finding against him related to an event in 2009 when he broke a window at the mother's home, by accident, but in the heat of confrontation. That incident was not mentioned in the Judgment. It was barely referred to at the hearing in August. It was not relevant to my finding that there had been domestic violence and that a Protection Order was necessary.<sup>8</sup>

### **The mother's case**

[41] The mother proposes to have day to day care of [Clara] and that the father has no contact. She is keen to use the communication website called Our Family Wizard, so that communication on parenting matters is retained, centralised in one place, and kept secure. She asks the Court to impose a barrier to the father's further litigation whereby he must seek leave to apply to the Court, which could only be granted if he was to present evidence of therapeutic input and a substantial and lasting change in his attitudes and behaviour related to the mother, the exercise of his rights in terms of [Clara], and his capacity to take some responsibility for his previous decisions and behaviour which have had an adverse impact on [Clara] both directly, and indirectly

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<sup>7</sup> See applications dated 28 September 2011, 7 December 2011, 26 September 2014, Notice of defence 3 August 2011 affidavits and emails from September 2011 and ongoing.

<sup>8</sup> Judgment of J F Moss, 24 August 2018.

because he has undermined and denigrated her mother. This issue has previously been considered by the Court in Judge Binns' decision 12 July 2012. Her Honour said this in addressing a request for an order pursuant to s 141 Care of Children Act:

[27] I have considered the matter carefully. I consider that both parents need to be put on notice in relation to my concerns, not only for the impact on each of them but particularly for [Clara] if they initiate further proceedings. In saying that, I note Ms [Shields]'s position whereby she consented to a restriction on future applications for parenting orders for a period of three years.

[28] While Mr [Buchan] has initiated vexatious proceedings and has demonstrated a lack of understanding of the fact that the Court must make a decision based on [Clara]'s welfare and best interests, and not his view of these matters, I am not satisfied that Mr [Buchan] has persistently instituted vexatious proceedings. He has, however, persistently demonstrated a vexatious stance in past litigation.

[29] At today's hearing he has clearly signalled his intention to institute further proceedings for equal shared care. He needs to be put on notice that if he does so then the ground, "persistently" is likely to be made out and he runs the risk of a costs order being made against him in relation to future proceedings.

[30] I consider also that he needs to take heed of the fact that future proceedings are likely to further damage the relationship between [Clara]'s parents. It is critical, and I have said it before, but I repeat it that the parties, in particular Mr [Buchan] need to put the past in the past and move on.

[42] Mr Dobson in submissions summarised the nub of the psychological evidence. He submitted that the mother has been shown to be protective of [Clara] and able to monitor her wellbeing closely. Mr Dobson argued that the mother has endured significant ongoing abuse and is entitled to some recognition from the Court that that will have caused some reactivity. He resisted the proposition that that behaviour must be seen as overprotective. Mr Dobson emphasised the father's demonstration of his habitual cognitive distortion, noting his inability to understand what was being said, his lack of insight, his minimising his responsibility for his own actions, his misleading the Court and psychologists. Mr Dobson raised concern about the father's resulting incapacity, particularly his incapacity to abide by conditions of orders.

[43] Mr Dobson also emphasised the oral evidence of the Court psychologist that the father has an enmeshed relationship with [Clara], he requires his views to be her views. Mr Dobson drew a connection between this and the expressed view of [Clara]

in relation to having her sharing herself equally between her parents. The mother's evidence described that orally as follows:<sup>9</sup>

Q Wasn't she happy because she was getting something close to what she had expressed a wish for?

A Something close to what her dad had wanted and she was probably, if anything, pleased that he was getting what he wanted. She wants to make him happy, that's really evident, she's a pleaser, that's come out right throughout her schooling, her teachers have commented on that. [Clara] loves to be a pleaser, she wants to make her dad happy, she wants to say the things that are going to make her dad happy.

Q So are you saying that the happiness that she expressed at that time isn't an accurate measure of her views?

A I believe that she wants to make her dad happy and she'll do whatever it will take to do that.

[44] Mr Dobson stressed the Court's obligation to [Clara] is to resolve the matter in [Clara]'s best interests. He firmly submitted that no weight should be placed on [Clara]'s views based as they are in involvement in adult conflict and responding to her father's enmeshed relationship.

### **The father's case**

[45] Mr [Buchan] made submissions on his own account. He emphasised the Care of Children Act obligations on the Court to protect children from all forms of violence and to advance their welfare. He noted the priority on joint parental responsibilities as they appear in s 5. He emphasised the legislative behavioural values of cooperation, consultation and continuing relationships in a child's upbringing.

[46] He too emphasises the need for [Clara] to know that the parental conflict has ended. He presented the only solution to that being a 50/50 sharing arrangement. He submitted that the mother had persisted in trying to take the child away from him, and if they shared in her care 50/50 there was a good chance we may not fight again.

[47] The father also is keen to use the communication platform Our Family Wizard. He committed to not denigrating the mother on any level to his daughter, and that he

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<sup>9</sup> NOE page 13, lines 17-28.

would only build up the image of her mother. He noted that his will is structured so that the mother is a significant stakeholder so that if anything happened to him she could continue to care for [Clara].

[48] The overall summary focus of the father's submissions retains two principles. First, [Clara]'s views must be implemented, and second, division of her care 50/50 between her parents would secure an end to the conflict.

### **Submissions of lawyer for child**

[49] Ms Crooks built her case on behalf of [Clara] around three themes. [Clara] needs to end the conflict. [Clara] needs protection and needs to be safe. [Clara] has expressed views, and the Court's task is to decide how to take them into account.

[50] Ms Crooks recommended the Court consider outcomes consistent with her views but that the Court is not obliged to go along blindly with them. Ms Crooks submitted the Court needs to identify welfare factors for [Clara] which weigh against her views and carefully consider the counter-veiling factors. She emphasised that [Clara]'s wish is to see her father regularly. She has expressed a wish, as recently as three days before the hearing that she wishes to share her time equally between her parents. In respect of the genesis of her view, Ms Crooks pointed to [Clara]'s age and stage, to the evidence from the psychologist about enmeshment, and to the father's consistent promises that he would fight for his daughter. Ms Crooks accepted, also, the hypothesis posed by the psychologist that [Clara] is idealising her father.

[51] Factors weighing against implementation of her spoken views were, in Ms Crooks view as follows:

- She has grown in confidence, at school, during the period where her care has been entirely different from her views.
- Her academic progress has increased at school in that same period.

- This is a marked improvement during the last two years, in which there were two periods of no contact, each about six months and one period of very strict supervision over 14 months.

[52] Addressing issues of safety, Ms Crooks referred to previous findings of psychological abuse and noted the connection that problems for the father become problems for [Clara]. Put another way, the father has not demonstrated a capacity to shield [Clara] from conflict. Ms Crooks noted that despite support and counselling, including a lengthy connection with Manline, and constructive support from a father's advocate, Mr [Forest], he has no insight on the impact of his behaviour on the child, and sees no need to change. Ms Crooks highlighted Ms Orr's evidence that, although she is persistently optimistic, she agreed that the evidence shows that the father has no capacity for change. Most telling of all, in Ms Crooks' view, is that the father refuses to see [Clara] when she wants to see him. As Ms Crooks put it, it is all about the father. While acknowledging the primary importance of engagement with two parents, the key indicator for a relationship with both parents is that it needs to be safe for the child.

[53] Ms Crooks summarised the risks in implementing the mother's proposal. She referred to Ms Orr's evidence that [Clara] would idealise her father and blame herself for the absence of contact. This may lead to mental health issues in adolescence, early adulthood, and potentially postnatally. More positively, Ms Crooks summarised Ms Orr's evidence that [Clara] has been growing resilience, and she may grow sufficient resilience to progress through the absence of her father, while remaining psychologically healthy.

[54] The advantage of no contact is that there becomes no risk that [Clara] will be exposed to the conflict. There is no risk that her father will refuse to see her if the Court does not permit contact. Additionally, [Clara] will not be exposed to the father's views of the Family Court and the litigation process and the obstacles to his rights. There is no evidence that the mother exposes [Clara] to the litigation conflict. She has been seen over years as being an effective shield.

[55] If the father's care of [Clara] is unsupervised, Ms Crooks submitted that there were uncertainties which exposed [Clara] to detriment. Ms Crooks referred to

Ms Orr's prediction that if the father receives a full equal share of [Clara]'s care he may go on to seek more. Ms Crooks submitted that [Clara] will necessarily be exposed to the father's views of the mother, of the conflict, and of his assertion of rights. Ms Crooks described a return to unsupervised contact as a gamble which was unwise, when [Clara] is doing very well. She is concerned that [Clara] would regress, increase her anxiety to old levels and with a concomitant reduction in her self-confidence.

[56] From Ms Crooks' point of view the best outcome for [Clara] is that she will have supervised contact which her dad exercises. That will protect her from the father's adverse comments. Ms Crooks emphasised, and I accept, that the father has demonstrated he can be a great dad.

[57] If, however, the father does not take up the contact there is less risk for [Clara] in the Court declining to authorise contact than in contact being ordered, and the father deciding not to take it up. Ms Crooks proposed an order for supervised contact, but that the father is to advise if he is to commit to it. If he will not commit to it, then she recommends the Court makes an order for no contact. Ms Crooks supported the provision within the order of a barrier to further litigation.

### **[Clara]'s views**

[58] [Clara] expressed her views to her lawyer, on many occasions, and to me. She wants her parents to stop fighting. Judgments have recorded that consistently since 2012. She wants her parents to be happy. These two simple wishes were expressed to me in a meeting during the hearing. She has prioritised fairness and equal division of time also. Although I checked with her about fairness, and how important that was to her, she did not agree that fairness is central. That variability is not concerning. Although a judicial interview is helpful, the views [Clara] expressed to her lawyer are likely to be more reliable, if they are constant, over time.

[59] Her views about seeing her father have been consistent over time, to both Ms Crooks, and Mrs Bateman who was counsel for her, until mid 2017. She wishes to see him and be in his care for half of her time. I accept that [Clara] has expressed this view.

[60] The Court is obliged to take her views into account. The Court is obliged to give paramount importance to her best interests. Reading the early sections of the Care of Children Act together, receiving [Clara]’s views about her own life and considering them respectfully forms part of acting in her best interests. Taking her views into account means listening to and considering her views. It means contributing her views to the overall pool of evidence, from which the Court must decide what is in her best interests. It means considering her views in terms of reliability, developmental and age-related indicia of influence on her thinking and perception, and the presence and importance of external influences on her.

[61] The evidence about the context for her views, and their reliability and extent of influences comes from her mother and her father and from the Court’s psychologists. The father has repeatedly asserted that [Clara] has said to him that she wants to live with each of her parents for equal time. Her mother agrees that she says that. The father denies putting the idea to [Clara] or recommending it to her. The mother rejects this assertion, demonstrating in the hearing through cross examination the link between the father’s wish being first expressed and then his statement that this was what [Clara] wanted.<sup>10</sup> The mother considers that [Clara]’s primary concern is to make the father happy.

[62] Mr Coyle recorded that [Clara] wanted to share care with equal division of time. He noted advantages and disadvantages, and especially reserved caution about shared care if the mother’s experience of the dynamics in the relationship proved to be accepted by the Court after consideration of the evidence.

[63] Ms Orr in assessing [Clara] did not directly ascertain her views. Rather, she interviewed [Clara] and observed her with both parents, commenting on the strength of her relationships with both parents, and the multi-factorial reasons for the change and improvement in [Clara]’s functioning since she stopped having contact with her father.

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<sup>10</sup> See also para [39] above for this development.

[64] Ms Orr commented on the other expressions of [Clara]'s wishes. She described the factors contributing to [Clara]'s expression. Summarising her responses to Mr Dobson in cross examination<sup>11</sup> these factors are:

- [Clara]'s age
- Her idealising of her dad because she is not currently seeing him
- Her knowledge of his promise that he would fight for her
- The enmeshed state of the relationship between Mr [Buchan] and [Clara].

[65] None of these factors give the Court confidence that [Clara]'s best interests will be advanced by taking the only segment of her views which the father emphasises at face value, and ascribing it the reliability, truthfulness and maturity of an opinion expressed by an age competent witness.

[66] Other evidence is consistent with her views that she wants her parents to be happy, that she wants the fighting to stop and that she wants to see her father. I consider that the Court would be failing in its duty to [Clara] if these views were not given significant weight. Although her wish that her parents would stop fighting is not one which the Court can grant, it gives the court a strong steer towards the key to solving this matter. An end to war is in [Clara]'s best interests. Chronic conflict for children is linked to disruptions in adjustment in adolescence and early adulthood. It saps adult energy. It distracts adults from expending creative energy on their children. Taking account of this wish, the Court should impose an outcome most likely to resolve the expressed conflict to which [Clara] is exposed. Her father has continued to seek more parenting time with [Clara], using fair means and foul.<sup>12</sup> The mother has agreed, compromised and settled proceedings.<sup>13</sup> She has ignored communication from the father (August 2018 to date) which could be seen as breaching the Protection

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<sup>11</sup> NOE p 204.

<sup>12</sup> Contrast use of litigation processes 2014-2016 with the hateful campaign he mounted in November and December 2016.

<sup>13</sup> Ending protection proceedings by accepting undertakings twice, agreeing to extend [Clara]'s time with her father from 5 nights to 6 nights per fortnight.

Order. She has continued to try to parent [Clara] with tolerance and generosity, in the face of excoriating attack by the father. It is clear to me that the mother has done her best to make the fighting stop. The father has not.

[67] The second of [Clara]’s wishes is that her parents should be happy. Aside from agreeing to the father’s requests for more time with [Clara], the mother has done other things to contribute to parental satisfaction. I accept her evidence that she talks with [Clara] about the fun and happy things she does with her father and his family. There is no evidence that the father takes a similar stance. His attacks on the mother can only be seen as an attempt to sap her happiness. Thus, the mother can be seen as demonstrating a capacity and willingness to grant [Clara]’s wish. The father cannot.

[68] The Court is not in a position to assist with parental happiness. That is in the hands of the parents.

[69] The next of [Clara]’s views is that she wants to see her father. Since the care regime was changed in December 2016 the father has had the benefit of an order for contact, on a supervised basis. He has seen [Clara] in this context for 14 months. He has refused to see her for 12 months.

[70] The Court does have the power to impose a solution which gives effect to the last of [Clara]’s consistently expressed wishes – to share her time equally. That can only occur if it is also in her best interests. The evidence before me leads me to conclude that imposing that parenting decision on the parents and on [Clara] is not in her best interests.

### **Psychological evidence**

[71] The Court has commissioned psychological assessments from Mr Coyle in 2014 and from Ms Orr in 2018. Their conclusions differ to some extent. Both psychologists observed a secure attachment for [Clara] with both of her parents. Both saw the mother and the father parenting competently, moment to moment. Mr Coyle recorded the father’s determined style and criticised the mother for being over reactive and over protective. He ascribed to the mother the majority of the responsibility for ongoing conflict. Unfortunately, his report contained factual errors about the

Domestic Violence Act proceedings, which appear to have been important in his assessment.<sup>14</sup> It also did not allocate credit to the mother for settling issues by agreement, rather than continuing the conflict. He strongly recommended that the conflict needed to end, and challenged the mother to enable that, by further compromise. His report did not record the father's compromise capacity.

[72] The report from Ms Orr came to a different conclusion in relation to the end of conflict and what [Clara] needed. By then the Court had made factual findings in relation to disputed matters,<sup>15</sup> and the awful storm which occurred in the wake of Judge Black's judgment in November 2016 had occurred. Each psychologist was looking at a different landscape. In her written report, Ms Orr recorded the security of attachment noted above. She recommended that the father undertake a therapeutic programme, with considerable detail, and recorded her optimism that the father had become more insightful and prepared to alter his stance, to accommodate what Ms Orr considered [Clara] needed in order to have a full relationship with her father. Ms Orr did not accept the wisdom of equal sharing. She considered that contact for the father needed to resume in careful steps, after he had undertaken the therapeutic steps she recommended.

[73] By the time of the hearing it had become clear that the father was not prepared to undertake this programme. He blamed Mr [Forest] for the content of the letter<sup>16</sup> in which he appeared to display insight, remorse and determination to put things right. He distanced himself from any of the concessions in the letter. The effect of the father's stance was to confirm the inevitability of continued conflict.

[74] As a result, Ms Orr was questioned orally about the effect on [Clara] if her father's parenting style remained unchanged. Ms Orr reiterated her conclusions about the father's cognitive distortions and confirmed her view that the progression of contact would need to be carefully managed. It is her view that [Clara] needs and wants a relationship with both parents, and that, for the sake of her safety, supervision needs to remain until the father is able to demonstrate changes in his attitude towards

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<sup>14</sup> He reported the mother had sought protection orders 5 times when in fact there had been two applications.

<sup>15</sup> Judgment of May 2017.

<sup>16</sup> 29 January 2018.

the mother, and insight into the damage his behaviour has caused [Clara]. When questioned about how she concluded that [Clara] had suffered, she noted the significant progress in terms of how bold [Clara] is,<sup>17</sup> and how her mother reports her capacity to lead has improved. Because the mother's context between the written report and the hearing had not changed, Ms Orr's observations of the mother in the report remained unchallenged.

[75] In coming to her conclusions, Ms Orr emphasised that the loss of a parent is associated with adverse risk in adolescence. She was clear that children thrive better when parented by two psychologically healthy parents. She was, however clear that where circumstances do not meet that standard, the court should be taking care in ordering unsupervised contact. Ms Orr was clear that, in the absence of undertaking the kind of therapeutic programme which she had recommended in her February 2018 report, the father did not offer psychologically healthy parenting to [Clara]. In particular, she noted three aspects leading to her conclusion. These are:

- The cognitive distortions which are evident in the father's thinking and presentation
- The enmeshed relationship he has with [Clara]
- His abusive undermining of the mother.

[76] In addition, Ms Orr emphasised the effect of ongoing conflict. She saw that as a continuing risk, no matter what the division of [Clara]'s time<sup>18</sup>. She considered that the father held the key to the ending of conflict, because she considered that it was the father who continued to strive for equal division of care. Ms Orr illustrated her concern about the father's insistence by referring to the language and manner of the father's evidence and questioning<sup>19</sup>. During cross-examination by Ms Crooks Ms Orr said:<sup>20</sup>

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<sup>17</sup> NOE p 211 line 5.

<sup>18</sup> NOE p 226-227.

<sup>19</sup> NOE p 229-230.

<sup>20</sup> NOE p 236 line 24.

Well his style of relating to the world and I think that's really well exemplified in the emails that are attached to varying affidavits. He makes statements that are non-negotiable in what he makes but what he says is what it is and that is the truth...

[77] Ms Orr also referred the Court to a table to illustrate the effects of ongoing conflict on [Clara].<sup>21</sup> Orally, Ms Orr referred to risks to [Clara]. She saw that she would become embroiled in the father's world, and eventually accept his view that his care of her must be equal to the mothers. Secondly, Ms Orr considered there was a risk for [Clara] that she would internalise the turmoil leading to the risks identified in the article relied on. I accept on the basis of Ms Orr's evidence and on the basis of the extensive review contained in this journal article that the prediction is persuasive and likely. The question for the Court is the extent to which this risk is worse than an outcome whereby effectively [Clara] does not have the opportunity of being parented by her father.

[78] Ms Orr considered that the chance of the father accepting the need for major shift in emotional relating and growing his capacity to relate in a reciprocal and emotionally intelligent way was low. Without this shift, the father's potential to step away from striving towards his belief of equal division of [Clara]'s time appeared low. Ms Orr confirmed that she had seen no evidence of the kind of shift that was required and that there was no evident progress despite 30 or more sessions at Manline (an agency retained by the Court and social agencies to deliver violence intervention programmes). Mr [Buchan] was able, in evidence, to explain in detail and demonstrate what he had learned there, in ways he applied these to his businesses. When he was asked to demonstrate what he learned in relation to issues with [Clara] his evidence displayed no insight or understanding of the conflicted position he was putting her in.<sup>22</sup> He asserted the rightness of modelling himself for [Clara], as a rigid position, to enable her to learn the rightness of his position.<sup>23</sup>

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<sup>21</sup> Annual Research review: Interparental conflict and youth psychopathology: an evidence review and practice focused update, *Journal of Child Psychopathology and Psychiatry* (2018) 374-402 at 395. Figure 2. For ease of reference this figure is reproduced as an appendix to this judgment.

<sup>22</sup> NOE pp 181-188.

<sup>23</sup> NOE p 187 lines 21- p 188 line 2.

## **Cognitive distortion**

[79] Cognitive distortions are conclusions based on observable data which are not supportable by logical analysis and not amenable of amendment when challenged. The father's belief that the Court's decision in granting the mother a Protection Order was based to his breaking a window at the mother's home in 2010 is one example. An examination of the judgment<sup>24</sup> will show that is not a matter which the Court considered. Another is the father's fixation on the words in a minute of the Court in April 2017 "resuming good contact". What the Court said in describing procedural steps was that these were precursors of "progress towards resuming good contact". This distortion has conditioned the father's expectation of and frustration with the Court process. A further distortion occurred when the father ceased seeing [Clara] at supervised contact. He believed that to do that would risk breaching the Protection Order. Even though reassured it would not, he was not able to meet [Clara]'s wish to see him. Similarly, when asked in evidence about why supervised contact began in May 2017, he said he attended as a favour to me. Another example arose during the hearing when the father stated that Mr [Ramsay], the mother's partner, said during the hearing in May 2017 that [Clara] was afraid of her father. That was not part of the evidence. It is not true. The father's view could not be shifted.

[80] Other examples include:

- His belief that the mother's allegation that he punched her son was continuing to influence the Court against him.
- His belief that the lawyers for the mother were bent on excluding him from the child's life.
- His belief that the Court had not adequately considered evidence about the December 2016 incident because the CCTV footage was not available.
- Matters referred to below (denigration of the mother).

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<sup>24</sup> August 2018.

[81] It appears to the Court that the father has stuck to these views to fortify his conclusion that he would not see [Clara] if it was not on his terms. These are not logical interpretations. His decision does not meet [Clara]'s wishes or needs. The decision accords with his own view. While the court can readily be sympathetic with the distress which the supervised contact causes the father, his erroneous justification only demonstrates the rigid set of cognitive distortions he holds.

### **Enmeshment**

[82] The next concern raised with the father's psychological health, and his ability to interact with [Clara] in a healthy way arises as a result of the enmeshment which Ms Orr saw. Put simply, enmeshment is evident when the feelings of a parent become coextensive with and the same as that parent believes the child's feelings to be. The father has not been able to separate his needs and feelings from [Clara]. For [Clara] this will cause her to be required, psychologically to adopt the father's point of view, despite this being opposite from her own. Over time this pressure will lead [Clara] to doubt the value of and reality of her own views. It will cause her to doubt herself, and to apply great energy to making sure that her emotions and wishes accord with her father. I consider that [Clara]'s expressed wishes to spend equal time with her father and her mother exemplifies this. What is not certain is the degree to which the father has overtly pressured [Clara]. However, his insistent forceful personality and determination that his views will prevail can only have influenced [Clara]. Despite the length of the Court's proceedings, the father has no insight in to the disadvantage of this for [Clara]. He has not meant to cause her harm. And he is not prepared to learn how not to cause her this harm.

[83] Ms Orr described the developmental disadvantage for [Clara] in being exposed to and held within an enmeshed relationship. She attributed [Clara]'s positive development in the last two years to several factors but included in that her freedom from the burden of the enmeshed relationship with her father. She posed the risks of exposure to enmeshment to include development of anxiety and depression, loss of social adjustment and some disruption to schooling. These are matters which the mother raised as concerns which were already occurring in 2014-16. Ms Orr reported

that [Clara] was, early in 2018, an anxious child. She accepts the mother's descriptions that these symptoms have abated since.

### **Father denigrating mother**

[84] The father's constant denigrating of the mother and indirect abusive behaviour undermines her health as a parent. His campaign since the Protection Order was made has been limited to email contact to her Lawyer and to other professionals involved in the litigation. He has alleged that she has been involved with drugs manufacture. He has repeated earlier sexual slurs.

[85] Although the father's affidavit of May 2017 and letter of January 2018 give some cause for optimism that his previous stance in relation to the dynamics in the litigation about [Clara] were capable of resolution, his behaviour since has not borne this out. He has engaged in demeaning and denigrating email correspondence. His unpleasantness has targeted the lawyers for the mother and for the child, as well as the mother herself. He has accused the mother of playing a game in trying to consider the evidence before the Court.<sup>25</sup> He described the mother as "a scorned woman willing to destroy a beautiful girl named [Clara]".<sup>26</sup> He refers to the mother doing a "victory dance at her daughter's expense".<sup>27</sup> On 5 February 2019 he referred to [Clara] as a "victim in the mother's home" and that the mother spent hundreds of thousands of dollars to stop [Clara] seeing her father.<sup>28</sup> The reference to [Clara] being a victim appears to mirror the conclusion that the mother was accepting a role as rescuer, of the victim [Clara].<sup>29</sup> As recently as 11 February 2019 the father repeated his allegation from one of the earliest confrontations, when [Clara] was 2, relating to the mother having sex in front of [Clara].<sup>30</sup> The mother has denied this. Even if it happened it has no relevance now.

[86] In earlier parts of the proceedings the father's content of emails and texts blame the mother for her failure to give in to him. Her refers to her "playing the victim".<sup>31</sup>

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<sup>25</sup> Email to [name deleted] Exhibit F to affidavit of 4 March 2019.

<sup>26</sup> Ibid n 19.

<sup>27</sup> Ibid Exhibit C.

<sup>28</sup> Ibid Exh B and page 303 in bundle.

<sup>29</sup> Report of Patrick Coyle, 2014.

<sup>30</sup> Ibid Exh A.

<sup>31</sup> Bundle page 242.

He mischievously referred to the mother suffering from a sexually transmitted disease.<sup>32</sup> Other abusive behaviour is summarised in my judgment of May 2017.<sup>33</sup> Elsewhere in that judgment I recorded earlier findings of the Court that the father had been arrogant, disrespectful, hurting and patronising.<sup>34</sup> The cumulative effect on the mother of the father's conduct of proceedings and associated email and text communication has been so abusive of the mother, that the Court has found that a protection order is necessary.<sup>35</sup>

## **Conclusion**

[87] Having considered the psychological evidence I am satisfied that to permit [Clara] to have unsupervised contact with her Dad will expose her to a continuation of the unsafe psychologically abusive dynamic observed and described by Ms Orr. [Clara] will not be free of the father's burdens, and the pressure within the relationship that she must accept his points of view. This will, I am satisfied necessarily follow on from unsupervised contact without his undertaking and learning from the therapeutic programme suggested by Ms Orr.

[88] Having reached that conclusion, the Court must consider whether the father will or can take steps towards being able to parent from a psychologically healthy position. He expressed no understanding or acceptance that he needs to challenge his own functioning in order to become a psychologically healthy parent for [Clara]. The father expressed doubt about whether he would take up supervised contact. It is not what he wants, he does not think that it advantages [Clara]. Supervised contact cannot continue in perpetuity, except in the rare situation where a parent accepts that status, commits to attend, and is prepared to accept the responsibility for funding the service. During the middle months of 2018 an option for the father was to fund or contribute to the funding of contact, so that it could be expanded beyond the venue of Barnados. The father did not take that up. However, this decision and his preference not to use the supervised contact which has been provided appear to thwart the wishes of [Clara], to see her father.

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<sup>32</sup> Bundle p 244.

<sup>33</sup> See paras [40] and [55].

<sup>34</sup> Ibid para 24 quoting Judge Binns in 2011.

<sup>35</sup> Judgment of August 2018.

[89] Ms Orr was asked about the lesser of two ills for [Clara]: these are, the Court ordering supervised contact which the father elects not to exercise, or the Court not authorising any contact. Ms Orr considered that it was worse for [Clara] if the father was entitled to contact but did not exercise it. The mother expressed concern for [Clara] if contact occurred irregularly, in that she would experience and re-experience her father's rejection.

[90] I accept the position of the mother and of Ms Orr. Although [Clara] wants to see her father, which is a view the Court endorses as being positive for her, in safe circumstances, the fact is that her father has exercised the choice not to grant her wish, and may do so again, if the Court authorises contact. I am not prepared to expose [Clara] to this risk of rejection. It is the Court's responsibility to act in [Clara]'s best interests, taking account of her wishes. I consider that her wishes for an end to proceedings and for her parents to be happy can only be met by ordering no contact. This frustrates her further wish to see her father. That is not of the Court's doing. The father has elected to thwart that wish of his daughter. I consider it is unsafe for [Clara] to continue to expose her to the real and proximate risk that her father will communicate his rejection of her by choosing not to have contact. Thus, it is the Court's responsibility to decline the father's proposal for any share in the care of [Clara]. The final parenting order is to issue confirming that [Clara] will be in her mother's day to day care. No contact is reserved for the father.

[91] However, Ms Orr recommended to the parents that they consider using a parenting support programme such as Our Family Wizard, which would create a secure and permanent platform for emails, and would enable exchange of information. Thus, [Clara] could, with her mother assisting send her father news, examples of school work, images and so on. The father's interest in recent images of his daughter is a legitimate and ordinary one. Similarly the father could send to [Clara] news of himself and his family, and day to day images. These will be filtered by the mother. I am confident that she will filter responsibly, enabling [Clara] to have up to date information. I recommend that the parents use this platform. The simple use of this platform will not constitute a breach of protection order. Offensive content in messages sent by the father will constitute a breach. Ms Crooks is asked to advise the

Court whether this indirect contact is to be included in an order as contact, or whether the opportunity to use this method of information dissemination may remain informal.

### **Barrier to further applications**

[92] [Clara] needs these proceedings to end. She has become aware of the litigation, particularly since the visit to the Court in December 2016. Ms Orr reported her tearful and anxious state when asked about the issues for her family. This presentation is unusual. It underscores how affected [Clara] had become by the litigation, and by her father's choices. In contrast Ms Orr saw that the mother had made significant progress in addressing the challenges laid down by Mr Coyle two years earlier.

[93] There is no evidence before me tending to prove that the father has begun to accept that his fixed view that [Clara] should be in his care for half her time is unlikely to be favourably considered by the Court. There is no evidence tending to prove that the father has begun to accept that the litigation has an adverse effect on [Clara]. Rather, it appears likely that the father will continue to assert his views, within litigation. It seems more likely than not that his consideration of his rights as a father will overwhelm any consideration of realistic outcome, or adversity for [Clara]. I accept the evidence of Ms Orr that the views arise from personality characteristics that mean that the father has limited capacity to consider [Clara]'s position as separate from his own.

[94] Thus, I consider there is a significant risk that the father will renew his application for equal division of time either by seeking leave to file before the 2 year period has expired, or as soon as it does expire. The Court's power to limit a litigant's access to the Court arises where proceedings have previously been characterised as vexatious, and further proceedings are instituted. This test is met. Judge Binns characterised the father's application in 2012 as vexatious.<sup>36</sup> The father instituted the December 2014 proceedings, basing these on adult expression of [Clara]'s realisations that she will have a stronger bond with her father's household if she has 50/50 care there.<sup>37</sup>

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<sup>36</sup> Judgment of Judge Binns 12 July 2012 para [11] and [12].

<sup>37</sup> Affidavit in support of Parenting order December 2014 para 3.5.

[95] The next tranche of proceedings was instituted by the mother, but the father's actions amount to instituting proceedings, because he has pursued the reinstatement of shared care, in the face of the mother's opposition. Had the father not continued proceedings, they would have ended in May 2017. I consider that his pursuit of the proceedings has been vexatious. He has, by changing his position with the Court, elongated proceedings and rendered them more costly and time consuming, and less likely to succeed. His resistance to an ordinary request for a short holiday overseas led to the mother applying for permission, when there was no adequate reason for the resistance.<sup>38</sup>

[96] This persistent behaviour continues that which Judge Binns found to be vexatious.

[97] I consider that the father has had adequate opportunity to be heard. The Court in fact went to elaborate lengths to enable the father to be heard, by taking a number of steps:

- Counsel to assist the Court has been appointed twice (Mr Cochrane and Mr Reid).
- Hearing days were delayed while the psychological reports were read aloud to the father.

[98] The father's questioning of the psychologists displayed intelligent grasp of the factual issues. His submissions summarised above were clear and competent.

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Judge JF Moss  
Family Court Judge

Date of authentication: 13/03/2019  
In an electronic form, authenticated pursuant to Rule 206A Family Court Rules 2002.

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<sup>38</sup> December 2018.