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**IN THE FAMILY COURT
AT MANUKAU**

**I TE KŌTI WHĀNAU
KI MANUKAU**

**FAM-2013-090-000566
[2021] NZFC 4319**

IN THE MATTER OF	CARE OF CHILDREN ACT 2004
BETWEEN	[MACI WEAVER] Applicant
AND	[ANDY BRADFORD] Respondent

Hearing: 24 November 2020

Appearances: Ms M Peilua for the Applicant
Ms P Siliva for the Respondent
Ms A Percy as Lawyer for Child

Judgment: 11 May 2021

RESERVED DECISION OF JUDGE G WAGNER

[1] At the centre of these proceedings is the parties' son, [LUCA BRADFORD] who is 10 years old. [Luca] also lies at the centre of significant ongoing conflict between his parents. While they both love [Luca] dearly, their very divergent world views and parenting styles means [Luca] has been, and continues to be, caught in the crossfire of their conflict and ongoing Family Court proceedings.

[2] The current proceedings were initiated by Ms [Weaver] on 7 August 2019 when she applied without notice to vary a final parenting order dated 22 August 2014¹ after discovering Mr [Bradford] had taken [Luca] to be immunised without her knowledge. That application was placed on short notice. Two days later Ms [Weaver] filed further applications. Firstly, a without notice application² for an order preventing any further vaccinations of [Luca], which was granted. Three on notice applications were:

- seeking permission³ to relocate with [Luca] to [location 1]
- for discharge of a 2013 order preventing removal of [Luca] from Auckland (**OPR**) in the event relocation is permitted; and
- enforcement for Mr [Bradford]'s alleged breach of the parenting order.

[3] All applications are opposed by Mr [Bradford].

ISSUES

[4] The following are the issues the Court is asked to determine for [Luca] at this point in his life:

- (a) If he should receive the second MMR vaccination on the New Zealand Immunisation Schedule.
- (b) If he should move with his mother to [location 1] to live from the start of 2022.
- (c) His ongoing care arrangements, whether he remains in Auckland or moves to [location 1].
- (d) If Mr [Bradford] has breached the parenting order and whether he should be formally admonished and/or pay a bond.

¹ By seeking supervision of [Luca]'s contact with his father

² Pursuant to s 46R of the Care of Children Act 2004

³ Also pursuant to s 46R

[5] Both parties gave evidence at the hearing as did Mr [Bradford]'s wife, [Melissa Bradford]. On the immunisation issue, Hilary Butler gave evidence for Ms [Weaver] and Dr Helen Petousis-Harris gave evidence for Mr [Bradford]. An affidavit previously filed by Ms [Weaver] from Dr Janion Heywood on the vaccination issue was disregarded as she was no longer available for cross-examination.

BRIEF BACKGROUND

[6] Ms [Weaver] lives with [Luca] in [Auckland]. She is an [occupation deleted]. Mr [Bradford] has repartnered. His wife, [Melissa] has a daughter from a previous relationship, [Zoe] (11/12) and together they have a young son, [Carl] (2/3).

[7] Care and contact arrangements were agreed between the parents at Family Dispute Resolution in August 2017 and between them directly in July 2018, thereby informally varying the terms of the final parenting order. [Luca] is in his mother's day-to-day care and has contact with his father during term time as follows:

- (a) Week 1 3.30pm Friday until 5pm Saturday;
- (b) Week 2 3.30pm Friday until 5pm Sunday;
- (c) Week 3 3.30pm until 7:30pm Friday;
- (d) Week 4 3.30pm Friday until 5pm Sunday.

[8] If I decline permission for [Luca] to move to [location 1], Ms [Weaver] will stay in Auckland with him. In that event she seeks no change to the current parenting order. Mr [Bradford] on the other hand seeks a move to week about care.

[9] There is a large measure of agreement between the parties for special days and the like, these agreements being recorded in a memorandum of consent dated 4 December 2020 filed shortly after the hearing.

RELOCATION

Parties' Positions

[10] Ms [Weaver]'s parents relocated from Auckland to [location 1] in [year deleted] on their retirement. She has two brothers, one who lives in [the UK] with [his daughter] and one living in [location deleted] with his wife and [son]. Whilst relocation might have been in the back of her mind earlier, the catalyst for acting on it was the death of Ms [Weaver]'s father in [date deleted] 2019 (together with having to move home and deterioration in the parenting relationship with Mr [Bradford]).

[11] Ms [Weaver], as the only daughter, wishes to move to live closer to her mother. She wants to be available in the event her mother needs help with daily life. There is no suggestion she needs that currently. At [over 70] years old now, she is both physically and mentally active and in good health.⁴ Ms [Weaver] is looking to the future.

[12] Other reasons advanced by Ms [Weaver] for the move to [location 1] [at the time she filed her application] include:

- (a) She was having to vacate her then rental home and was concerned about where she would be able to move to;
- (b) She will be better off financially in [location 1];
- (c) The outdoorsy lifestyle in [location 1] favours raising a child and would benefit [Luca];
- (d) [School C], the school Ms [Weaver] proposes for [Luca] in 2022/23, is superior to [School B];
- (e) [Luca] has a good friend, [Austin Bernard] who now lives in [location 1] and who [Luca] could attend school with [at [School C];

⁴ The Court heard at the hearing that Ms [Weaver]'s mother was hospitalised last year and diagnosed with [an illness]. She had mostly, though not totally, recovered from that

- (f) The geographical distance between the parents would benefit the strained parental relationship.

[13] Mr [Bradford] argues that none of these reasons outweigh the significant detriment to [Luca] of being physically separated from him and the flow on reduction in their current weekly face to face contact. He already feels strongly that Ms [Weaver] does not view him as an equally important parent. He is concerned he will be further marginalised with greater physical distance.

[14] Further, whilst [Luca] would be moving closer to his maternal grandmother, he would be moving further away from all his paternal family members who reside in Auckland. This includes his step-mother, siblings, two sets of grandparents (Mr [Bradford]'s mother and step-father and Mrs [Bradford]'s father and step-mother), an aunt and an uncle. Three other aunts, an uncle and cousin live in [location deleted].

[15] Ms [Weaver] counters the last factor by suggesting that relations between Mr [Bradford] and his family are poor and they have little contact. She contends she has a stronger relationship with certain members of Mr [Bradford]'s family, and whilst they would be further away geographically she will be able to foster relationships and ensure ongoing contact (which she argues would not be much, if any, less than now).

The Law

[16] Relocation applications are, in essence, the fusion of two matters requiring resolution in a parenting application. The first being a need to resolve the day-to-day care and contact arrangements of a child. The other, regards questions over where the child should live. Both applications merge to become a "relocation application", because both are interrelated.⁵ The outcome of the day-to-day care arrangement is reliant on the child's place of residence and vice-versa.

⁵ [M] v [H] [2013] NZHC 1010 at [34].

[17] Relocation applications are subject to the provisions contained in the Care of Children Act 2004 (COCA). Fundamental to a decision to relocate are ss 4, 5, 6 and 16 of the Act.

[18] Section 16 stipulates the obligations of guardians of the child. In that, the parents (or guardians) of the child are required to act jointly in exercising the duties, powers, rights, and responsibilities of a guardian. This includes a requirement to consult “wherever practicable with the aim of securing an agreement with any other guardian”.⁶ Where this is not practical, the court is required to intervene to determine whether the child should or should not relocate. This is a fact-specific inquiry.

[19] The first and paramount consideration in any relocation case, as under any application considered under COCA, is the welfare and best interests of the child. In determining what is in the child’s best interest, the principles in s 5, as well as the views of the child under s 6, must be considered by the Court.

[20] The s 5 principles the court must consider in determining whether relocation is the child’s best interests include:

- (a) a child’s safety must be protected and, in particular, a child must be protected from all forms of violence (as defined in sections 9(2), 10, and 11 of the Family Violence Act 2018) from all persons, including members of the child’s family, family group, whānau, hapū, and iwi:
- (b) a child’s care, development, and upbringing should be primarily the responsibility of his or her parents and guardians:
- (c) a child’s care, development, and upbringing should be facilitated by ongoing consultation and co-operation between his or her parents, guardians, and any other person having a role in his or her care under a parenting or guardianship order:
- (d) a child should have continuity in his or her care, development, and upbringing:

⁶ Section 16(5).

(e) a child should continue to have a relationship with both of his or her parents, and that a child’s relationship with his or her family group, whānau, hapū, or iwi should be preserved and strengthened:

(f) a child’s identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.

[21] In *Kacem v Bashir*, the Supreme Court emphasised that there is no presumptive weighting of the principles.⁷ Therefore, whether a principle is particularly pertinent in a case will depend on the specific facts.

[22] Although the court must consider the s 5 principles, these are by no means an exhaustive list of the matters that may be relevant to the best interests and welfare of the child.⁸

[23] Section 6 of the Act requires the court to take the child’s views into account. In considering the views of the child, Justice Heath in *Blair v Blair* stated:⁹

Ascertaining views, taking account of views and placing weight on views are three distinct steps. The weight to be given to a child's views will vary according to the child's stage of development and the particular circumstances of the case. In contrast to the position under s 23(2) of the Guardianship Act 1968, the words “age and maturity” do not appear in s 6. In the 1968 Act those words were used to assist a Court to determine the weight to be given a child's “wishes”. As Professor Mark Henaghan has observed, reference to age and maturity were removed because of the risk that young children's views would be dismissed as “immature”, without the Court listening to them carefully and seeing whether or not they represent significant feelings for the particular child. Because of the large variations in developmental

⁷ *Kacem v Bashir* [2010] NZSC 112 at [21]-[23].

⁸ At [18].

⁹ *Blair v Blair* [2012] NZHC 2957 at [44].

maturity of different children of the same age, assumptions about a child's maturity and the weight to be given to his or her views on the basis of the child's age are to be avoided. The focus of the Court's inquiry is on the particular child, in his or her particular circumstances, including his or her actual degree of maturity. While maturity will often be a product of age, that is not always the case.

Discussion

[24] I am a long way from being satisfied that it is in [Luca]'s best interests and welfare to relocate from Auckland to [location 1]. There is no question but that he is very close to his maternal grandmother. She and her late husband have had a lot to do with [Luca] growing up and Ms [Weaver] and [Luca] still travel regularly to see her mother (and vice versa). I accept Ms [Weaver]'s evidence that [Luca] is used to travelling by car and he travels well (often spending the time sleeping).

[25] I accept [Luca] is close to [Austin]. However he will have multiple friends in Auckland too that he would have to say goodbye to if he moved. At the hearing Ms [Weaver] estimated that about 20 students would be moving from [Luca]'s current school, [School A] to [School B] next year. Further, as Mr [Bradford] notes, [Luca]'s relationship with [Austin] has stood the test of time and distance and there is no reason why that should not continue.¹⁰

[26] I accept [location 1] would provide [Luca] with a positive lifestyle. Both cities offer a variety of activities and attributes for children and adults alike. It is not helpful nor necessary in my view to make a point by point comparison on this score.

[27] I accept Ms [Weaver] might be better off financially in [location 1]. However the evidence shows she is managing financially in Auckland and it is not an imperative for her to move to [location 1] for financial reasons. The accommodation issue Ms [Weaver] had at the time of filing has long since resolved. She now has a long term rental in [Auckland].

¹⁰ 20 September 2019 affidavit at [25] pg 7

[28] I accept [Luca] would likely adjust if there was a move to [location 1], especially as the city is already familiar to him. I would not be concerned about where he might live or the school he might attend as I trust each parent to make good decisions for him on such matters. Having said that, I have no independent evidence before me to support Ms [Weaver]'s personal view, based on looking into each school online and talking to parents with children at each school, that [School C] "trumps" [School B].

[29] What on balance I do not accept is that the above benefits, either individually or combined, outweigh the significant detriment to [Luca] of moving away from his father and paternal family and the undoubted prejudice to those relationships. This is especially so when considered against the backdrop of Ms [Weaver]'s mother having chosen to move away from Auckland when [Luca] was very young, plus the lack of any imperative for Ms [Weaver] to be close by at this point in her mother's life. Mr [Bradford] expressed it well when he said [Luca]'s relationships with his paternal family members should not come second to Ms [Weaver]'s perceived family obligations, which have an adult focus, and that this is not [Luca]'s burden to bear.¹¹

[30] It concerned me however to hear that Mr [Bradford] had actively prohibited Ms [Weaver] from remaining in contact with his family when [Luca] is in her care. No matter the rationale, this in turn appeared to be motivated by adult issues and not child focussed. However it is almost irrelevant which parent is responsible for fostering [Luca]'s relationships with his wider paternal family, and I hasten to add that I do not consider in future there should be any restriction on Ms [Weaver] facilitating contact between [Luca] and his paternal family. The issue is that it will be more difficult for those important relationships to be fostered and enhanced when they are in Auckland and [Luca] is in [location 1]. I accept there is not a lot of contact for [Luca] with his father's family that couldn't happen from [location 1], but his contact with Mrs [Bradford]'s parents, her father especially, who are effectively grandparents to him and are in and around the home regularly would be significantly affected.

¹¹ 20 September 29 affidavit at [11] & [12]

[31] More important is the impact on [Luca]’s contact/relationships with his father and immediate paternal family (step-mother and two siblings¹²). These are primary relationships for him. He currently sees them on a weekly basis. Their face to face contact would reduce to fortnightly weekends at best.¹³ It is of concern, as Mr [Bradford] points out, that Ms [Weaver] was silent on [Luca]’s relationships with any paternal family members (beyond his father) and any impact on those relationships in her initial evidence regarding the proposed relocation. I would have concerns for a deterioration in the strength of those relationships with greater geographical distance when I have reservations around either parent being able to genuinely promote the importance of the other parent in [Luca]’s life.

[32] Although Ms [Weaver] rejected the portrayal of her as undervaluing Mr [Bradford]’s role in [Luca]’s life, the totality of the evidence does support this concern. Mr [Bradford] described a number of examples where Ms [Weaver] had to all intents and purposes acted unilaterally and did not seek Mr [Bradford]’s input where she should have. Examples include:

- 13/11/18 – Ms [Weaver] declined treatment as recommended by [Luca]’s GP for sores on his thighs & lower legs
- 30/07/18 & 15/07/19 – Ms [Weaver] declined treatment for [Luca] as recommended by his dentist
- 24/04/19 Ms [Weaver] declined treatment for [Luca] recommended by his GP for a cyst.

[33] The evidence further demonstrated that Ms [Weaver] did not see a need to include Mr [Bradford]. Indeed, in respect of the last example above, Ms [Weaver] acknowledged to the Court that she had withheld information from Mr [Bradford] to avoid what she knew would be an inevitable argument.¹⁴

[34] Moreover, I do not consider the geographical distance would be a salve to the parents’ dysfunctional adult relationship as claimed/hoped by Ms [Weaver]. Indeed I

¹² Despite Ms [Weaver] categorising them as [Luca]’s step and half siblings, which technically they are, (see NOE pg 26 & 66), for [Luca] they are simply his sister and brother

¹³ Originally in her affidavit evidence Ms [Weaver] was proposing monthly access

¹⁴ NOE pg 31

consider there is merit in Mr [Bradford]'s concern that the distance would make it easier for Ms [Weaver] to ignore/exclude him when making decisions for [Luca] ('out of sight, out of mind'). At the very least, it is an appreciable risk.

[Luca]'s views

[35] When Ms Percy first met with [Luca]¹⁵, he expressed to her that "*I don't really want to go to [location 1] coz I don't want to see dad less. I want to see mum 5 days and dad 2 days and a bit*". He said further "*I don't want to see dad or listen to dad on the computer or on mum's phone*". He was comfortable with those views being relayed to the Court even though he hadn't told his parents himself and he was aware what each parent wanted.

[36] When Ms Percy saw [Luca] again prior to the hearing¹⁶, his express views had changed. On this occasion he said he wanted to move to [location 1] "*when I'm about to go to Intermediate*". He said he would like to live quite near his grandma, though not with her. He would watch [the TV show] The Chase with her, one of the activities he had said earlier he enjoyed sharing with his grandma. Whilst he acknowledged he had changed his mind from the year prior, he couldn't explain why, beyond having said earlier "*That's kind of why I want to move down, so grandma has got some company.*"

[37] Ms [Weaver]'s explanation for why [Luca] had possibly changed his mind related to the timing of the proposed change in school and [Luca]'s understanding now that any move would not be until he started Intermediate, as opposed to leaving his friends part way through primary school.

[38] Whilst I must take [Luca]'s views into account, they are of course not determinative and they form part of the overall matrix of factors I need to balance. There is no way of knowing why [Luca] changed his mind, or indeed if what he expressed in 2020 reflects his genuine views or is the result of pressure/expectation. Irrespective of his express views, which I consider to be ambivalent at best, I also

¹⁵ As recorded in her 31 October 2019 report

¹⁶ As recorded in her 30 September 2020 report

consider the enhancement of his welfare by remaining in Auckland outweighs those views.

Result

[39] I decline the applications for permission for [Luca] to relocate to [location 1] and for discharge of the OPR.

PARENTING ARRANGEMENTS

[40] I turn now to consider what [Luca]'s future care arrangements should look like given he will remain in Auckland.

Parties' Positions

[41] Initially Mr [Bradford] was proposing that [Luca] move into his primary day-to-day care. The reasons advanced for this being in [Luca]'s best interests included¹⁷:

- a) The increasing need for a male role model in [Luca]'s life as he gets older;
- b) To foster and strengthen the sibling relationships, and so [Luca] doesn't feel like a part time member of the [Bradford] household;
- c) To expose [Luca] more to the different dynamics, lifestyles and parenting practices in the [Bradford] household, noting the very different environments he experiences in each parent's home;
- d) So [Luca] can continue doing [sport deleted] with his father and [Zoe];
- e) the parents' inability to co-operate and co-parent;
- f) Ms [Weaver]'s alleged medical neglect and the risk this poses to [Luca].

¹⁷ Set out in Mr [Bradford]'s 20 September 2019 affidavit across paragraphs 33-38

[42] By the time of his 3 February 2020 affidavit Mr [Bradford] was no longer seeking primary care, acknowledging as he did the importance of Ms [Weaver] in [Luca]'s life. However, for the same reasons as summarised above, he still seeks greater parenting input, specifically in the form of a week about care arrangement (during term time) with Friday changeovers.

[43] As noted earlier, Ms [Weaver] seeks no change to the current regime. She argues it is working for [Luca] and thus there is no need to change it ('don't fix what isn't broken').

[Luca]'s views

[44] Ms Percy's first report records that [Luca] expressed he enjoyed his time in each parent's home but he did not want any change to the then care arrangements (including school holidays).

[45] For this hearing [Luca] reiterated he wanted no change to the care arrangements, pending any move to [location 1]. Specifically he expressed that he does not want:

- extra nights at his father's;
- week about;
- his weekend time with his father to extend to Monday morning;
- to spend any week time [during term time] at his father's.

[46] He also expressed that he doesn't want to continue with [sport deleted] when with his father or daily texting. These two issues were explored at some length at the hearing. Ms Percy recorded in her report for the hearing her impression that [Luca] feels his opinions, including and particularly around [sport deleted] and daily messaging are not being listened to by his father.

[47] Ms Percy also noted that at 10 years of age [Luca] was articulate and had expressed consistent views over time (except with respect to moving to [location 1]). Ms Percy argued [Luca]'s views should be given significant weight.

Discussion

[48] I accept there is overwhelming evidence confirming significant barriers to [Luca]'s parents being able to co-parent effectively, if at all. In fact there is no dispute around this from any of the adults. This has long been the reality and there is nothing before me to suggest it will change in the foreseeable future. Without going into the evidence in detail, the 'handling' of [Luca]'s experience of chicken pox and the way his eczema condition has been addressed over time are but two illustrations of this.

[49] I do not find that Ms [Weaver] has been medically neglectful, rather she has chosen different options to that Mr [Bradford] would have chosen for [Luca] in the same situation. I accept Ms [Weaver] has acted in the various scenarios after careful consideration of the options/information available to her and in what she has genuinely considered to be her son's best interests. I need make no finding on the efficacy of decisions she has made for [Luca] beyond saying, at the risk of repeating myself, that Mr [Bradford] may have addressed matters differently.¹⁸

[50] The way I see it is that the parents' very divergent parenting styles in fact contraindicate it being beneficial for [Luca] to spend significantly greater time in his father's home, thereby having to navigate to an even greater extent these differences. For his care to be shared more equally would necessitate more extensive communication on day to day issues (as opposed to more significant guardianship issues which arise less frequently), which in turn increases [Luca]'s exposure to and risk of involvement in the differences/conflict between his parents.

[51] [Luca] is already acutely aware of these differences across a broad spectrum. This was noted in Ms Percy's report of 31 October 2019.¹⁹ Whilst now he may perceive that as disagreement and/or conflict, as he grows and matures he will

¹⁸ I have already recorded my finding that Ms [Weaver] has on a number of occasions not consulted or involved Mr [Bradford] as a co-guardian to the extent she should have

¹⁹ At [15]

hopefully learn to understand it also as different world views and practices. There is no evidence suggesting he does not currently feel a valued and [equally] important member of the [Bradford] household. There is no evidence to suggest, beyond the views he has expressed on the vaccination issue, that he critically compares his parents' parenting styles.

[52] I do not find therefore there is a need to greatly increase the time [Luca] spends in his father's household so as to expose him more to the differing dynamics or to strengthen the sibling relationships. Nor is there any evidence, either personal to [Luca] as an individual or in terms of social science generally, to support the contention that [Luca] must have his father in his life more as a male role model, let alone that any such need would be met by a 50:50 care regime.

[53] I do however consider that the above factors can be enhanced, and there is benefit to [Luca], in spending a little more time in his father's household alongside changing the specific days he is with him and increasing school changeovers. This latter feature reduces the adults' interactions but also facilitates Mr [Bradford]'s greater involvement in [Luca]'s school life. I do consider that for [Luca] to experience his father being more involved in other aspects of his life, such as schooling, is important as it instils/reinforces the message that his father's role is equally important.

[54] Mr [Bradford] will be in a better position this year to accommodate this. Previously as a [profession deleted] his work hours were long and not conducive to having care of [Luca] during the week. However, he advised at the hearing that from this year he will be studying towards becoming a [profession deleted]. This will be full-time study for three years and his hours will loosely coincide with school hours. It follows that he will be more available, alongside his wife, to the three children before and after school and during school holidays.

Application of the Law

[55] The care arrangements I am implementing satisfy all of the mandatory s 5 principles that can be realistically achieved for [Luca]²⁰. It honours the principle that

²⁰ Noting that some are ideals only and cannot at this point in time be achieved for [Luca], including

[Luca] should have continuity in his care/development/upbringing and that he will continue to have a relationship with each of his parents and wider families. His right for his identity to be preserved and strengthened is also achieved.

[56] The care regime also takes into account, as it must, [Luca]'s views and follows those views to a large (though not total) extent. His views in respect of the amount of time he spends with each parent have been clear and consistent over time, unlike his views with respect to relocation. I accept they are based on his actual experience and are therefore reality based. I agree with Ms Percy's submission that, on this issue in particular, [Luca]'s views should be given significant weight. I have however departed from them to some extent by providing for an increased role for his father in other aspects of his life, schooling in particular, which I consider important for the aforementioned reasons.

[57] In not following [Luca]'s views strictly, I am also mindful of the potential for influence of his views, intentional or otherwise. Ms [Weaver] herself acknowledged²¹ that there had been a shift in [Luca]'s express views in some respects such that, at the time of the hearing, his views aligned with his mother's in all respects.

[58] Conversely, I think it is naïve of Mr [Bradford] to think as he expressed at the hearing²² that [Luca] would adjust to week about. Being so contrary to what he has consistently expressed he wants, and what he is accustomed to, I consider it more likely that [Luca] would experience distress by moving to a week about arrangement and may well rail against it in some way if imposed.

Result/Orders

[59] Balancing all of the above, I make the following orders as being in [Luca]'s best interests and welfare in all of his circumstances.

[60] I discharge the parenting order dated 22 August 2014.

his care/development/upbringing being facilitated by ongoing consultation and cooperation between his parents

²¹ NOE pg 55

²² NOE pg 193

Term Time

[61] From the week commencing 7 June 2021 (Week 1), [Luca] will be in the care of his father over a 4 weekly cycle during term time as follows:

- (a) Week 1 After school Friday until school the following Monday;
- (b) Week 2 After school Thursday until 7.30pm Friday;
- (c) Week 3 After school Friday until school the following Monday;
- (d) Week 4 After school until 7.30pm Friday.

[62] I have deliberately structured the above to ensure [Luca] is able to continue attending [sport deleted] on Friday evenings with his father/siblings. I am well aware this is not an activity he says he enjoys much. However I do not consider in this context it is for the Court to impose on a parent the activities that parent chooses for his/her child. In the present case it is for Mr [Bradford] to reflect on how [Luca] feels about it, to weigh the pros and cons of [Luca] continuing with [sport deleted] lessons with the family, and to make a decision based on what he considers to be in his son's best interests.

Changeover

[63] Pick-up and drop off can be by either Mr [Bradford] and/or his wife.

[64] [Luca]'s return on Friday is to be by Mr and/or Mrs [Bradford] to Ms [Weaver]'s home.

[65] If Ms [Weaver] wishes to have [Luca] in her care on a Friday afternoon/evening from time to time, especially on weeks 2 or 4 to go away for example, she will inform Mr [Bradford] no later than the Friday prior. Mr [Bradford] will consider such a request favourably, unless there is good reason not to, and there will be a swap for any

period relinquished over Monday-Thursday of the week leading up to the weekend in question.

[66] [Luca] will be in the care of his mother at all other times during the school terms.

Indirect contact

[67] I make no specific provision for indirect contact beyond saying [Luca] should be free to contact his father by phone whenever he wishes.

Special Days

[68] Given the significant change to the structure of weekends, the current arrangements are no longer workable and new arrangements are needed. I am comfortable in a general sense with Mr [Bradford]'s proposals.

Birthdays

[69] *[Luca]'s birthday* – if [Luca]'s birthday falls on a weekday, the non-care parent shall have a video call with [Luca] on his birthday and then dinner with him the day after from after school until 7pm. If his birthday falls on a weekend, [Luca] shall spend half the day with the non-care parent at times agreed between the parents or, if they cannot agree, from 1 to 6 pm.

[70] *Parents' birthdays* – If either parent's birthday falls on a week day, and [Luca] is not in the celebrating parent's care, [Luca] shall spend time on that parent's birthday from after school until 7pm for dinner. If the parent's birthday falls on a weekend, [Luca] shall spend the birthday with the celebrating parent from 10am to 6 pm, unless these times are otherwise mutually agreed.

[71] *Sibling's birthdays* – If [Luca] is not in Mr [Bradford]'s care, [Luca] will spend from after school/3pm to 7 pm with Mr [Bradford] for each of his sibling's birthdays. This will occur in reverse for Ms [Weaver] if she has other children in the future.

Father's/Mother's Day

[72] If not otherwise in that parent's care, [Luca] shall be in the care of the celebrating parent from 5pm the day before until 4pm on Father's/Mother's Day.

Term Holidays – By consent

[73] [Luca] will spend the first week of each term school holiday with Mr [Bradford] from 6pm on the Friday school breaks up until 6pm the following Friday (at the end of the first week of the holiday). The regular term schedule shall resume on the last Friday of the school holidays.

Christmas Period - By consent

[74] In odd numbered years, [Luca] will be with Mr [Bradford] from 12pm Christmas Eve to 2pm Christmas Day, and in even years [Luca] will spend that period with Ms [Weaver].

[75] One parent will have [Luca] from 2pm Christmas Day to 5pm on 1 January (Mr [Bradford] in even numbered years and Ms [Weaver] in odd years), and the other parent will have [Luca] from 5pm 1 January until 5pm 7 January.

[76] Thereafter, the parents shall share [Luca]'s care throughout the remainder of the Christmas school holidays on an equal basis, week about if they cannot agree otherwise. [Luca] is to be back in Ms [Weaver]'s care no less than two days prior to the new school term each year.

Conditions

[77] I am inclined to continue the current, previously agreed, conditions of the parenting order with some modification.

[78] The following will be conditions of the new parenting order:

- (a) Changeovers. Where changeovers are not to/from school, the parent into whose care [Luca] is moving shall collect [Luca] from the other parent's home.
- (b) No adult issues will be discussed in the presence of [Luca].
- (c) At changeover, the parents (or [Melissa Bradford]) shall only discuss [Luca]'s immediate needs and arrangements. There shall be no other discussions at this time.
- (d) The parents agree to communicate with the other in a respectful manner and shall not make negative comments about the other parent in [Luca]'s presence, or anyone else's presence (unless it is a professionally privileged or confidential conversation).
- (e) All communications shall be only in relation to [Luca]'s care arrangements or guardianship issues.
- (f) The parents will communicate by text or phone if there are emergencies or there is a need to advise the other parent of a sudden, unexpected change to the timing for pick up/drop off.
- (g) Guardianship issues will at first instance be identified by text message and then resolved by text, telephone or face-to-face discussions as required.
- (h) [Luca]'s Well Child book is to be returned to Ms [Weaver] within 14 days²³ and will be held by her going forward.

[79] I note and commend the parties for their detailed agreements in relation to future doctor and/or dentist appointments for [Luca], as recorded in paragraphs 7 through 13 of the 4 December 2020 consent memorandum. I do not consider it is appropriate to include those guardianship matters as conditions of the parenting order, but record the Court's expectation that they will be followed and honoured by each parent unless changed in any way by mutual agreement (preferably in writing).

[80] I also specifically record the other guardianship agreements regarding schooling as follows:

²³ Giving Mr [Bradford] time to copy any outstanding information

- a) [Luca] will attend [School B] after he finishes at [School A].
- b) Both parents will keep each other updated if there are any concerns they have with [Luca]'s education.
- c) Mr [Bradford] is also to be a contact at any school for [Luca].

ENFORCEMENT APPLICATION

[81] On 19 May 2014, following a defended hearing, His Honour Judge Hikaka directed that [Luca] not complete the [New Zealand] immunisation programme, thus declining Mr [Bradford]'s application.

[82] On 22 August 2014, a final parenting order was made, by consent, providing for [Luca] to be in the day-to-day care of his mother and defining his contact with his father. That order was subject to a number of conditions, one of which was:

“3. Guardianship issues will at first instance be identified by text message and then resolved by text, telephone or face-to-face discussions as required.”

[83] On 28 June 2019, Mr [Bradford] asked Ms [Weaver] for [Luca]'s Plunket “Well Child” book, saying he wanted to copy information from it. Not thinking much about the request, except that it seemed a bit unusual, Ms [Weaver] handed the book over. The next day Mr [Bradford] asked Ms [Weaver] if her position on [Luca] being vaccinated for measles had changed²⁴. She answered it had not.

[84] Ms [Weaver] deposes that on 3 August 2019, when [Luca] returned home from his father's, he was “incredibly grumpy, tender and angry, he just kept on loosing (*sic*) it.”²⁵ When asked (more than once) what was wrong, Ms [Weaver] says [Luca] eventually broke down saying there was something he needed to tell her but wasn't allowed to. He then disclosed to his mother, whilst described as hyperventilating and crying hysterically, that his father had taken him for the measles vaccination [on [date deleted] 2019].

²⁴ In the context of the then measles outbreak in New Zealand

²⁵ Application/affidavit dated 7 August 2019, pg 6

[85] Mr [Bradford] in broad terms accepts this occurred, including that he deliberately took [Luca] to [Hospital] (a pop up Comprehensive Measles Clinic) instead of his usual GP²⁶ for this vaccination.

[86] On 9 August 2019, Ms [Weaver] applied for enforcement of the parenting order after a breach, seeking admonishment by the Court, payment by Mr [Bradford] of a bond and variation of the order. She specifically sought a bond in the sum of \$50,000 as a “meaningful consequence to prevent breaching of the parenting order further.”²⁷

[87] Mr [Bradford] accepts he breached the condition of the order, but argues that does not amount to a breach of the parenting order per se. He argues that his actions were in breach of Ms [Weaver]’s right as co-guardian of [Luca] to be consulted and have her consent obtained first, rather than unilaterally proceeding with the vaccination as he did. He argues there is no remedy for breach of guardianship rights and there is therefore no enforcement remedy available to Ms [Weaver].

Discussion/Findings

[88] Mr [Bradford] argues support for this position in the decision of Her Honour Judge Manuel in *Horton v Burke*²⁸. In that case, the relevant portion of the parenting order was a standard term of the order contained in all parenting orders²⁹ under the heading ‘Effect of parenting order’. In that sense I find it is distinguishable from the present case. In *Horton*, the general information was not a term of the parenting order itself. In the present case, the relevant segment is a specific condition of the order and therefore a term of the order.

[89] I find that Mr [Bradford]’s actions in unilaterally having [Luca] vaccinated breached the condition that guardianship issues are at first instance to be identified [to the other parent] by text message, then resolved by text, telephone or face to face

²⁶ Dr [Ahmad] at [Medical Centre] is his usual GP, though he has seen other doctors there from time to time

²⁷ Her 9 August 2019 application, pg 4

²⁸ FAM-2013-004-002838 9 July 2018

²⁹ Required by virtue of s. 55(1)(b) COCA which provides that a parenting order must be accompanied by general information

discussion. There is no issue that that did not occur, and as that condition formed part of the 22 August 2014 parenting order I find the order was breached.

[90] It is not appropriate or necessary to vary the parenting order in this context. Ms [Weaver] originally sought immediate supervision of Mr [Bradford]'s time with [Luca] pending she [and the Court] being satisfied that he would not unilaterally take [Luca] for further vaccination(s). Time and circumstances have well and truly moved on, and the parenting order is being looked at afresh within the context of the relocation application and the current situation for [Luca]/the parties.

[91] Nor am I prepared to impose a financial bond on Mr [Bradford] as I accept he is in no position to pay that. He is legally aided. He gave evidence at the hearing of his financial circumstances when he was in full-time employment as a [profession deleted]. It would have been nigh on impossible for him to afford a bond even then, when working full-time, with his income being expended entirely on day-to-day living costs for his family. It would be even more difficult now that he is a full time student and possibly incurring a student loan. I am not prepared to impose a financial burden which would impact his family, including [Luca]. I also accept that a bond is not necessary as a disincentive, as I am satisfied Mr [Bradford] now has the message loud and clear that there are procedures to be followed if he seeks a particular outcome which isn't agreed to by Ms [Weaver].

[92] I do consider however it is appropriate to admonish Mr [Bradford] formally. I do not accept his alternative explanation for retrieving [Luca]'s Well Child book from Ms [Weaver] (to copy information), a position he maintained at the hearing. I find it was part of his calculated plan to take [Luca] for his measles vaccination. I also find that, despite the circumstances in New Zealand at the time with the serious measles outbreak and Mr [Bradford]'s understandable concern for his son's health, that the unilateral action he took in having [Luca] vaccinated behind his mother's back was inexcusable. Not only was it a gross breach of Ms [Weaver]'s rights as a co-guardian and of trust, but it placed [Luca] in a terrible situation. It was disingenuous of Mr [Bradford] to say that had [Luca] on the day said he did not want to be vaccinated Mr [Bradford] would not have proceeded. [Luca] had no idea what was happening until the last minute. He was then faced with two adults (his father in the clinic car park

and his father and the nurse inside the clinic) explaining perceived advantages of being vaccinated and risks associated with not being vaccinated. There is no way [Luca], in the face of that, would have been able to express anything other than consent/acquiescence. Ms [Weaver] put it well when she said at the hearing “*He ([Luca]) was put in a position of [Andy] and a nurse in the same room and [Luca] loves his father and respects his father, and to put him in a position like that would’ve put such a heavy weight on him that he wouldn’t have refused under that weight.*”³⁰

[93] What is even more inexcusable, and would have compounded [Luca]’s distress hugely, is the fact that despite what he says was his intention Mr [Bradford] did not advise Ms [Weaver] retrospectively that [Luca] had been immunised. Again I do not accept Mr [Bradford]’s explanation that there wasn’t a need to as [Luca] was in his care immediately afterwards and during the riskiest period. I accept he may have intended to, but he put off and put off telling Ms [Weaver] knowing full well what her reaction would be. He procrastinated for so long that he placed his son in the invidious position of being the one to tell his mother. I find that Mr [Bradford] continued at the hearing to downplay the impact of all of this on [Luca], particularly having to keep this significant secret from his mother and having to be the one to tell her when he could bear that burden no longer.

Result

[94] Mr [Bradford] is accordingly admonished for his deliberate breach of condition number 3 of the parenting order.

VACCINATION

[95] Mr [Bradford]’s application is limited to the second MMR vaccination (measles, mumps and rubella) on the New Zealand Immunisation Schedule, typically had at 15 months of age. [Luca] has of course already had the first MMR vaccination on [date deleted] 2019. Prior to the 2014 litigation [Luca] had, with both parents’ consent, received all vaccinations on the Immunisation Schedule up to the age of five

³⁰ NOE pg 10 lines 3-6

months. Mr [Bradford] indicated at the hearing that he wants [Luca] to have the balance of vaccinations on the Schedule³¹. However I declined to broaden the ambit of the hearing to include those vaccinations as that had not been originally pleaded and Ms [Weaver] rightly pointed out that were they being considered she would have filed evidence directed specifically at each vaccine.

Ms [Weaver]

[96] The following passage in Ms [Weaver]'s evidence at the hearing nicely encapsulates her reasons for opposing [Luca] receiving the second MMR vaccination:

*“I believe the risk of a vaccine... outweighs having it naturally.”*³²

Then later:

*“I’m aware of those risks [of contracting measles naturally] and the vaccine insert has the same risk plus a whole load of unknown and more.”*³³

[97] Ms [Weaver] expands on and provides specificity around her concerns, which relate specifically to the measles vaccination, in her evidence. Again this is neatly summarised in her counsel's submissions³⁴ which I repeat here:

- a) Vaccination has risks, including some known and some unknown. Ms [Weaver] refers specifically as examples to a lack of evaluation around infertility and carcinogenic potential.
- b) Vaccination information is limited. The current form of vaccine has only been around since 1990 and Ms [Weaver] is concerned about what might come to light in the future regarding its safety that is not known now.

³¹ Those for a child include diphtheria, usually at 4 years of age, and tetanus/diphtheria/pertussis at 11/12 years of age.

³² NOE pg 4 line 25

³³ NOE pg 13 lines 11-12

³⁴ Dated 23 November 2020 at [46]

- c) It is still possible to contract measles once vaccinated and/or immunity may wane over time. On the other hand, if [Luca] contracted measles naturally he would definitely have life-long immunity.
- d) There are benefits from natural immunity, including reduction in cardiovascular disease, stroke disease and some cancers.
- e) [Luca] is not in a high-risk category for developing complications should he contract measles naturally. Ms [Weaver] explained the steps she has taken to provide [Luca] with a strengthened response, including healthy diet³⁵, clean water, adequate sleep and a clean, well ventilated home environment. Furthermore, [Luca] was breast fed until 3 years of age.
- f) Ms [Weaver]'s focus and concern is on [Luca] as an individual, whereas the Immunisation Schedule and what she regards as the "Government marketing campaign" are targeted at the population as a whole.

[98] Ms [Weaver] believes the Government and medical professionals use fear as a marketing tool to sell vaccination products.

[99] On discovering [Luca] had received the first MMR vaccination, Ms [Weaver] investigated which specific brand of vaccine was used. She discovered he had received the Merck MMRII vaccine even though, she says, that variant was replaced in 2017 with the Glaxo Smith Kline (GSK) Priorix MMR brand. She was also able to establish that [Luca] fell into the approximate 8% of persons not successfully covered by the first MMR vaccination.

[100] Ms [Weaver] believes that [Luca] developed respiratory issues after, and because of, his 5 month vaccination³⁶. Mr [Bradford] disputes this, and no independent medical evidence has been provided to support a connection. Ms [Weaver] also believes the first MMR triggered an eczema reaction in [Luca]

³⁵ Including taking cod liver oil, Vitamin C & Nordic berry supplement

³⁶ For diphtheria/tetanus/pertussis/polio/hepatitis B/haemophilus influenza type b

(aggravating his existing condition). Mr [Bradford] does not believe eczema is a side effect of the MMR vaccination.

Hilary Butler

[101] Ms Butler was called as Ms [Weaver]'s expert witness and specifically to respond to Dr Petousis-Harris' affidavit. She regards herself as an expert on vaccines.³⁷ She is a long term campaigner for informed consent. She has some international litigation experience regarding cases where there is alleged harm from vaccines. She is the author of two books – “Just a Little Prick” and “From One Prick to Another”. She has extensively read medical articles. Introducing herself at the hearing, she said her qualifications were: “Mother, medical researcher, writer, jack of all trades”.³⁸

[102] Ms Butler qualifications were addressed under cross examination³⁹ and confirmed that she does not hold a medical degree nor a research/science degree. Her research is not peer reviewed. She is not a member of professional groups related to vaccines, nor is she involved in any expert advisory groups.

[103] Ms Butler criticised Dr Petousis-Harris' qualifications and lack of medical training, claiming in particular that to determine contradictions for any child is outside Dr Petousis-Harris' stated qualifications.⁴⁰

[104] Ms Butler questions the safety of the second MMR vaccine. She argues that [Luca]'s lack of antibodies after the first MMR means he may never develop antibodies from the vaccine, though acknowledged under cross examination there is no way to test this. She would question why [Luca] had not responded to the first MMR vaccine. She believes he may have an adverse reaction to the second dose.

³⁷ NOE pg 78, line 26

³⁸ NOE pg 73, line 10.

³⁹ NOE pg 75

⁴⁰ Affidavit of Hilary Anne Butler dated 3 February 2020, page 3.

[105] She believes further that [Luca] has a relatively good, innate immune system, demonstrated in the way he dealt so well with chicken pox and that chicken pox is she said like measles. She had no hesitation in saying his immune system should be able to cope with measles. She claims a diet rich in vitamin A, D C and zinc may have the ability to prevent all kinds of diseases, include covid-19 related ones. She considers vitamin A is correctly referred to as the “anti-infection agent”⁴¹, and vitamin A deficiency plays a crucial role in measles cases. It has the same hallmarks as immune amnesia.

[106] In response to Dr Petousis-Harris’ claim that natural exposure to measles can expose people to immune amnesia, Ms Butler argued that the amnesia theory is a black mail tool directed at the ‘anti-vaxxers’. Common sense she says tells us that in the real world this immune amnesia theory doesn’t stack up. Other viruses can cause immune amnesia and immune amnesia is ultimately just a theory.

[107] Ms Butler expressed a concern with the formulation and ingredients of the modern MMR vaccine. By growing live cell cultures there is no way she says of predicting whether or not the ingredients are cancerous. She criticises Dr Petousis-Harris’ ‘all vaccines are safe’ mentality. She argues further that the Schwarz strain of measles is not the same as the Edmonston-Enders strain, claiming that the two strains have different effects on susceptibility to fevers, rashes and conjunctivitis.

[108] Ms Butler claims that the hospitalisation rate increased in NZ after the introduction of the vaccine, though acknowledges there is no medical evidence from official sources to explain why. She says the death rate for measles has declined over the past few years as the general standard of living has increased. That the death rate has declined is not denied by Dr Petousis-Harris, but she argues firmly that the number of cases has significantly dropped due the introduction of the vaccine.

[109] Ms Butler believes the government and medical professionals operate on a ‘KISS’ (‘keep it simple stupid’) approach to vaccine information handouts, often deliberately leaving off information relating to certain side effects. She points to the fact of warnings about potential side effects from the vaccine on the data sheets, and

⁴¹ Affidavit of Hilary Anne Butler dated 3 February 2020, page 29.

notes [Luca] may have displayed one of those side effects. Dr Petousis-Harris denies the causal link between the two and notes cautions against datasheets being used as scientific evidence.

[110] Ms Butler believes strongly that an individual risk benefit analysis needs to be undertaken for every person with every vaccine; that every parent has the right to the fullest information and to make an informed choice for their individual child. Perhaps the extent/strength of her views was amply illustrated when asked by the Court to describe a situation (apart from the one extreme she had just described of a “helicopter” parent) where in her view a particular child might benefit from the MMR vaccination. Her response was “*Middle of Africa, in the middle of a famine, you try to get to a relief camp where there is [no] food and doors are shut because it’s full and you know your child is starving and the immune system is down because they’re starving and they offer you an MMR. Now, that’s a calculated decision because your kid is starving. They may well badly react but also if they’re starving they may not react at all.... So that would be my worst case scenario where I might say yes because I’m not gonna be fed, I’m gonna get water, I might die anyway but if measles is rampantly running around, and I know it is then I might take that risk, knowing that I’m probably gonna die anyway. ... That’s my benchmark*”.

Mr [Bradford]

[111] In brief, Mr [Bradford] relies on the advice and recommendations of relevant agencies which he considers expert evidence based on scientific research and data. He says he wants [Luca] to be safe from harm, and believes this is mostly guaranteed by being fully vaccinated against measles. He points to the alarming situation (at the time) of the measles epidemic, particular in the Counties Manukau area of Auckland.

[112] Furthermore, he is concerned about [Luca] being excluded from school⁴² and family/social activities if he is not fully vaccinated. He is also concerned for his young son [Carl], who at his age is only partially vaccinated. Mr [Bradford] effectively relies

⁴² Which happened after [Luca] got chicken pox in [date deleted] 2019 and had to stay home for more than a week because he was unvaccinated

on the evidence of his expert, Dr Helen Petousis-Harris. I therefore address her evidence in greater detail.

Dr Petousis-Harris

[113] Dr Petousis-Harris' relevant qualifications and experience are as follows:

- (a) She holds a number of qualifications including a PhD (Vaccinology), Postgraduate Diploma in Science (Molecular Medicine) with Distinction and a Bachelor of Science (Biological Science), all from the University of Auckland.
- (b) She is an Associate Professor at the University of Auckland Medical School and an expert on immunisation.
- (c) She was previously employed by the Immunisation Advisory Centre at the University of Auckland, primarily as Director of Immunisation Research since 2012. This Advisory Centre is the most reliable source of expert information in respect of the vaccination of children.
- (d) She has approximately 22 years of experience in research, advice and communication on vaccines and vaccinations, as part of which she has produced more than 90 peer reviewed publications, book chapters and major reports.
- (e) She has seven other relevant national and international roles as listed in her affidavit.⁴³

[114] First Dr Petousis-Harris says there is no evidence, based on the records she has seen for him, that [Luca] has any underlying conditions which would contraindicate him receiving any of the childhood vaccinations, including MMR. She says further that the various claims around vaccine safety and vaccine preventable diseases [as promulgated by both Ms [Weaver] and Ms Butler] are not scientifically based but

⁴³ At [3]

rather reflect popular pseudoscientific books, websites and articles which are widely refuted by the global scientific community.

[115] Her evidence in response to the points advanced by Ms [Weaver] (and Ms Butler) are encapsulated as follows:

- a) Approximately 2% of vaccinated people will still get measles. Whereas 100% of unvaccinated people will get measles if exposed.
- b) Healthy living does not prevent measles.⁴⁴ Further, severe measles occurs in healthy (unvaccinated) children as do severe related complications. Complications associated with measles are common in healthy children. The reason [Luca]'s age group has fewer cases is simply because it is a well vaccinated age group (not because individuals have lower risk if unvaccinated).
- c) Ms [Weaver] errs in claiming [Luca]'s immunity will be stronger if he is exposed to measles naturally. Waning immunity relates to mumps only, not measles. The measles vaccination protection is suspected to be life-long.
- d) Subsequent MMR doses are not boosters, a word often used for simplicity but technically incorrect. The second dose, which is a second primary dose, is administered to cover the approximate 8% who do not receive protection from the first vaccination. The coverage after a second MMR vaccination is approximately 98%. Furthermore Dr Petousis-Harris cautioned against the focus on antibodies as the measurement of success of the first vaccination. She deposed there are many arms of the immune system potentially at play, and even if the antibody measurement indicates otherwise, [Luca] could still have protective immunity.
- e) The Schwarz strain of measles is derived from the Edmonston-Enders strain and therefore is essentially the same thing. Any small difference between them

⁴⁴ Ms [Weaver] does not refute this

would not result in a different response to the vaccine, in other words there is not a difference in the safety profiles of the two strains.

- f) Measles vaccines have been used since the 1960s. Formulations have changed little since then and immunity appears to be stable.
- g) The MMR vaccination is not a “scientific experiment”. It has been extensively assessed in studies conducted globally for decades. The safety data on the MMR vaccination is extensive and well established⁴⁵. Having said that, continual ongoing scientific research results in ongoing generation of new knowledge, with recommendations adjusted accordingly. As a scientist, Dr Petousis-Harris had to say it is possible in the future that additional safety risks might be identified. However she was firm in her view that with this particular vaccine, given how long it has been around and the studies/data available on it, it is unlikely anything dramatically new would be discovered in future.
- h) The vaccine roll out is not a marketing tool for the medical community. Dr Petousis-Harris clarified that general practices do not receive money from vaccine companies to sell vaccines and most practices make a loss when they vaccinate.

[116] It is Dr Petousis-Harris’ opinion that there is no comparison between the adverse effects of the measles infection and the vaccine. The possible health risks from contracting measles include middle ear infection, eye infection, laryngitis, pneumonia (in one in every 10-20 cases), encephalitis, respiratory and neurologic complications. Hospitalisation is possible, with between 30 to 40% of cases in the recent NZ epidemic being hospitalised. Death occurs in approximately one in every 1000 to 2000 cases, noting this is likely to be reduced further by advances in intensive care particularly in the developed world. Where services are more basic and intervention delayed the mortality rate is between 1-2%. A rare but fatal disease of the central nervous system, subacute sclerosing panencephalitis, results from measles virus infection acquired earlier in life. Additionally, measles causes immune amnesia.

⁴⁵ As set out in the World Health Organisation Information Sheet on Observed Rate of Vaccine Reactions (Measles, Mumps and Rubella Vaccinations) May 2014

After infection, a proportion of existing immunity to other infections (developed during life) is destroyed leaving the person immune compromised for up to 5 years (with immunity needing to be rebuilt through re-exposure to the infections).

[117] Whilst the vaccine might in rare cases cause some of these same complications, it does not cause the more serious ones of encephalitis, pneumonia or otitis media. Dr Petousis-Harris agreed that in a very small number of cases there is a link between vaccination and an adverse outcome. However specifically in relation to the MMR vaccination, she deposed the most serious event causally linked, which occurs in approximately one in 300,000 people, is a temporary drop in platelets. There may also be fever.

[118] Dr Petousis-Harris did not consider that the various illnesses, including respiratory difficulties, which [Luca] saw his GP for as recorded in the medical records, would be related to the preceding vaccination. [Luca] developed a mild audible wheeze approximately six weeks after his three month immunisation. Dr Petousis-Harris said studies had shown there is no association between vaccines and onset of wheeze and various allergic diseases. There is no increased risk for these things in infants which have been vaccinated and those who haven't. Any reaction would include, more immediately anaphylactic reaction, then over the next few hours through to the next day the possibility of fever and generally a grizzly baby. The timing is important, and one would not expect reactions to materialise weeks or months after the vaccination. She acknowledged specific to [Luca] that conjunctivitis, if it appeared between 7-14 days, may have represented a reaction.

[119] Dr Petousis-Harris said too that she did not consider there to be a causal association between the first MMR vaccination and flareup of [Luca]'s eczema. She said going to first principles, the type of immune response you might get from the MMR vaccination is skewed very much away from an allergic type response. She went on to say reactions following the second MMR dose are normally non-existent. Whilst it is possible to have a response to the second vaccine which didn't occur for the first, that is unlikely with the MMR vaccine (unlike a lot of other vaccines).

[Luca]’s views

[120] In her report for the hearing Ms Percy reported that [Luca] expressed he did not want the measles injection (or any other injections) because “*mums told me once it’s in me you can never get it out of me*”. He also said “*I don’t want to have a needle... it really hurts, and I don’t like it... the left arm goes dead when I have to hold a tissue on my right arm*”. [Luca] told Ms Percy that his mother had read two books about vaccination and what can happen to you. He said “*You can die from vaccinations or you can get brain damage, or you can get disease in your arm. It’s not a very nice thing*”. He said his mum “*had told him and showed him lots of things and that’s why I don’t want a vaccination*”.

[121] Not only is it too much to expect a child to be able to assess and truly understand the pros and cons of vaccination (as Ms [Weaver] herself implicitly acknowledges by preferring [Luca] make the decision after he turns 18), it is also clear from what [Luca] said to his lawyer that his views are unreasonably skewed. Though the evidence shows both parents have talked to him at some length about the vaccination issue, with a focus on their respective perspectives, he has clearly absorbed his mother’s views in particular. Indeed, what he has taken not just from the adult information he has received, but his experience of receiving the first vaccination, is alarm and fear. I consider that an issue of this sort, which is complex, is one for adults to make for their child/ren, with the child’s views of limited import. For [Luca], I do not consider I can take his views into account at all given the level of influence they are subject to.

Discussion

[122] As previously, the cornerstone of my decision on this issue must be [Luca]’s best interests and welfare. My decision must also be based on the evidence before me. A plethora of material has been put before the court on the MMR vaccine. I have considered that material carefully, alongside the evidence given at the hearing.

[123] When Judge Hikaka dealt with the matter for [Luca] in 2014, he was persuaded by what he found to be Ms [Weaver]’s good understanding of the benefits and risks of immunisation and her evidence that immunisation was not appropriate for [Luca]. Mr

[Bradford] at that time did not present any significant rebuttal of Ms [Weaver]'s evidence. It is a different scenario in the present case where Mr [Bradford] has presented evidence from a person considered to be an expert in this very field.

[124] When I consider the evidence advanced in opposing the MMR vaccination and the evidence advanced in support, I find on balance that the evidence falls in favour of vaccination of [Luca] with the second MMR vaccine being in his best interests and welfare.

[125] I respect and admire the intelligent, careful and thoughtful approach Ms [Weaver] takes to all aspects of [Luca]'s health and well-being. I make no criticism of that. However as much as she said she was making a decision for her son and her son alone (as opposed to the rest of the child population), it became clear from her response to questions from the court that her view regarding the MMR vaccination for [Luca] logically flowed from her general view on the risks of vaccination vs perceived benefits of contracting a disease like measles naturally. Furthermore Ms [Weaver] did not present any evidence which contraindicated for [Luca] the clear benefits to children generally of vaccination.

[126] I do not accept Ms Butler's challenges to Dr Petousis-Harris' expertise. There is no doubt Dr Petousis-Harris is a pre-eminent expert in this field and was eminently qualified to give evidence. Whilst I accept that Ms Butler has devoted many decades of time, research and passion to this area, I place greater weight on the evidence given by Dr Petousis-Harris being as it is based on sound medical research and data. Dr Petousis-Harris' evidence is that the MMR vaccine has been around now for some 5 decades in much the same form and has been subject to many ongoing and rigorous empirical studies. I find on the evidence before me that the risks associated with the MMR vaccination are minimal, and further that the risks associated with contracting measles naturally are considerably more serious than those associated with vaccination. This applies to [Luca] as it does to other children, irrespective of his positive home environment.

[127] I cannot accept on the evidence before me a causal connection between the five month vaccination and [Luca] developing a wheeze weeks later, nor the flare up of his

eczema following his first MMR vaccination. Not only is there a lack of medical evidence to support a link, but Dr Petousis-Harris' evidence is that neither a wheeze nor eczema are expected vaccine reactions. I also do not accept the submission made on Ms [Weaver]'s behalf⁴⁶ that "there is no guarantee that [Luca] will in fact be in any better position should he have the second shot". I accept Dr Petousis-Harris' evidence that [Luca] will after the second MMR dose likely have 98% coverage and he will thereby be protected from the serious consequences of contracting measles. This risk/possibility of contracting measles if unvaccinated remains even when there is no longer an extraordinary outbreak as occurred in 2019. Measles is a particularly infectious, air borne disease.

[128] There are the additional factors relevant to [Luca], including that being vaccinated reduces the risk of being excluded from school and family life in his father's household in the event of another measles outbreak. Immunisation of course protects the wider community too.

Result

[129] I accordingly grant Mr [Bradford]'s application and give him permission to take [Luca] for his second MMR vaccination at a clinic of his choice. Mr [Bradford] is to advise Ms [Weaver] no less than 24 hours prior to the MMR vaccination when and where it will be taking place, and he is to keep Ms [Weaver] informed how [Luca] is doing on a daily basis until such time as [Luca] returns to his mother's care.

[130] The order dated 12 August 2019 preventing any further vaccinations is varied to permit the second MMR vaccination only. Otherwise that order is to become final.

G Wagner
Family Court Judge

⁴⁶ Ms Peilua's submissions at [47]