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**IN THE FAMILY COURT  
AT PORIRUA**

**I TE KŌTI WHĀNAU  
KI PORIRUA**

**FAM-2019-091-000018  
[2021] NZFC 11934**

IN THE MATTER OF      THE CARE OF CHILDREN ACT 2004  
  
BETWEEN                      [ALEXANDER WATKINS]  
                                         Applicant  
  
AND                              [MAYA WATKINS]  
                                         Respondent

Hearing:                      22 November 2021  
  
Appearances:                M van den Bergh for the Applicant  
                                         A Gray for the Respondent  
                                         R Cochrane as Lawyer for Child  
  
Judgment:                    15 December 2021

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**RESERVED JUDGMENT OF JUDGE P R GRACE**

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[1]      The parties are the parents and guardians of three children, [George], now aged 14, [Summer], who will be 12 in [month deleted] and [Alice], who is almost nine.

[2]      The parties are English and married in the United Kingdom in May 2004.

[3] The parties moved to New Zealand about 12 years ago. [George] and [Summer] were born in the United Kingdom and [Alice] was born in New Zealand.

[4] The parties separated in [2017]. The father moved to [the USA] and, subsequently, moved to the United Kingdom where he still resides. He has been in the United Kingdom since approximately March 2019.

[5] The mother and the children reside on a large lifestyle block on [location deleted].

[6] The issues in this case are:

- (a) The long-term care arrangements for the children;
- (b) Whether the children should be home-schooled, or should they attend the mainstream schooling;
- (c) Should the children be vaccinated against COVID-19;
- (d) Should [George] and [Summer] become New Zealand citizens (the younger child would be a New Zealand citizen by virtue of birth); and
- (e) Should [George] and [Summer] obtain a New Zealand passport (the younger child would be entitled to a New Zealand passport by virtue of birth).

[7] The father's position is that he would return to New Zealand on the understanding that the Court places the care of the children with him during week days and half of all school holidays, with the mother having the children on weekends and for the remaining half of the school holidays. His reasoning is that he considers that he can ensure the children attend mainstream schooling, which he sees as being in the best interests of the children. If the Court does not direct that the father is to take on the care of the children on that basis, then he will remain in the United Kingdom.

[8] The father seeks the children are schooled in mainstream schooling, whereas the mother seeks to have the children home-schooled by her.

[9] The father seeks a direction that the children be vaccinated against COVID-19. [George] is eligible for vaccination now. [Summer] would become eligible when she turns 12 under the current vaccination approvals, and [Alice] would be eligible in three years' time as the vaccination approvals stand. (While writing this decision the Government and Health Services are considering approval of the vaccination for children aged 5 years and over). The mother is opposed to the children being vaccinated with the Pfizer vaccine, but has indicated that she would accept the AstraZeneca vaccine if or when it is approved.

[10] The mother seeks that the children become New Zealand citizens. The father's position is that he can see no advantage one way or the other for the children in holding New Zealand citizenship and suggests that that decision is left to the children when they are of an age to make such a decision.

[11] The mother seeks that the children hold New Zealand passports. The father, again, does not consider that there is any advantage or disadvantage to the children and therefore suggests that decision should be left for the children to decide when they are of sufficient age.

[12] This matter has had a chequered history of litigation since 2020. It appears that the first set of proceedings revolved around the father's application to have the children immunised. That application was made before COVID came on the scene. That application was eventually resolved by agreement between the parties and the children received their immunisation vaccines.

[13] With the intervention of COVID there are now the current set of proceedings covering the various matters at issue. There was an earlier hearing in November 2020 which directed that the children, who were at that point being homed-schooled, were to attend mainstream schooling for 2021, and that decision allowed the parents to revisit the schooling matter in anticipation of the 2022 academic year. The matter is being revisited, with the respective parents adopting their diametrically opposed positions.

## **Background**

[14] Prior to separation, the parties had agreed that they would home school the children. “Agreement” may be overstating the position because the father now seems to be saying that he only agreed to home schooling in order to keep the peace within the family unit as the issue of home schooling does appear to have been somewhat of a contentious issue for both parties.

[15] Both parties are highly educated, with the father completing his own university education at Oxford holding a doctorate in [his area of expertise]. The mother is also a qualified [profession deleted] following the completion of her education.

[16] The father currently works for a large international organisation.

[17] The parties attended dispute resolution before the father moved overseas, at which they sought to resolve the care arrangements for the children. An agreement was signed on 23 November 2017 which included provisions for the parties to continue to consult on all important decisions for the children, including their education.

[18] Well prior to separation, the parties had jointly applied to the Ministry of Education for an exemption to enable [George] and [Summer] to be home-schooled by the mother. The Ministry of Education exempted [George] in October 2013 and exempted [Summer] in November 2015.

[19] The father accepts that before separation he had some oversight of the home schooling, but he considers the separation resulted in him no longer being able to contribute to that home schooling and he considered, therefore, that home schooling is no longer appropriate for the children.

[20] The mother did not consult with the father about the home schooling of [Alice] when she applied to the Ministry of Education in November 2017 for an exemption for [Alice]. Her approach seems to have been that as the two older children were being home-schooled, and only one signature was required on the application, she therefore saw no need to consult with the father.

[21] The father says he would not have agreed to [Alice] being home-schooled and that prior to separation he had made it clear to the mother that he no longer agreed with the children being home-schooled. The mother does not accept that the father made it clear that he was dissatisfied with home schooling.

[22] The father considers that the issue of home schooling was one of the issues that brought about the eventual separation between the parents. The mother does not accept that.

[23] The father originally filed his application in 2019 in which he sought that the children be immunised, also seeking that the children attend mainstream schooling, and that the children be relocated to the United Kingdom. That latter application of returning the children to the United Kingdom is no longer pursued. The immunisation was resolved, and the schooling issue remains alive.

[24] The mother has subsequently filed applications relating to citizenship and passports.

[25] The parties agreed to engage a psychologist to give them advice on the home schooling issue, and whether the home schooling the children were receiving at that time was meeting the children's particular needs.

[26] The mother indicated that she was prepared to try mainstream schooling but for a term only. The father was not prepared to accept such a trial and wanted a permanent commitment to mainstream schooling, hence the necessity for the hearing in November 2020.

[27] At that hearing there was evidence called from an educational psychologist who had met the children. What transpired from those assessments was the fact that each of the children scored highly on the intelligence scale, and that the children appeared to be doing well in some academic topics and not necessarily so well in others.

[28] No expert evidence has been called in respect of the children's progress during the past year at mainstream schooling. What has been presented are reports from the school which [George] attends and the school which the two girls attend.

[29] It appears accepted by both parents that the mainstream schooling of the children has not been a success. This is particularly so for the two girls.

[30] The report on [George] has been a positive report from the school but it is not consistent with [George]'s own comments, nor the reports from the mother to the effect that [George] has not enjoyed his time at school.

[31] As far as the girls are concerned, their attendance rate has not been as good as it should be. There has been difficulty experienced by the mother in getting the girls to attend school, and the school has noticed distress on the part of the girls and their reluctance to engage.

[32] The mother puts these difficulties, particularly for the girls, down to the fact that they clearly do not want to be mainstream-schooled. Likewise, she reports that [George] does not want to attend the mainstream school as, according to her, he finds mainstream schooling boring as he does not feel challenged. The girls, likewise, do not feel challenged by the mainstream school.

[33] The father is critical of the mother in that he sees this reluctance on the part of the children as being brought about by the mother, whether deliberately or indirectly instilling her views and preference for home schooling into the children, thus causing the children to adopt her position and, in effect, rejecting mainstream schooling in favour of home schooling. The father's view is that if he had the care of the children during the week, he should be able to overcome this reluctance on the part of the children to ensure education through mainstream schooling is successful.

[34] On the issue of vaccination, it is clear that the mother is opposed to the Pfizer vaccination as she considers it is still an experimental exercise and has not been fully tested. She acknowledges that if the AstraZeneca vaccine is approved by New Zealand, then she would accept that the children should be vaccinated.

[35] The father's position is that the Court should adopt the recommendation from the New Zealand health authorities and government, and have the children vaccinated with the Pfizer vaccine as and when vaccination is approved for their particular age group.

[36] All counsel filed written submissions. I do not intend to address their written submissions at any length other than to say the submissions filed by each counsel were supportive of their client's respective decisions. With respect to their submissions, there was nothing in any of the submissions that was persuasive one way or the other but resulted in making it abundantly clear that the parents were not able to reach a consensus between themselves, thus leaving it to the Court to make the determination for them.

### **The law**

[37] The law in these cases is contained in ss 4, 5 and 6 of the Care of Children Act 2004 ("the Act").

[38] Section 4 requires the Court to make a decision that is going to advance the best interests and welfare of these children, both now and for the future. Decisions of this nature are quite case specific to these children in their particular circumstances. This is not a generic decision.

[39] In coming to a decision as to what may be in the best interests and welfare of the children, the Court is required to take the various principles contained in s 5 of the Act into account.

[40] In this case, there is no suggestion that the children's safety is at risk with either parent. The issues revolve around consistency, communication and the enhancing of relationships between children and parents and extended family members, and the children's sense of identity.

[41] In terms of s 6, the Court is required to take the views and wishes of the children into account. For that purpose I met with the three children in the presence

of their lawyer. I initially met the three children together, and then I spoke with [George] on his own (with counsel present), and then I spoke with [Summer] and [Alice] (again with counsel present).

[42] I was impressed with [George] and [Summer]'s engagement with me. They were very articulate and appeared quite capable of expressing themselves and reasoning behind their expressions. [Alice] was a little quieter.

[43] [George] made it clear that he did not want to attend a mainstream school at this point, although he was not closed to the idea of attending a mainstream school but that should be done at a time of his choosing. He explained that he had found mainstream schooling to be boring. He found that his education, in some areas, appeared to be more advanced than the students in his class, but there were areas where that was not the case. In particular, with maths he is doing work a year ahead of the class. He found the other students as not being committed to education and he found them unruly.

[44] [George] was involved with the school hockey team and would like to have kept that up and he hopes that if home schooling is allowed, he would still be able to join in the hockey matches. From his perspective, mainstream schooling is tiring because he goes by bus to school, leaving home at 8 o'clock, and getting home about four. That interferes with his ability to do swimming, which he was doing when he was home-schooled. He acknowledged that he had a couple of friends at school but did not regard them as being as good as the friends he has developed whilst being home-schooled.

[45] [Summer] made similar comments about her experiences with mainstream schooling and made it quite clear that her preference was to be home-schooled.

[46] The Court is required to give such weight as it considers appropriate, having regard to the maturity of the particular child, to the views and wishes as expressed by the child. The difficulty in a case such as this is that these children were articulate and were clearly able to express their views and their wishes. However, a question must arise as to whether or not those views and wishes have been influenced by their



primary caregiver who, in this case, is their mother, as she is the person they have lived with since the parties' separation over four years ago. Whilst there has been a clear denial of any influence as far as the children might perceive it, and also as far as their mother is concerned from her evidence, nevertheless there must inevitably be influence from the mother over the children as that would be natural and normal within any family unit.

[47] The views and wishes of these children do not, therefore, in my view, carry the day. I do, however, give them due recognition in coming to the decision which I have come to. I say that because if a decision is made that is contrary to the wishes and views expressed by the children, that is, in and of itself, likely to cause distress for the children and that should, if possible, be avoided. However, it is a question of trying to balance the views and wishes against their best interests and welfare as they move into their teenage and young adult years.

[48] The father had requested the Court direct a s 133 report. That request had not been approved by the Court but was left for the Judge hearing this case to determine at the conclusion of the evidence. The father renewed his request for a s 133 report be obtained, primarily, as I understand it, because he is concerned about the influence of the mother over the children's views, and their wishes.

[49] The obtaining of a s 133 report must be necessary in assisting the Court in determining the ultimate outcome in a case such as this. It seemed to me that any s 133 report is unlikely to tell the Court anything that the Court is not aware of, having heard from these parties. There are disadvantages in directing a s 133 report, and the primary one in this case is the delay which is likely to be incurred if such a report was to be obtained. Decisions regarding children should be made in an appropriate timeframe for the children. In this case, these proceedings have taken some considerable time already to reach the point that they have and a further delay, which would keep the children involved in litigation and in some form of hiatus, is contrary to their best interests and welfare, so in my view it is not appropriate to direct a s 133 report and delay matters further.

## Discussion

[50] The first issue to determine is the future care arrangements for the children, namely, should they remain in the care of their mother with some form of contact with their father or, alternatively, should the children be placed in their father's care Monday to Friday and half of school holidays as is sought by the father.

[51] There are a number of factors that are relevant in determining this issue, and in no particular order of importance they are:

- (a) The father's evidence is that he would require a minimum of six months before he could return to New Zealand. This arises by reason of the fact that he is required to give three months' notice to his employer of his wish to terminate employment. He would then be required to sell his home in the United Kingdom, and that is likely to take a minimum of two months. With restrictions on travel, he has allowed an extra month before he could be back in New Zealand. This means that there would be at least a six-month gap between this decision and the father's ability to take on the care of the children, if that were approved. It is accepted by the father that, in the interim, the children would have to remain in the care of their mother.
- (b) The children have been in the care of their mother since the parties separated. That has been the status quo. A continuation of that status quo brings about a degree of consistency. A change in the status quo brings about a change for the children.
- (c) The children have had physical contact with their father when he has returned to New Zealand for holidays. The other contact they have is by video calls but, since approximately May of this year, the two older children have declined to communicate with the father. The only child communicating with the father has been [Alice]. The two older children have expressed a feeling of anger towards the father

for, as they express it, leaving them. There are some concerns in this regard because:

- (i) The children were having video contact with their father until about May of 2021. It is unclear as to what brought about the change in the children's attitudes.
  - (ii) The children have all expressed a wish to spend time with their father if he were to return to New Zealand but, likewise, have made it clear that they do not want to live with him as he has suggested.
- (d) As I have previously mentioned, children are inevitably influenced by the parent with whom they primarily live. This is not any reflection against that parent, in this case the mother, but an expression of the reality of the influence that the primary caregiver normally has over children. Whilst the father has a clear view in his mind that the mother has influenced the children, whether it be directly or indirectly, there is no evidence other than the father's view to support that contention. The factors that persuade me against a finding that the mother has influenced the children are:
- (i) The mother has encouraged the children's relationship with the father.
  - (ii) Despite the two older children not wanting to partake in the video calls with the father, [Alice] has continued to have those video calls on a regular basis. If the mother had been proactively turning the children against the father, then I would have expected all three children to have become disengaged in the video contact.
- (e) There is a concern that there is a lack of communication between the parents. The mother accepts that she does not communicate with the

father because she feels that she is criticised if she attempts to do so. She also considers that there have been occasions when the father has not responded to communication. It is also apparent that the father has shown a lack of communication with the mother. Communication, therefore, is tenuous between the parents and unless both parents change their attitude, communication is unlikely to improve.

- (f) The children do not have contact or communication with the paternal family in the United Kingdom. That is unfortunate because that is part of a child's connection with their extended family. If the father were to return to New Zealand and have the children in his care, then there can be little doubt that he would be able to facilitate communication with his family. However, in my view, the father would also be able to assist in that communication if he remained in the United Kingdom. I do not consider, therefore, that that factor is likely to change whichever country the father resides in.
- (g) Whilst the father has criticisms of the mother's communication with him about issues pertaining to the children, there is no evidence that the care of the children by the mother has been in any way inappropriate.

[52] In weighing these factors together, I come to the view that these children need a decision now, so they know where they stand in the future. It would be inappropriate to place the children "on hold" for a period of six months.

[53] The children's consistent pattern of care has been with their mother over the past four years. Whilst they have experienced contact with their father, albeit limited contact, the concept of the children residing with their father on a semi-permanent basis would constitute a change in that consistency. Whilst I have no doubt the father has genuine and good intentions as far as the children are concerned, nevertheless he has not had the primary care of the children over a lengthy period for some considerable time. The children have got older. Before there could be any suggestion of some shared care arrangement, it seems to me appropriate, from the children's perspective, that the father spends time reuniting with the children and re-establishing

his relationship with them before attempting to move to such a substantial shared care arrangement.

[54] The basis of the proposed shared care arrangement seems to be around the educational needs of the children, rather than any need arising because of safety issues or inadequate or inappropriate care experienced by the children over the past four years.

[55] Taking those factors into account, my view is that the children should remain in their mother's care with contact in favour of the father. There should, therefore, be a final parenting order placing the children in the primary day-to-day care of the mother.

[56] As far as contact goes, there does appear to be consensus between the parents that the father should be able to have physical contact with the children at least every year which should occur over the Christmas school vacation period. The father should be able to travel to New Zealand on every second of those visits and the children should be able to travel to the United Kingdom on the other visit. The father should have Facetime (or such other appropriate electronic contact) with the children once a week.

### **Home schooling**

[57] This clearly is a guardianship issue. There is no presumption that the primary caregiver's views or opinions, in this case the mother, carry more weight than the other guardian.

[58] There is no presumption that the starting point is that the best approach is for children to be in mainstream schooling or education. Any decision must be based around the best interests and welfare of these particular children.

[59] The Ministry of Education have approved these children being home-schooled. That tends to suggest that, in the case of the two older children, the Ministry accepted that the parents and guardians were capable of providing an appropriate and acceptable

standard of education for those children. There is a process whereby the syllabus is approved by the Ministry, so those checks and balances must have been carried out at that time.

[60] The same could be said when it came to the younger child, but the Ministry was probably not aware that the parents were separated and the father was no longer involved in jointly overseeing the education of the children.

[61] Home schooling is said to have a number of advantages in that it enables a degree of flexibility as to when and how the actual teaching of the children takes place. Conversely, the education takes place in some degree of isolation because the children are “home-based”. It is accepted that it is common practice for home-based taught children to meet with other home-based taught children on occasions where they do interact, but by and large the children are educated at their own home.

[62] One of the father’s primary concerns has been accessing information as to how the children have progressed with home schooling. Because of the lack of communication between the guardians, the father has had difficulty in finding out how the children have advanced. There are no formal reports from an independent assessment indicating how the children have progressed.

[63] These children are clearly bright. It is also apparent that they are, in some topics, at a level of education beyond their peers. However in other topics they are either at that level or slightly below. The fact that they are bright children is more likely to be an inherent ability that these children have because they have been born to bright parents. It is not necessarily a reflection of a high standard of education. In saying that, it is not intended to be critical of the mother but one would expect a bright child to be able to cope with home schooling without much difficulty.

[64] Education is much more than academic learning. It involves interaction with other people of a similar age. It involves having to mix with other children of a similar age, some of whom may well prove difficult to get on with. It therefore involves learning to adjust to a whole range of situations and prepare the student for the future and, thus, enable them to get on with a range of people as they move through their

adult life. It involves the discipline of having to do things in a structured way and to do things which people may not like or enjoy. This is teaching a young person how to cope with their future life because they will come across similar situations as they move into adulthood.

[65] [George] was not impressed that he has to travel by bus to school each morning, and home by bus, which he finds tiring. Busing to and from school is, however, a fact of life for probably the vast majority of children in this country. It, likewise, teaches children how to make adjustments and to cope with situations that they may not enjoy.

[66] [George] has clearly coped with mainstream schooling. He is well thought of by his teachers. He is well liked by others attending his school. He is involved in a sports team and has enjoyed the sporting activity.

[67] Likewise, [George] has sporting activities during home schooling. He is involved in swimming when he is home-schooled but is not involved in swimming when attending mainstream schooling because of the timing of the bus trips to and from school. Not surprisingly he wants the best of both worlds, namely, to be involved in swimming but also to retain his interest in hockey and continue with the school team.

[68] The two girls, however, have clearly not enjoyed their mainstream schooling and both have expressed a view that they want to return to home schooling. The letter produced from their school suggests that the views and wishes of the children should be listened to, which seems largely based upon the reluctance which has been noticed from each girl to continue with mainstream schooling. Both parents acknowledge that mainstream schooling has not worked for the girls.

[69] Another issue which arises is whether or not all three children should be treated in the same way, namely, should there be a decision that directs all three to attend mainstream schooling or should this be an individualised approach. In my view it should be an individualised approach because the Court is required to take into account each child in his or her particular situation. In those circumstances I must deal with each child individually.

[70] In coming to that view, it seems that there are some issues which must be common to all three children. The main differences are that as these children mature, their own level of development and maturity is different and each of them is going to experience a different impact from their particular education. One must also balance that against the impact that may occur in treating the children differently when it comes to their own interaction between each other.

[71] [George] is now at an age where he is going to be at secondary school. The two girls still remain at the primary level of education.

[72] As far as [George] is concerned, the mother has suggested that he would be educated at Te Kura, which is the former New Zealand Correspondence School, and that [George] would, therefore, potentially have a tutor assigned to him who would be responsible for overseeing [George]'s education. That oversight would largely come from remote electronic means.

[73] The mother's concern, as far as mainstream schooling is concerned, is that [George] would not have access to a "gifted" programme designed to stimulate or challenge gifted children with their education. She considers [George] as not being challenged in the mainstream schooling whereas her view is, he can be challenged with home schooling which he can do at his own pace.

[74] I have no doubt that both parents want the best for their children, and both want to see [George] utilise the talents which he clearly has so that he achieves the best from his education, thus preparing him for a future move into adulthood.

[75] In my view this must come from mainstream schooling as opposed to home schooling. I come to that view for the following reasons:

- (a) With mainstream schooling [George] is going to have to mix with students that he likes as well as students that he does not like. This is part of any young person's overall education in their development towards adulthood. By cutting him out of mainstream schooling and engaging him in home schooling, these opportunities



are lessened because it is highly probable that [George] would only mix with other home-schooled students who he likes and gets on with, as opposed to mixing with some that he does not feel an affinity with. That mixing and interaction is vital to part of a student's development. Limited interaction, which in my view can potentially come from home schooling, is not, therefore, in the best interests and welfare of [George].

- (b) It is appropriate that young people learn a degree of discipline in having to do tasks within timeframes at certain times of the day, and commit to matters even though they may not want to. This, again, is part of life's development. Home schooling is much more flexible and could be regarded as a more holistic approach. It does not necessarily instil that level of discipline.

[76] Decisions on whether or not children are mainstream schooled or home schooled are quite individual decisions for guardians to make. It is not appropriate for me to substitute my opinions or views in place of [George]'s guardians. I am required to make a decision that is in his best interests and welfare, taking into account the various principles and purposes of the legislation, and put aside personal views.

[77] In taking into account the matters referred to above, I have come to the view that mainstream schooling is in the best interests and welfare of [George] because it exposes him to a greater educational potential as he moves into his mid teenage years, and a greater exposure to a cross section of students of his own age than is achievable with home schooling.

[78] In coming to that view, I have had to balance [George]'s expressed wishes and views, which currently vacillate between mainstream schooling and home schooling but probably favour home schooling, against the conclusion I have come to. In reaching that balance I take into account that, in my view, [George] has not yet been exposed to sufficient life experience to appreciate and understand fully the long term implications and impact that education at this stage of his life is very likely to have on his entire future. It is for that reason that I do not consider that his views and wishes should ultimately determine his decision.

[79] When it comes to the two girls, I take into account their age and their stage of development. The decision that I have come to for [George] is based on [George]'s age and the fact that he is in the secondary school age range. The two girls are still in the primary school age range. It is quite clear that the current mainstream schooling has not worked for these two girls to force them, at their age, into the situation which I do not consider their mother supports, will potentially entrench the two girls in a negative view of mainstream schooling and will have a negative impact on the girls' schooling in the future.

[80] For that reason I come to the view that the girls should be treated differently, and that they can remain in their home-school environment.

[81] However, in coming to that view, I am satisfied that once the girls reach secondary school age that there should be a transition into mainstream schooling at that point so that they can enjoy the same advantages that I consider are available to [George] with mainstream schooling.

[82] In those circumstances, once the girls reach secondary school age, they should transition then into mainstream schooling.

## **Vaccination**

[83] In discussions with [George] and [Summer], both of them indicated that they did not want to be vaccinated. Both indicated that they had completed their own research and did not consider the current Pfizer vaccine as appropriate. [George] was not able to explain what he had actually researched.

[84] With respect to the children, the views expounded by them did seem to reflect the views put forward by their mother.

[85] It was clear, from the evidence, that the mother is opposed to vaccination generally. She has elected not to be vaccinated. She did indicate that once an alternative vaccine is approved, she would have no objection to the children being vaccinated at that point.

[86] Earlier in these proceedings the mother had filed two affidavits from a doctor in support of her opposition to vaccination. She subsequently sought to withdraw those affidavits, but I cannot ignore the fact that those affidavits were from a doctor who is part of a group of doctors who are opposed to vaccinations, and those affidavits are indicative of the stance that the mother has taken in respect of this particular issue.

[87] The father seeks the vaccination for the safety and wellbeing of the children.

[88] It is not for this Court to determine the correctness or otherwise of the directions given by the Director of Public Health and the government on the issue of vaccination. The primary thrust of the advice is that vaccinations are important for personal and public safety, having regard to the current pandemic. It is deemed to be in the interests of each individual to be vaccinated to ensure as best as possible their personal protection from infection or, if infected, to reduce the potential seriousness of the infection on the individual and the potential spread of the virus to other members of the public.

[89] The issue of vaccination is an issue for guardians and as these two guardians cannot agree, they abrogate that responsibility to the Court.

[90] The weight of evidence in this country, and indeed throughout the world, and the stance taken by the government and the Director of Public Health, all suggest that vaccination is important. Whilst individuals are entitled to make choices and whilst children remain subject to guardianship decisions to be exercised by their parents, as their guardians who are deemed to have the best interests and welfare of their children at heart, it seems to me that it is appropriate and proper to direct that these children should be vaccinated when the public health directives provide for it. That means that at the present time [George], at age 14, is able to be vaccinated. [Summer] will be able to be vaccinated following her 12<sup>th</sup> birthday [shortly]. Those two children should, therefore, be vaccinated.

[91] [Alice] is well below the current age level. However, if the rules change or a vaccine is introduced that provides for younger children to be vaccinated

(as seems likely), [Alice] should likewise be vaccinated when she is within the age group approved by the Director of Public Health.

### **Citizenship and passports**

[92] These two issues must be decided upon what would meet the best interests and welfare of these three children in their particular circumstances.

[93] In coming to a view about their best interests and welfare, the relevant principles of s 5 must be applied. The principle of continuity and consistency is relevant here.

[94] The mother wishes to have the children on an equal footing with each other when it comes to their citizenship and their passports. Her reasoning appears to be that if the children were travelling, then they should all be in the same position so as to avoid one child being in a different situation to another, which could result in their being treated differently at immigration or passport control at a particular point. (In the event that the children happened to travel to Australia with two being on United Kingdom passports and one being on a New Zealand passport, the two on the United Kingdom passports would require visas, whereas the New Zealand passport does not).

[95] The father's position seems to be that whilst not opposed to the concept of New Zealand citizenship or New Zealand passports, he can see no immediate advantage for the children so he suggests that this issue be left for the children to decide when they are of an age to do so.

[96] From a practical view, I can see no advantages or disadvantages for the children whichever decision I arrive at, other than the one of consistency for the three children when travelling together.

[97] The factors that, in my view, are important in coming to a conclusion are:

- (a) I think that it is important that the children should all be in an equal position in the event of travel. The prospect to them being split up at

an airport due to a different citizenship or holding different passports, does potentially put them into a difficult situation, particularly if anything untoward were to happen in the course of their travel. They should have consistency in both citizenship status and passport.

- (b) Before the parents' separation, they were in the process of making application for New Zealand citizenship for themselves and for the children. That indicates quite clearly that the parents, both for themselves and as guardians for the children, considered the acquisition of New Zealand citizenship, which would then lead to New Zealand passports, in a positive light. If they had not seen the acquisition of New Zealand citizenship in a positive light, they would not have proceeded with the applications to the point they had before separation.
- (c) The proposal put forward by the mother for the children to acquire citizenship and passports is, therefore, merely a completion of the process started by the guardians before separation.
- (d) The mother's evidence is that she will also complete the process for herself, so it is not as though the children are being considered in isolation.
- (e) There are no disadvantages to the children in holding New Zealand citizenship and passports. They do not lose their United Kingdom citizenship and passport – they would carry dual passports and dual citizenship which, potentially, can hold advantages for them in the future.
- (f) The concern raised by the father that the children should be left to make a decision when they are older is understandable. But if they do become New Zealand citizens now, and obtain New Zealand passports now, they can renounce those later should they choose to do so.

[98] Weighing these factors up, I see no basis for delaying the application for citizenship or passports. In the circumstances, there will be a direction that the children who do not hold New Zealand citizenship or New Zealand passports should be able to acquire that citizenship and passport, and the parents are to make application to do so. If the father is not prepared to support that application, then the mother is authorised to sign on behalf of both guardians.

Judge P R Grace  
Family Court Judge | Kaiwhakawā o te Kōti Whānau  
Date of authentication | Rā motuhēhēnga: 15/12/2021