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**IN THE FAMILY COURT
AT WHANGAREI**

**I TE KŌTI WHĀNAU
KI WHANGĀREI-TERENGA-PARĀOA**

FAM-2018-088-000525

FAM-2020-088-000136

[2021] NZFC 7015

IN THE MATTER OF THE CARE OF CHILDREN ACT 2004

BETWEEN [KIRSTY VERWOLDE]
Applicant

AND [CARL BLAKE]
Respondent

AND BETWEEN [RANDY MAXWELL]
Applicant

AND [JUDITH BLAKE]
Respondent

Hearing: 9-11, 16-19, 22-25 March 2021
(Submissions received: 1 April 2021)

Appearances: M Davies for the Applicant [Verwolde]
K Cohen for the Applicant [Maxwell]
N Dore for the Respondent [C Blake]
C Muston for the Respondent [J Blake]
D Hart as Lawyer for the Children

Judgment: 4 August 2021

RESERVED JUDGMENT OF JUDGE L KING

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Introduction

[1] These proceedings concern stepsiblings, [Valerie], aged nine and [Lucas], aged four.¹ [Valerie]'s parents are [Judith Blake] and [Randy Maxwell].² [Lucas]'s parents are [Kirsty Verwolde] and [Carl Blake].

[2] In January 2016, [Judith] and [Randy] separated. Shortly after separation, [Judith] and [Randy] agreed to share [Valerie]'s care on a week about basis which has remained in place. [Randy] has remarried. His wife is [Arlene Maxwell] and their son, [Gerard], is two and a half years old.

[3] In January 2018, [Kirsty] and [Carl] separated. [Lucas] has remained in [Kirsty]'s care since then. Around this time, [Carl] commenced a polyamorous relationship with [Judith] who lived with her fiancé, [Liam Knight].

[4] In March 2018, [Carl] moved in with [Judith] and [Liam]. They continued to live together until October that year when [Liam] left the relationship.

[5] [Carl] and [Judith] married in February 2019. As well as [Valerie], [Judith] has shared care of her two sons, [Jonathan], aged 13, and [Seth], aged 11 years, on a week about basis.

[6] [Carl]'s contact with [Lucas] has been problematic. [Kirsty] does not approve of [Lucas] being exposed to [Carl] and [Judith]'s polyamorous lifestyle. [Kirsty] has had ongoing safety concerns for [Lucas] in his father's unsupervised care since the proceedings for [Lucas] commenced in October 2018. [Randy] shares some of these concerns and commenced proceedings against [Judith] in March 2020.

[7] In March 2020, I consolidated the separate proceedings for [Valerie] and [Lucas], categorised them as complex and have case managed the proceedings.³ I presided over separate hearings to determine [Lucas] and [Valerie]'s interim care

¹ The children's full names are [Valerie Maxwell] born [date deleted] 2012 and [Lucas Blake] born [date deleted] 2016.

² During the proceedings, [Judith] changed her first name to [another name] although no proof of a legal change in name was filed. For consistency, I shall refer to Mrs [Blake] as [Judith].

³ Family Court Rules 2002, r 135 and r 416UA.

arrangements, which allowed a limited opportunity to test some, but not all, of the evidence before the court. I issued reserved judgments and made separate orders providing for the interim care of [Lucas] and [Valerie]. Those orders remain in place.⁴

Issues for determination

[8] [Randy] and [Kirsty] both say their child has suffered psychological abuse in either or both [Judith] and [Carl]'s care as they have prioritised their needs over the children's needs. Some of their concerns overlap, some do not. [Judith] and [Carl] reject any suggestion of causing psychological harm to either [Valerie] or [Lucas] and maintain that each child is safe in their care.

[9] Accordingly, the issues for determination are:

- a) Have [Valerie] and [Lucas] been subjected to psychological abuse?
- b) Is [Valerie] safe in the care of her mother, [Judith]?
- c) Is [Lucas] safe in the care of his father, [Carl]?
- d) The terms of a final parenting order for [Valerie].
- e) The care arrangements for [Lucas] and whether an interim or final parenting order is made.

[10] As well, [Randy] and [Kirsty] do not agree to [Valerie] and [Lucas] being exposed to [Judith] and [Carl]'s polyamorous lifestyle.

⁴ The interim parenting order concerning [Lucas] is dated 6 July 2020. The interim parenting order concerning [Valerie] is dated 11 November 2020.

The law

[11] Family violence is defined as violence inflicted against a person by another person with whom that person is in a family relationship.⁵ Violence includes physical, sexual and psychological abuse.⁶

[12] A person psychologically abuses a child if that person causes or allows the child to see or hear the psychological abuse of a person with whom the child has a family relationship, or puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring.⁷ Psychological abuse may include behaviour that does not involve actual or threatened physical or sexual abuse.⁸

[13] Psychological abuse includes a child, by reason of their age, being unable to withdraw from the care of another person.⁹ Section 11 does not provide an exhaustive list and other types of behaviour can be included on a case by case basis.¹⁰

[14] I remind myself that a single act may amount to abuse. A number of acts that form part of a pattern of behaviour (even if all or any of those acts, when viewed in isolation, may appear to be minor or trivial) may amount to abuse.¹¹

[15] When faced with an allegation of abuse in a care of children proceeding, the court should not be misdirected and focus on the truth of the allegation.¹² Although the truth is important, it is not the key consideration. As the Court of Appeal stated, that continues to be the welfare and best interests of the child. Further, the court must engage in a two-step process where abuse is alleged:¹³

- a) Determine the allegation; and
- b) Determine the current application in light of all the circumstances.

⁵ Section 9(1) Family Violence Act 2018.

⁶ *ibid* at s 9(2).

⁷ Section 11(2).

⁸ Section 11(4).

⁹ Section 11(1)(f).

¹⁰ *Family Law - Adult Relationships* (looseleaf ed, Thomson Reuters) at [FV11.01].

¹¹ *ibid* at s 10; see also *SN v MN* [2017] NZCA 289 at [20] and [21].

¹² *M v Y* [1994] 1 NZLR 527 at 533.

¹³ At 533.

[16] The allegation should be determined using the civil standard of proof.¹⁴ The court may then be satisfied that the abuse has or has not occurred. However, even where satisfied the abuse has occurred the court should refrain from making a finding that it has taken place unless the particular circumstances require it.¹⁵ If satisfied it did not occur, then the court should reject the allegation.

[17] If, however, the court is unable to reach a conclusion with confidence then it must undergo a risk assessment. Even if an allegation has not been made out the circumstances may require the court to find there should be no care or contact, or only supervised contact, with the parent or person against whom the allegation was made.

[18] In determining the welfare and best interests of [Valerie] and [Lucas], I must identify those principles that are relevant, as well as those that are irrelevant, and provide reasons for the same.¹⁶ I must also be satisfied [Valerie] and [Lucas] have been given reasonable opportunities to express their views and I must take those views into account.¹⁷

Have [Valerie] and [Lucas] been subjected to psychological abuse?

[19] Mr Hart as lawyer for child submits that even though [Valerie] and [Lucas] are not related by blood, they are part of a blended family as [Valerie]’s mother and [Lucas]’s dad are married and live together. I agree. When [Valerie] is in [Judith]’s care, her care is provided for by [Judith] and [Carl]. Similarly, when [Lucas] is in [Carl]’s care, his care is provided for by [Carl] and [Judith].

[20] It is therefore unsurprising that many of the concerns that arise for [Valerie] and [Lucas] are the same for when they are in [Judith] and [Carl]’s care. There are also separate concerns for [Valerie] and then [Lucas].

¹⁴ At 534.

¹⁵ At 534.

¹⁶ *Kacem v Bashir* [2010] NZSC 112 [2011] 2 NZLR 1.

¹⁷ Care of Children Act 2004, s 6.

What are the shared concerns?

[21] [Carl] and [Judith] are open in their desire to lead a polyamorous lifestyle. The Cambridge English Dictionary defines polyamory as: “The practice of having sexual or romantic relationships with two or more people at the same time”.¹⁸

[22] Whilst a party’s conduct is only relevant to the extent such conduct impacts on a child’s welfare and best interests,¹⁹ [Randy] and [Kirsty] say [Lucas] and [Valerie] have suffered psychological abuse as a direct result of [Judith] and [Carl] prioritising their needs over the children’s needs, thereby placing [Valerie] and [Lucas]’s safety at risk.

[23] Some of the concerns relied upon by [Randy] and [Kirsty] have been the subject of earlier findings made by me and it is the cumulative effect of the separate incidences that [Randy] and [Kirsty] rely upon.²⁰

The children’s exposure to sexual activity in the [Blake] home

[24] In early September 2019, [Carl] and [Tara Fuller] (Ms [Fuller]) met online via [Carl]’s tinder page. At the time, they were both interested in meeting another couple and explore a polyamorous relationship. The initial online meeting between [Carl] and Ms [Fuller] was quickly followed by Ms [Fuller] and her partner, Mr [Savage], visiting [Carl] and [Judith] at their home.

[25] The relationship between the two couples moved very quickly. [Judith] and [Carl] accept that sexual activity took place between the couples in their lounge during the months of September and October 2018. However, they say that Ms [Fuller] and Mr [Savage] visited their home and participated in sexual activity when the children were not in their care, other than on 11 October 2019.

¹⁸ Cambridge English Dictionary “polyamory” (16 July 2021) Cambridge Dictionary <https://dictionary.cambridge.org/dictionary/english/polyamory>.

¹⁹ Care of Children Act, 2004 at s 4(2)(b).

²⁰ See my judgments in respect of the separate hearings to determine [Lucas] and [Valerie]’s interim care arrangements, hereafter referred to as the [Lucas] or [Valerie] hearing.

[26] On 11 October 2019, Ms [Fuller] was at the [Blake] home when [Judith] and [Carl] had all three of [Judith]’s children, including [Valerie], and [Lucas] in their care. Ms [Fuller] remained at the [Blake] home for between one and a half to two hours and shared an evening meal with the [Blake]s and their children before the children went to their bedrooms for the evening.²¹

[27] The [Blake] home is described as a fairly compact home with an open plan lounge and kitchen area.²² [Valerie] and [Lucas] share a bedroom at one end of a short hallway that leads to the lounge. There is no door between the lounge and the hallway. [Jonathan] and [Seth] sleep in the detached sleepout behind the home.²³

[28] [Judith] and [Carl] accept that, after the children went to their rooms, [Carl] and Ms [Fuller] engaged in sexual activity on a mattress on the floor in the lounge. Ms [Fuller]’s evidence was that [Judith] also participated in the sexual activity.

[29] Although [Judith] and Ms [Fuller] had previously engaged in oral sex between themselves in the lounge, they said that on this occasion, [Judith] did not participate in group sex. Instead, [Judith] remained seated on the couch so that she could keep an eye on [Valerie] and [Lucas]’s closed bedroom door.

[30] It was accepted that if [Judith] sat on the couch, she could see the children’s bedroom door, although it was also clarified at the hearing that the children’s door did not have a handle. [Carl] said they would jam a bit of paper under the door to keep the door closed but still allow for the door to be opened either side.

[31] [Judith] and [Carl] maintain there was no risk of any of the four children walking in on [Carl] and Ms [Fuller] having sex because [Judith] would have intervened and would have stopped them from seeing any of the sexual activity in the lounge.

²¹ [Carl]’s evidence at p 488 of notes of evidence.

²² At the hearing to determine [Lucas]’s interim care arrangements, [Carl]’s evidence was that the home is 86 square metres – bundle of documents at p 74, line 22.

²³ [Carl]’s evidence at the [Lucas] hearing dated 9 June 2020, notes of evidence at p 74.

[32] Whilst I am not satisfied [Judith] participated in group sex that evening, I do not accept [Judith] and [Carl]'s actions that evening prioritised the children's safety over their own needs. Similarly, I do not accept [Judith]'s attention was entirely focused on keeping an eye and ear out for the children. She chose to remain in the lounge whilst [Carl] and Ms [Fuller] were engaged in sexual activity.

[33] A more child focused approach, if sexual activity was required to take place that evening, would have been for [Carl] and Ms [Fuller] to remove themselves to another part of the house that provided full privacy out of earshot and eyesight of any of the four children at home that evening.

Inconsistencies in [Judith] and [Carl]'s evidence

[34] There are other concerns about that evening.

[35] Firstly, [Judith] and [Carl]'s initial evidence, in response to Ms [Fuller]'s evidence that she was at their house that evening, was to call it a "miscommunication error"; that they never intended Ms [Fuller] to be at their home when the children were there.

[36] This explanation was rejected by me at the [Lucas] interim hearing after [Carl] and [Judith] were cross examined and it was established that [Judith] had, in fact, collected Ms [Fuller] from her home that day.²⁴

[37] At that time, the care arrangements for all four children were stable and consistent. Therefore, both [Judith] and [Carl] would have known the children were in their care prior to [Judith] taking Ms [Fuller] to their home. In any event, [Judith] and [Carl] welcomed Ms [Fuller] into their home and shared a meal with her.

²⁴ My reserved judgement dated 9 June 2020 from the [Lucas] hearing at [29], p 94 of the first bundle.

[38] Secondly, Ms [Fuller]’s presence at the [Blake] home that evening was a clear breach of the judicial direction made by consent that:²⁵

[Carl]’s weekend contact will continue on the condition contact will include [Carl]’s fiancé (as [Judith] was then), but no other partner.

[39] [Carl]’s initial explanation was that Ms [Fuller] was not his partner and therefore he did not breach the court’s direction. I disagree.

[40] The year prior, [Lucas]’s mother, [Kirsty], had made her position very clear to [Carl] and [Judith] that she did not want [Lucas] being exposed to their polyamorous lifestyle, sexual activity or to multiple sexual partners.²⁶ Although [Kirsty]’s application was placed on notice, the court issued a judicial direction that:²⁷

[Lucas] is not to be exposed to any sexual behaviour in any household.

[41] That, coupled with the subsequent direction that [Carl]’s weekend contact could include [Judith] but no other partner, satisfy me that [Carl] and [Judith] would have known Ms [Savage] was not to come into contact with [Lucas].

[42] Thirdly, the very next day, namely 12 October 2019, at a prearranged meeting with the court appointed psychologist in respect of the proceedings concerning [Lucas], [Carl] and [Judith] failed to tell Ms Clough about what occurred the evening prior.

[43] In respect of [Judith] and [Carl]’s polyamorous lifestyle, Ms Clough, in her first s 133 report on [Lucas], stated:

It is evident - given the nature of the polyamorous lifestyle - that it is different from currently accepted societal norms of habitation and families. This difference could result in children experiencing degrees of discrimination from peers and others. It is therefore incumbent on parents to resource the children with ways of dealing with any discrimination they may encounter. Any harm from any adult relationship is mitigated with a focus on the following:

²⁵ Minute of Judge Lindsay dated 15 November 2018.

²⁶ [Kirsty]’s without notice application for a parenting order dated 26 October 2018.

²⁷ Judge Courtney’s eduty Minute dated 26 October 2018.

- a) the adults in the relationship are child focused and appropriately nurturing to the children;
- b) the relationships are long-standing and stable; with no introduction to the child of a new person until such time as the relationship is well established;
- c) the children are not exposed to adult sexualised behaviours.²⁸

[44] After her meeting with [Judith] and [Carl] on 12 October 2019, Ms Clough reported:

The father and stepmother maintained, ‘we are not introducing anyone new; either friends or romantic interests’. They also reported, ‘just because we’re open to having more than one relationship going concurrently; we’re not intending to and not going to introduce anyone new to the children’. They both presented as having a protective focus towards the children. They were receptive to discussions in this regard. They both presented as being insightful and aware of possible difficulties for children. At this point in time the father and stepmother present as being able to manage any harm to the children.²⁹

[45] Based on their representations, Ms Clough concluded:

At this point in time there are no concerns about either parent’s ability to provide appropriate and nurturing care for [Lucas]; provided there is a focus on his needs and he is protected from untoward adult behaviours. The father and mother were expressive in their intent to be protective of the children.³⁰

[46] I find that [Carl] and [Judith] mislead Ms Clough and that Ms Clough’s conclusion regarding [Lucas]’s safety in their care is not reliable.

Introduction of successive partners

[47] Furthermore, [Judith] and [Carl] failed to mitigate any harm suffered by [Valerie] and [Lucas] by the introduction of successive short-term partners.

[48] As well as Ms [Fuller] being introduced to [Valerie] a month after first meeting [Carl] and [Judith], [Valerie] was introduced to [Laura Kent] as “Mummy’s girlfriend” a month after [Judith] and [Carl] commenced a polyamorous relationship with Ms [Kent]; their relationship with Ms [Kent] ended three months after the introduction.³¹

²⁸ ibid at [29].

²⁹ Ms Clough’s first s 133 report on [Lucas] dated 5 December 2019 at [31] at p 350 of the third bundle.

³⁰ ibid at para [45].

³¹ Ms [Kent]’s evidence was the relationship commenced in May 2019, she was introduced to

[49] Similarly, when [Carl] moved in with [Judith] and her former fiancé, [Liam Knight], in March 2018, just two months after their relationship had started, [Carl] had [Lucas] sleep in a cot in the same bedroom where the three adults shared a bed. [Liam] left the relationship in October that year.

[50] Even more concerning is when [Jonathan] and [Seth] were interviewed by Ms Clough for the purposes of the first s133 report on [Valerie], she reported them as being aware [Judith] and [Carl] participated in sexual activity in their lounge when they have friends over.

[51] Ms Clough reported [Jonathan] as saying:

So now; if I go inside, I put my headphones on so I can't hear anything and I don't look. I know where the toilet is so I curve around so I don't see anything.³²

[52] [Seth] is reported as saying:

"We don't go in(side) when the lights are on. That's why we take out bottles of water."³³

[53] I accept the actions described by both [Jonathan] and [Seth] were to avoid the risk of exposure to adult sexual activity in their lounge.

[54] A more recent example of [Judith] and [Carl]'s lack of insight into the need to mitigate any harm to [Valerie] and [Lucas] was their interpretation of the parenting agreement they entered into with [Randy] and his wife, [Arlene].³⁴

[55] The parenting agreement prohibited [Judith] and [Carl] from introducing [Valerie] to any new partners. The only exception provided for in the agreement was to allow "*those persons to be around [Valerie] in a platonic setting i.e. for a Board game night.*"

[Valerie] on her seventh birthday in [month deleted] and that her relationship with [Judith] and [Carl] ended in September 2019.

³² Ms Clough's first s133 report on [Valerie] dated 7 July 2021 at [49] – p 380 of bundle 3.

³³ *ibid* at [47].

³⁴ Parenting Agreement in respect of [Valerie] dated 1 June 2020.

[56] At the interim hearing concerning [Lucas], [Judith] and [Carl]'s evidence was that this exception allowed board game evening to conclude in consensual sex between the adults present in the home whilst the children were in their care.³⁵ This was rejected by both [Randy] and [Arlene].

[57] [Carl] and [Judith] maintained their position at the recent hearing. [Judith] went so far as to say she had a one hour 50 minute recording of their meeting in which [Randy] and [Arlene] do not say they did not want sexual partners around [Valerie] when she is in the [Blake] home.³⁶ However, [Judith] failed to produce a recording, in circumstances where she has been represented by experienced counsel throughout and filed numerous affidavits, the first one as far back as 21 March 2019.

[58] Furthermore, at the time the parenting agreement was signed, [Kirsty] and [Randy] had filed detailed evidence setting out their concerns associated with [Carl] and [Judith]'s polyamorous lifestyle; including their concerns [Valerie] and [Lucas] were being exposed to sexual activity in the [Blake] lounge, including adults participating in group sex, and using sexual language around the children and prioritising their own interests. [Randy] also provided evidence regarding his concerns that [Valerie] was displaying sexualised behaviour and inappropriate sexual language when playing with dolls with her friend, [Molly], and general neglect concerns.

[59] I therefore reject [Judith] and [Carl]'s interpretation about the board game exception. This is yet another example of their failure to prioritise [Valerie] and [Lucas]'s psychological safety.

³⁵ See my judgment issued following the 11 November 2020 hearing in respect of [Valerie]'s interim care arrangements at [20](a).

³⁶ [Judith]'s evidence at p 635 of the notes of evidence.

What are the additional concerns for [Valerie]?

[Valerie]’s knowledge of and use of sexualised language

[60] Ms [Alice Rata], a close friend of [Randy]’s, gave evidence in relation to two separate allegations involving [Valerie] and her daughter, [Molly], and [Valerie]’s inappropriate doll play. [Molly] is two years younger than [Valerie].

[61] The first incident was in December 2019 when Ms [Rata] and [Molly] were visiting at [Randy] and [Arlene]’s home.

[62] Ms [Rata]’s evidence was as she was walked past [Valerie]’s bedroom, she heard the girls speaking in hushed voices. This caught her attention. She slowed down and listened outside the door, which was slightly ajar, for what she estimated was about 30 seconds.

[63] Ms [Rata] said she heard [Valerie] say four words and after each word, she heard [Molly] repeat the word. Those four words were “orgy”, “pussy”, “cunt” and “cock”. Ms [Rata] said she was both shocked and horrified. Ms [Rata] entered the room. She said [Valerie] and [Molly] “froze” when they saw her and dropped the dolls they were each holding.

[64] Ms [Rata] described [Valerie] and [Molly] as being “shocked and embarrassed”.³⁷ She described the position of the dolls when she first entered the room as “the Barbie doll mounted on top of the Ken doll” and that neither doll had any clothing. Under cross examination, Ms [Rata] accepted that both girls got a fright when they first saw her enter and dropped the dolls almost immediately. I was unclear about how many dolls [Valerie] and [Molly] were playing with.

[65] The second incident relates to an incident the following month in January 2020. Ms [Rata]’s evidence was that [Molly] returned home from playing with [Valerie] at the [Maxwell] home and told her that whilst her and [Valerie] were playing with dolls, [Valerie] “was making the male doll be angry and violent with two girl dolls for being

³⁷ Notes of evidence at p 421.

‘cheating sluts’’. Ms [Rata] described her daughter’s facial expression and body language as being angry and grossed out.³⁸

[66] Ms [Rata] was very measured in her response and clear in her evidence that she heard both girls use the words, with [Valerie] saying each word first. Under cross-examination, Ms [Rata] was adamant that it was [Valerie] that she heard first when listening outside the bedroom door which was slightly ajar. Ms [Rata] also accepted she had never heard either [Valerie] nor [Molly] use those words before.

[67] I accept Ms [Rata]’s evidence in respect of the first incident. I found her to be a very articulate and credible witness. She was consistent in her evidence and was very clear that it was [Valerie] that first spoke the words “orgy”, “pussy”, “cunt” and “cock”.

[68] [Judith]’s evidence was that [Valerie] does not act like this in her home, that she has never heard [Valerie] use the words attributed to her by Ms [Rata] and [Valerie] has not played with dolls in such manner whilst in her care. [Judith]’s position is that if this happened in her father’s home, then it must have something to do with what [Valerie] is exposed to in [Randy]’s home.

[69] Although both incidences occurred in the [Maxwell] household, [Randy] says [Valerie]’s knowledge and use of these words are a direct result of what [Valerie] has either seen or heard in her mother’s care. In support of [Randy]’s position, his wife [Arlene] gave evidence that on one occasion when [Judith] and [Carl] were at their home for dinner, and whilst [Valerie] was at the dining table with them, [Carl] spoke openly about looking forward to going home and having “loud sex” with his wife.³⁹

[70] Ms [Fuller] and her husband [Mr Savage] also gave evidence that neither [Judith] nor [Carl] made any attempt to curb their language when the children were around. Their evidence was they regularly heard [Judith] and [Carl] use the words “cock”, “cunt” and “pussy” and that when [Tara Fuller] spoke with [Judith] about this

³⁸ Ms [Rata]’s affidavit dated 14 April 2020 at [10.14] at p 420 of the first bundle.

³⁹ Notes of evidence at p 231.

in mid-October 2019, [Judith] “brushed me off and said that she would refer to these things as “pizza” instead.”⁴⁰

[71] Under cross-examination, [Randy] admitted that at some point he had owned, or had in his possession, adult comics which he accepted contained some graphic and pornographic illustrations. [Randy] also said that he had many books in his home and that any books with adult content were stored on shelves at a high level which would not be easily accessible by any child, including [Valerie]. [Randy] accepted that in the recent past, he had a boarder at his home, and could not rule out that person having adult sexually explicit literature in his room. However, he said his boarder’s room was out of bounds to [Valerie].

[72] Similarly, [Judith] and [Carl] have a large chest in their bedroom in which they store sexual paraphernalia. Ms [Fuller]’s evidence was that when she visited the [Blake] home, the chest was unlocked whereas [Judith] and [Carl] said they kept it locked and it doubled as a window seat. Of particular relevance is Ms Clough’s statement in her second report:

[Jonathan] also made a derisive/amused reference to the locked chest in his mother’s room; that suggested that he had an awareness of its contents.⁴¹

Triangulation of data

[73] Ms Clough’s evidence at the hearing regarding the triangulation of data is significant.⁴² The separate sources of information that Ms Clough relied upon in forming her opinion that [Valerie] had been exposed to sexual activity in the [Blake] home was the alleged acting out with the dolls, her interview of [Valerie] and [Valerie]’s response that she knew what the word “orgy” meant at the age of eight years and then the information from [Jonathan] and [Seth] regarding their avoidant behaviour when there were other adults present in the evenings.

[74] Specifically, Ms Clough had this to say:

⁴⁰ Joint affidavit from April 2020 at [60] at p 403 of bundle 1.

⁴¹ Ms Clough’s report dated 23 July 2020 at [50] at p 380 of the third bundle.

⁴² Notes of evidence at p 900.

Because you've got three different – they don't have to be correlated together, but because there's three different bits of data, Ma'am, the possibility of there being something raises concerns, so you look further and try to find. So like I said, if it was just [Valerie] acting out with dolls, then that wouldn't be a concern. There would be more concern about the boys, past reports of the boys' past behaviours.⁴³

[75] There were further concerns raised for [Valerie].

[76] In particular, [Judith]'s failure to act on and address longstanding concerns held by [Jonathan]'s school regarding his bullying and sexualised behaviour. This was reported on by Ms Clough after she interviewed Ms [Saunders], a teacher at [school name deleted]:

According to her, 'we did a lot of work with [Jonathan] from eight to 13 years of age.' She described him as having several behaviours of concern, including, 'lots of violence; he'd lash out. He wasn't a bully. Just reacting to his environment'. Ms [Saunders] also expressed concerns about his sexualised behaviour he had exhibited; 'lots of sex talk, inappropriate behaviours. He'd hump anything; kids, if he could get hold of them; chairs, doors. He'd lie on kids if he could'. Ms [Saunders] also commented 'he managed himself better as he got older'. She also described [Jonathan] as having informed her at that time, 'there were no doors at home and that Mum had multiple partners'.⁴⁴

[77] [Judith] said that [Jonathan] did not display any of those behaviours at home and that, as far as she knew, the concerns for [Jonathan] were over a period of months, not years.

[78] Ms [Saunders] was summonsed to give evidence at the hearing. Ms [Saunders] is a teacher with over 30 years' experience. She had been the Special Educational Needs Coordinator (SENCO) for over 10 years. In this role, Ms [Saunders] oversees students with learning and behavioural difficulties and was involved in their individual educational plans. Ms [Saunders] had also taught [Jonathan] and [Seth] at various times and was [Valerie]'s classroom teacher last year.⁴⁵ There were copies of a number of school documents that were admitted into evidence.

⁴³ Notes of evidence at p 906.

⁴⁴ Ms Clough's first report dated 23 July 2020 at [52] at p 380 of the third bundle.

⁴⁵ Ms [Saunders] was [Jonathan]'s classroom teacher in 2013 and [Seth]'s for two years in 2015 and 2016 – see notes of evidence at p 676.

[79] Ms [Saunders] confirmed [Judith]’s advice to Ms Clough that [Seth] was autistic and that in 2013, [Jonathan] was diagnosed with attention deficit hyperactive disorder (ADHD). Her evidence was that there were ongoing and repeated concerns regarding [Jonathan]’s behaviour from as early as 2014 until he finished at that school at the end of 2018.

[80] Ms [Saunders] produced a school guidance report for [Jonathan] which confirmed [Jonathan]’s attendance at the STAND health camp for five weeks in 2015 following a referral from the school “due to ongoing hygiene and behavioural issues (hitting, yelling, disrespectful to teacher and other students). [Judith] confirmed [Jonathan]’s attendance at STAND was because of the school’s concern regarding [Jonathan]’s behaviour.

[81] That same report records three separate incidences concerning [Jonathan] after his attendance at the health camp spanning a period from 5 July 2016 to November 2018.⁴⁶

[82] Having had the benefit of hearing Ms [Saunders]’s evidence, I found her a compelling witness. I accept her evidence that the school’s concerns regarding [Jonathan]’s behaviour over an extended period were shared with [Judith] and that [Judith] failed to appropriately respond to such concerns.

[83] Ms [Saunders] also gave evidence which supported, in part, [Randy]’s concerns regarding general neglect issues for [Valerie] in [Judith]’s care. Her evidence also supported [Randy]’s contention that he was far more focused on [Valerie]’s educational progress and in ensuring [Valerie] is appropriately bathed, dressed and ready for school; all matters that [Randy] raised as concerns about [Judith]’s care. However, I am not satisfied such concerns reached such a level that the school should have considered a report of concern to Ministry of Oranga Tamariki.

[84] Finally, Ms Clough in her report referred to both [Jonathan] and [Seth] watching pornographic material from their home.

⁴⁶ Page 20 of the bundle seven headed education material.

[85] In respect of [Seth], [Judith] and [Carl] reported to Ms Clough that when they had checked [Seth]’s phone, they saw adult stuff on there and that he had googled Hentai, an x-rated pornography site.⁴⁷ [Jonathan] told Ms Clough he accessed pornography on his own phone; “xvideos” but that his mother was not aware of this.

[86] When asked by Ms Clough whether [Valerie] could have been exposed to those videos, [Jonathan] responded “no way; I always lock my phone”.⁴⁸

[87] In oral evidence, Ms Clough spoke about [Jonathan] being “absolutely horrified” when she asked if there was a possibility that [Valerie] would have ever seen pornography on his phone and that it was “quite a genuine response from him, yeah, so I think that’s important.”⁴⁹

[88] Ms Clough’s evidence was that, as the adolescent brain is not fully developed, exposure to pornography was “really bad for adolescents”.⁵⁰

[89] There was no suggestion that either [Jonathan] or [Seth] watched pornography in front of either [Lucas] or [Valerie]. However, both [Randy] and [Arlene] were concerned at the lack of appropriate supervision and oversight by [Judith] in the home given [Jonathan] and [Seth]’s young ages and the impact that pornography can have on children and adolescents.

My finding

[90] Standing back and considering the evidence as a whole, I am satisfied [Valerie] was psychologically abused in [Judith]’s care based on my findings in respect of the shared concerns for [Valerie] and [Lucas], [Valerie]’s knowledge and use of sexualised language as reported by Ms [Rata] and Ms Clough and Ms Clough’s conclusions regarding triangulation of data. As well as the three sources Ms Clough identified, my finding in respect of [Judith]’s failure to address the school’s concerns regarding [Jonathan]’s behaviour is a further source.

⁴⁷ ibid at [46].

⁴⁸ Report dated 23 July 2020 at [50] at p 379 of bundle three.

⁴⁹ Page 754 of the notes of evidence.

⁵⁰ Notes of evidence of the interim hearing for [Valerie] at p 503 of the fourth bundle.

[91] There were other concerns raised by [Randy Maxwell], including:

- a) [Judith]’s former occupation as a sex worker, which is how [Judith] and [Carl] first met, and then her work as a camgirl.⁵¹
- b) When [Valerie] was five years old, she would repeatedly touch [Arlene]’s breasts whilst [Arlene] was fully clothed.
- c) When [Valerie] was six years old, she tried to sit on the lap of a friend of her father’s at their home when she had only just met him and “flirted” with him and, at the same age, she was given a black ruffled bra, with removable padding, by [Judith].⁵²⁵³
- d) Around December 2019, when [Valerie] was seven and a half years old, she showed an inappropriate amount of interest in [Alice Rata]’s 12-year-old son, [Oscar], by hanging around him on three occasions within a short space of time.⁵⁴
- e) In June 2020, when [Arlene] came across [Valerie] in the lounge at their home, lying on the floor face down, with [Molly]’s younger brother, [Marshall], aged four astride [Valerie], both fully clothed. [Arlene]’s evidence was that their genitals were touching and they looked to be simulating sex.⁵⁵ [Judith]’s response was that [Valerie] takes swimming lessons and that the incident as described to her, was akin to dolphin swimming.

⁵¹ [Carl]’s affidavit dated 25 March 2020 at [27] and [28] at p 363 of the first bundle.

⁵² Both [Randy] and [Arlene Maxwell] gave evidence about the incident involving [Valerie] attempting to sit on [Randy]’s friends lap – notes of evidence at pp 136 to 137 and [Arlene Maxwell]’s evidence at p 272 of the notes of evidence.

⁵³ It was accepted the item of clothing, which was entered as an exhibit was a piece of clothing for a child of [Valerie]’s age at the time.

⁵⁴ [Alice Rata]’s unsworn affidavit dated 14 April 2020 at [11.2] to [11.4] at p 421 of the first bundle.

⁵⁵ [Arlene Maxwell] subsequently accepted both children were fully clothed so the children’s genitals were not touching.

- f) Ms Clough reported [Arlene]'s concern that [Valerie] had said to them "I'm going to drink your blood" and that [Kirsty] had told her [Lucas] also said the same thing to her.⁵⁶

[92] Given my finding that [Valerie] has been psychologically abused in her mother's care, I am not required to determine those matters any further. Had I been required to, I would not have been satisfied those incidences amount to psychological abuse.⁵⁷

What are the additional concerns for [Lucas]?

[93] [Lucas] was born in [month deleted] 2016. He was sixteen months old when [Carl] moved in with [Judith] and [Liam] and slept in a cot in their bedroom where they shared the same bed.

[94] [Lucas] was two months off his third birthday when [Carl] and [Judith] engaged in a seven-and-a-half-hour online chat with Ms [Fuller] and Mr [Savage]. [Kirsty]'s evidence was the printout of the chat ran to some 600 pages. The contents of the chat were of an explicit sexual nature with [Judith] putting a message in the chat room:

[Carl] is being dragged outside to play tag with the toddler. He is right in the middle of furry porn scrolling.⁵⁸

[95] [Lucas] was less than three years old when his father engaged in sexual activity with Ms [Fuller] on 11 October 2019.

[96] Each of these incidences must be seen in the context that [Lucas]'s parents, when they were together, were a heteronormative couple. It was only after [Carl] formed a relationship with [Judith] that he then informed [Kirsty] and his own parents that he was in a polyamorous relationship and gave them a video to watch explaining what that meant.

⁵⁶ Ms Clough's third report on [Valerie] dated 3 March 2021 at [12] – [13] at p 931 of the sixth bundle.

⁵⁷ In relation to the last matter, I rely in particular on Ms Clough's second report at [20] – [23].

⁵⁸ A screen shot of the photo and message posted by [Judith] was attached as exhibit A to [Randy]'s affidavit dated 12 March 2020 at p 310 of the first bundle.

[97] I return to the earlier point made by Ms Clough that the steps to mitigate harm required [Carl] and [Judith] to be child focused and appropriately nurture [Lucas]; any relationship to be long-standing and stable; with no introduction of a new person to [Lucas] until such time as the relationship is well established; and that [Lucas] is not exposed to adult sexualised behaviours.

My finding

[98] I am satisfied [Lucas] was psychologically abused in [Carl]'s care based on my findings in respect of the shared concerns for [Valerie] and [Lucas] and the additional concerns set out above. Even if I am wrong, I rely upon *M v Y* and am satisfied there was an unacceptable risk to [Lucas]'s safety whilst in his father's care.⁵⁹

Is [Valerie] safe in her mother's care?

[99] Having found [Valerie] suffered psychological abuse in [Judith]'s care, I must now consider [Valerie]'s ongoing safety in her mother's care.

[100] [Randy]'s position is that as a result of the psychological abuse [Valerie] has suffered in her mother's care, a final order should be made that provides for [Valerie] to be in his day-to-day care. [Randy] proposes [Judith] have unsupervised contact with [Valerie] every second weekend plus a midweek activity with safety conditions imposed.

[101] [Judith] agrees to a final parenting order but seeks the status quo continue. [Judith] agrees to some, but not all, of the conditions proposed by [Randy].

[102] Since 11 November 2020, [Valerie]'s care has been regulated by way of an interim parenting order. That order provides for [Valerie] to be in the shared care of her parents on a week-about basis with changeovers occurring on a Monday.

[103] [Judith]'s care is subject to nine conditions which are:

⁵⁹ above n 13.

- a) [Valerie] is not to be introduced to, nor exposed to, any sexual partners of either or both [Carl] and [Judith];
- b) [Valerie] is not to be exposed to sexual language or sexual activity of any kind;
- c) [Carl] and [Judith] shall not look at any material of a sexual nature whether it be in print, television, or electronic form;
- d) [Valerie] was not to have access to, nor use, any device that does not have an operating childlock or similar application installed to prevent access to age inappropriate content;
- e) [Carl] and [Judith] shall ensure that [Jonathan] and [Seth] do not have access to pornography on any device;
- f) There shall be no adult discussions, and particularly, no discussions around the allegations contained within these Court proceedings;
- g) There shall be no illicit drug use;
- h) There shall be no violence around [Valerie]; and
- i) [Valerie] shall not be left alone with [Jonathan].

Has the interim parenting order been breached?

Exposure to sexual activity in the [Blake] home

[104] [Randy] alleges [Judith] breached the condition that [Valerie] was not to be exposed to sexual activity in her care by performing massages on other people which [Randy] said was a euphemism for performing sexual services. [Judith] rejected [Randy]'s allegations and produced a certificate of attendance for having completed the foundation course for training as a Contact Care Practitioner on [dates deleted] 2021.

[105] I heard evidence that contact care therapy is a specific type of body work which uses the flinchlock method and can be performed standing up or lying down. [Judith] said the intention was that she would convert the container on their property, which is separate to the sleepout that [Jonathan] and [Seth] have, and perform her training and treatment in the container.

[106] [Judith]'s mother, Ms [Conley], gave evidence that her mother, [Judith]'s [relative], is a contact care therapist and has been undertaking therapeutic massage using this technique for 15 years and had treated all of her family, including Ms [Conley], many times. Ms [Conley] was supportive of [Judith] undertaking training in the same technique and hoped that [Judith] may be able to treat her grandmother at some point. Ms [Conley] confirmed that clothing was worn and that there was no need to strip down to a person's undergarments.⁶⁰

[107] Ms Clough had also been a client of contact care. Whilst she did not hold concerns about the type of training [Judith] was undertaking, she considered it was important that contact care not be undertaken in the lounge but rather in the container.⁶¹ I concur with Ms Clough's assessment. Furthermore, I am satisfied [Judith] did not breach the interim parenting order.

Failure to check on [Jonathan] and [Seth]'s internet access

[108] In respect of condition (e), the [Blake]s have had their internet provider install a lock so that certain websites, including all pornographic websites, could not be accessed by [Jonathan] and [Seth]. However, [Carl] and [Judith] conceded there was no such restriction on [Jonathan] and [Seth]'s own personal devices if they had access to data.

[109] I understand both [Jonathan] and [Seth] have their own mobile phones which are for their personal use only and are not accessed by either [Lucas] or [Valerie]. However, [Judith] said that both her sons had limited financial means in which to buy

⁶⁰ Notes of evidence at pp 534 – 535.

⁶¹ *ibid* at p 945.

data and that otherwise the boys would access the wifi which had the appropriate restrictions in place.

[Jonathan] and [Seth]

[110] The condition regarding [Jonathan] needs to be fine-tuned. Ms Clough clarified the concern was not about [Valerie] being left in the same room as [Jonathan] or [Seth], such as the lounge or other common areas, whilst [Judith] or [Carl] are present. Rather, that neither [Jonathan] nor [Seth] should be left home alone to care for [Valerie]. This is an important distinction as it impacts on the practical care arrangements for [Valerie].

[111] Ms Clough had previously recommended [Jonathan] and [Seth] attend some sort of programme such as the SAFE programme. [Judith] does not agree that [Jonathan] and [Seth] need to attend the SAFE programme. Furthermore, there was no evidence to suggest either [Jonathan] or [Seth] were a risk of any sexual abuse towards [Valerie]. [Judith] did say she tried to engage with [a counselling service] to provide counselling for her sons, however she was unable to make contact with them and was then told they could not help as [Kirsty] was using that service. [Judith] says she only found out [Kirsty] had stopped using [the counselling service] prior to the hearing.

[112] I am not satisfied the condition regarding [Jonathan] and [Seth] should be extended to require either of them to attend a SAFE programme or something similar. There is no allegation of inappropriate behaviour by either [Jonathan] or [Seth] towards either [Valerie] or [Lucas] that requires attendance on such a programme as mandatory.

Play therapist involvement

[113] The interim parenting order included a condition that applied equally to [Randy] and [Valerie] and that was for [Valerie] to participate in play therapy which [Valerie]'s parents arranged.

[114] The report from the play therapist, Ms Muijlwijk, did not disclose any further concerns for [Valerie], quite the opposite. Both the play therapist and Ms Clough commented on the close relationship [Valerie] has with her mother. Ms Clough's report raised concerns in the event that the week about care arrangement was changed.

[115] In the event that [Judith]'s care of [Valerie] is reduced, then a likely consequence will be that [Randy]'s wife [Arlene Maxwell] will feature more prominently in her relationship with [Valerie].

[116] Whilst [Arlene Maxwell] went to some lengths to say that she was not [Valerie]'s mother, that was [Judith]'s role, the reality is that if [Valerie]'s contact with her mother is restricted then that will mean increased time with her father and stepmother. When considering this, I take on board the comments made by Ms Clough when she described [Arlene Maxwell] as having a heightened awareness and being hypervigilant. I must also have regard to [Valerie]'s continuity in care development and upbringing.⁶²

[117] Accordingly, I am satisfied that [Valerie] is safe in her mother's care. The safety conditions I imposed in terms of [Judith]'s care of [Valerie] have not been breached. There is some fine tuning of conditions given the order will be a final parenting order.

[118] Mr Hart, as [Valerie]'s lawyer, strongly supports continuation of the status quo, based on [Valerie]'s very clear views. Ms Clough also supports week-about shared care continuing.

[119] I also have regard to the remaining s 5 principles. In particular, that [Valerie]'s care, development and upbringing should be the primary responsibility of her parents and facilitated by ongoing consultation and cooperation between [Randy] and [Judith].⁶³ This requirement to consult and cooperate has been tested over the last two years. However, the court's expectation is that [Valerie]'s parents will improve their

⁶² Section 5(d) Care of Children Act.

⁶³ The principles set out at s 5(b) and (c).

lines of communication now that there is certainty and clarity on [Valerie]’s long-term care arrangements.

[120] The shared care arrangement will preserve and strengthen [Valerie]’s relationship with her maternal blended family, which includes her three brothers and stepfather, as well as her paternal family, which includes her stepmother, stepbrother and younger brother.⁶⁴ It will also recognise that part of [Valerie]’s identity is that she is a valued member of a modern blended family.⁶⁵

[121] Accordingly, I am satisfied [Valerie]’s welfare and best interests require the current care arrangements to continue, which is for [Valerie] to be in the shared care of her parents on a week about basis, with protective conditions in place.

Is [Lucas] safe in his father’s care?

[122] Having found [Lucas] suffered psychological abuse in his father’s care, I must now consider [Lucas]’s ongoing safety in [Carl]’s care.

[123] [Kirsty] seeks a final parenting order that provides for [Lucas] to be in her day to day care. [Kirsty] proposes [Carl] have supervised daytime contact with [Lucas] every second weekend, plus every Wednesday after daycare for two and a half hours.

[124] [Carl] opposes supervised or monitored contact. Instead, he seeks unsupervised contact and proposes an increase from the current contact, which is every second Sunday daytime contact plus a mid-week activity, to overnight contact for a five day period every second weekend, to shared care on a week-about basis similar to [Judith]’s care of [Valerie].

[125] Whilst [Carl] agrees to many of the safety conditions proposed by [Kirsty], there are some he opposes. [Carl] proposes that the Court make an interim parenting order and that the interim order be reviewed in six months following a report from Lawyer for Child.

⁶⁴ Section 5(e) Care of Children Act; [Jonathan] and [Seth] are [Valerie]’s half-brothers and [Lucas] is her stepbrother.

⁶⁵ The principle to preserve and strengthen [Valerie]’s sense of identity in s 5(f).

Has the interim parenting order been breached?

[126] On 6 July 2020, I made an interim parenting order granting [Kirsty] day to day care of [Lucas]. This order recognises [Kirsty] has provided primary care of [Lucas] since his parents separated in January 2018. At the recent hearing, Ms Clough gave evidence that [Lucas] has a primary attachment to [Kirsty].⁶⁶

[127] The interim parenting order provides for [Carl] to have daytime contact only, with any contact in the [Blake] home to be monitored.⁶⁷ Additionally, [Carl]’s contact is subject to the same four conditions of [Judith]’s contact to [Valerie] set out at paragraph [103] (a) to (d) above.

[128] [Kirsty] has raised a number of concerns for [Lucas] which [Kirsty] says only arose when [Carl]’s contact was no longer supervised. Ms Clough reports [Kirsty] as describing [Lucas] as being distressed, aggressive and throwing major tantrums. Ms Clough reported these behaviours were evident at her observation of [Lucas] with [Kirsty]; “with [Lucas] freely expressing his frustration and feelings to his mother.”⁶⁸

[129] [Kirsty] says [Lucas] started daytime wetting, both at home and at his day care, about a week after supervision was lifted.⁶⁹ [Kirsty] also said that in September 2020, whilst she was bathing [Lucas], he put his finger in his bum and told her that Dad told him to do this to help [Lucas] “get the bugs out”.⁷⁰ [Carl] rejects telling [Carl] to put his finger in his bum. He also rejects the suggestion that [Kirsty]’s concerns about [Carl]’s behaviour are linked to a removal of the condition his contact be supervised.

[130] [Kirsty] also reported to Ms Clough:

He won’t sleep unless he’s in my bed. I need to get him out of my bed; but he’s not a happy child. He been losing it over little things. I moved his books from the playroom to the lounge. He flew into a rage. He lost it.⁷¹

⁶⁶ At p 791 of the notes of evidence.

⁶⁷ The interim parenting order provides for monitored contact to require a person approved by lawyer for child be present at the beginning and commencement of contact in the [Blake] home and have an understanding of activities planned for the contact visit.

⁶⁸ Ms Clough’s final report dated 3 March 2021 on [Lucas] at [8] of the report.

⁶⁹ [Kirsty]’s affidavit dated 28 September 2020 at [57] at p 621 of bundle four.

⁷⁰ *ibid* at [64] to [66].

⁷¹ *ibid* at [9].

[131] [Lucas] is also reported as demonstrating some hypersensitivity to some noises and to touch.⁷² The concerns were observed by both [Kirsty] and [Lucas]’s day care.

[132] I have particular regard to the following excerpts from Ms Clough’s report:

[Lucas] is clearly a very distressed little boy; with him exhibiting significant levels of distress with his mother and at his pre-school. It is not unusual for four-year-old children who are beginning to assert independence – to express frustration. However, the reports of [Lucas]’s behaviours are considered to be extreme. He is currently exhibiting a high level of anxiety; particularly evidence in his regression to daytime wetting, picking at his nails and his distress at his mother’s leaving.⁷³

...Given the above – resistance to change; distressed, angry behaviour, regression in toileting, anxiety and hypersensitivity – it is considered to be in [Lucas]’s best interest for him to be referred to a child psychiatrist; to consider a basis and possible diagnoses for the source of these behaviours.⁷⁴

[133] Ms Clough concluded:

[Lucas] continues to be a delightful and engaging child. In addition, at this point in time, [Lucas] also presents as being distressed; with regression in his development and angry, acting behaviours; resulting in concerns about his optimal development. It is important he is provided with follow-up specialist assessment, with a Child Psychiatrist.

...[Lucas] needs meaningful contact with his father. However, the impact of the lack of trust – on the mother’s part – is such that there are concerns about the consequences on the mother and subsequently on [Lucas] should the court decide on unsupervised contact.⁷⁵

[134] [Kirsty] and [Carl] have divergent views as to the reasons for [Lucas]’s deteriorating behaviour.

[135] [Carl] considers his contact with [Lucas] is too limited and too restrictive and this is now impacting negatively on [Lucas]. On the other hand, [Kirsty] blames [Carl]. Ms Clough reported [Kirsty] as saying “[Carl] can’t put his sexual needs behind [Lucas]’s needs” and “[Jonathan] is a danger to [Lucas].”⁷⁶

⁷² ibid at [17].

⁷³ At [18].

⁷⁴ At [21].

⁷⁵ At [22] and [23].

⁷⁶ Ms Clough’s final report at [7].

[136] I have no doubt that [Lucas]’s welfare is being negatively impacted on by his parents’ lack of communication and poor relationship. Their evidence about the lack of meaningful engagement at changeovers is an example.

[137] However, there has been no reported breach of the interim parenting order made in July last year which includes a prohibition on exposure to sexual language or sexual activity of any kind, and a prohibition on [Lucas] being introduced or exposed to any sexual partners of [Carl] and [Judith].

[138] [Lucas] has already been assessed by a paediatric neurologist, Dr Wong, at the request of his parents, following his daytime wetting. However, Dr Wong’s report was inconclusive. His impression was that “[Lucas]’s wetting is the result of some emotional and or psychological distress which has occurred because of custody issues. It is not uncommon for young children to regress with their toileting behaviour in the context of psychological; and emotional distress”.⁷⁷

[139] Accordingly, I am unable to determine the source of [Lucas]’s deteriorating behaviour. I simply do not know. What I do know is that both parties agree with Ms Clough’s recommendation for [Lucas] to be assessed by a child psychiatrist to consider a basis and possible diagnosis for the source of his behaviours.

[140] In the meantime, I am satisfied [Lucas] is safe in his father’s unsupervised care for the purposes of daytime contact only.

[141] In reaching this conclusion, I find the period that continues to pose a safety concern for [Lucas] in [Carl]’s care is the evening and overnight periods. That is when the incident involving Ms [Fuller] took place and that is the same period when [Carl] and [Judith] considered the board game exception applied. Furthermore, in [Kirsty]’s original application, her concerns for [Lucas] in his father’s care arose in relation to overnight stays.

⁷⁷ *ibid* at [12].

[142] I also take into account Ms Clough's evidence that requiring [Lucas]'s daytime contact in the [Blake] home to be monitored is no longer required.⁷⁸

[143] Until such time as the results of the psychiatric assessment is known, and the parties agree otherwise, all overnight contact, other than contact which takes place either at the paternal grandparent's home or with either of [Carl]'s parents being present, must be supervised.

[144] In reaching this position, I have regard to Ms Clough's evidence which supports daytime contact continuing for an estimated period of between six to twelve months before moving to overnight contact.⁷⁹ Ms Clough also supported an increase in contact after that period provided the conditions of contact had been adhered to.⁸⁰

[145] I also have regard to Mr Hart's submissions on behalf of [Lucas] which support the order I intend to make.

Final or interim order?

[146] I have considered whether a final or interim order should be made for [Lucas]. Ms Clough's opinion was that the Court proceedings need to be concluded and that these parents need to be able to move forward.

[147] I take heart from Ms Clough's observations during the hearing breaks over the two days she was required to attend the hearing. She spoke positively of [Kirsty] and [Carl]'s engagement when discussing matters concerning [Lucas]. The fact that they agree on [Lucas] undertaking a psychiatric assessment and MRI scan, as recommended by Dr Wong, is promising.

[148] I support [Kirsty] and [Carl]'s agreement that the MRI scan and psychiatric assessment be fast tracked, potentially through [Carl] making a claim on his medical insurance.

⁷⁸ Notes of evidence at p 935.

⁷⁹ Notes of evidence at p 935.

⁸⁰ *ibid* at p 936.

[149] In the event [Lucas] is assessed by a child psychiatrist and a good treatment plan is implemented, then it may be appropriate for an application for leave to be filed within two years to review the terms of [Carl]'s contact. However, the order I make will enable the parties to agree to further terms of contact.

[150] On balance, I am satisfied that a final order ought to be made. Such an approach recognises the principles of continuity in [Lucas]'s care, development and upbringing, the need for [Lucas]'s parents to consult and cooperate with each other, and the need to preserve and strengthen [Lucas]'s relationship with his family group.

[151] A final order will also recognise [Lucas]'s place with his mother, to whom he is primarily attached, as well as preserving and strengthening [Lucas]'s place within [Carl] and [Judith]'s blended family.⁸¹

[152] In making a final parenting order, I encourage [Kirsty] and [Carl] to recognise they are both guardians and have a shared responsibility to consult on important issues affecting [Lucas].

Can [Judith] and [Carl] live a polyamorous lifestyle when caring for [Lucas] and [Valerie]?

[153] Both [Kirsty] and [Randy] seek a condition that their child is not exposed to [Judith] and [Carl]'s polyamorous lifestyle. [Judith] agree this is a guardianship decision which requires the consent of both guardians. [Carl] does not agree this is a guardianship decision.

[154] Given this proceeding concerns competing parenting applications, and that there is no application to determine a guardianship dispute, I intend to simply make it a condition of each parenting order that [Valerie] and [Lucas] shall not be exposed to nor educated in [Judith] and [Carl]'s polyamorous lifestyle.

[155] I do so on the basis that [Carl] and [Kirsty]'s relationship when they were together was heteronormative. [Carl]'s decision to lead a polyamorous lifestyle was reached after their relationship ended.

⁸¹ The principles set out at s 5(b) to (f) of the Act.

[156] In respect of [Valerie], [Judith] agrees she will neither introduce nor expose [Valerie] to any person with whom either her or [Carl] have sexual relations with other than with [Randy]'s consent or the necessary application to the Court.

[157] Accordingly, I am satisfied such condition shall advance the welfare and best interests of [Valerie] and [Lucas]. I am also satisfied the orders I make must be detailed and very specific so that [Carl] and [Judith] understand what is required by each of them.

Orders and directions

[158] **In respect of [Valerie]**, I discharge the interim parenting order and make a final parenting order upon the terms set out at paragraphs [1] to [5] subject to the terms and conditions below.

[159] [Randy] and [Judith]'s care shall be subject to the following conditions:

- a) [Valerie] shall continue to participate in play therapy until such time as [Randy] and [Judith] agree play therapy is no longer required.
- b) All communication between the parties regarding the care and guardianship of [Valerie] shall be civil, child-focused and preferably take place via the familywizard application. In the event the familywizard app is unable to be utilised by both parties, then communication shall be via email on the same basis unless both parties agree to an alternative means of communication.

[160] [Judith]'s care shall be subject to the following additional conditions:

- a) [Valerie] shall not be exposed to nor educated in [Judith] and [Carl]'s polyamorous lifestyle. This includes:
 - (i) No direct or indirect exposure to sexual language or sexual activity.

- (ii) Not being introduced, nor exposed, to any sexual partner of, or person, who is in a sexual relationship with, either [Judith] or [Carl Blake] or both.
 - (iii) No access to nor use of any device that does not have an operating child lock or similar application installed to prevent access to age inappropriate content.
 - (iv) [Judith] and [Carl] not viewing any material of a sexual nature, whether it be in print, television or electronic.
- b) [Judith] shall ensure that [Jonathan] and [Seth] do not have access to pornography on any device and shall undertake fortnightly checks of their devices to ensure compliance.
 - c) Neither [Jonathan] nor [Seth] shall be left at home on their own, either together or separately, with [Valerie].
 - d) No contact care training or therapy is to be undertaken in the [Blake] home; instead it shall be restricted to the container sited on the property.

[161] **In respect of [Lucas]**, I discharge the interim parenting order and make a final parenting order on the following terms and conditions:

- a) [Kirsty] shall have the day to day care of [Lucas].
- b) Unless agreed otherwise, [Carl] shall have unsupervised contact with [Lucas] at the following times:
 - (i) Each Wednesday from 4 pm until 6.30 pm.
 - (ii) Every second weekend on both Saturday and Sunday from 10 am to 4 pm.
 - (iii) Such other contact as agreed between the parties.

c) [Carl] shall have overnight supervised contact on the weekend that he exercises daytime contact as above on the following terms:

- (i) [Adam Blake] is to be continuously present during overnight contact.
- (ii) Overnight contact shall take place at the home of [Adam Blake].
- (iii) In the event [Lucas] becomes distressed, [Adam Blake] will facilitate a phone call between [Lucas] and [Kirsty] with the aim that [Kirsty] will encourage [Lucas] to enjoy his visit. If [Lucas] does not settle, then [Adam Blake] shall arrange with [Kirsty] for [Lucas] to be returned to [Kirsty]'s care.

d) At all times, [Carl]'s contact shall be subject to the following conditions:

- (i) [Carl] shall ensure that all contact with [Lucas] shall be child-focused and provide a conducive environment to [Lucas]'s learning, health and wellbeing.
- (ii) Unless agreed otherwise, all changeovers shall take place in front of the playground at [location deleted]. [Kirsty] and [Carl] shall keep their communication at changeovers both civil and child focused.
- (iii) [Carl] shall ensure [Judith] is not present at changeovers, unless expressly agreed to by [Kirsty].
- (iv) [Lucas] shall not be exposed to nor educated in [Carl] and [Judith]'s polyamorous lifestyle. This includes:
 1. No direct or indirect exposure to sexual language or sexual activity.

2. Not being introduced, nor exposed, to any sexual partner of, or person, who is in a sexual relationship with, either [Judith] or [Carl] or both.
 3. No access to nor use of any device that does not have an operating child lock or similar application installed to prevent access to age inappropriate content.
 4. [Carl] and [Judith] not viewing any material of a sexual nature, whether it be in print, television or electronic.
- (v) [Lucas] shall not be left at home on his own, with [Jonathan] or [Seth], either together or separately.
- (vi) [Judith] shall not practice nor train as a contact care practitioner at the [Blake] family home other than in the container situated on the property and shall ensure that such activities are carried out without [Lucas] being present.
- (vii) [Judith] shall not preform contact care or any other form of massage or treatment upon [Lucas].
- e) The following conditions shall apply to both [Kirsty] and [Carl]:
- (i) There shall be no discussions around the allegations contained in these Court proceedings in the presence of [Lucas].
 - (ii) Neither parent, nor any other adult, shall denigrate the other parent in the presence of [Lucas].
 - (iii) [Lucas]'s parents shall engage with a psychiatrist to obtain a diagnose for his sensory and behavioural issues.
 - (iv) [Lucas] must be transported in a current five-point car seat harness until he is 148 cm tall. [Kirsty] shall provide the next

level of car seat booster to be used during contact when [Lucas] out grows his current car seat.

- (v) All communications between the parties regarding [Lucas]'s care and guardianship shall be civil, child-focused and preferably take place via the familywizard app. In the event the familywizard app is unable to be utilised by both parties, then communication shall be via email on the same basis unless both parties agree to an alternative means of communication.
- (vi) Unless the parties agree otherwise, no overnight contact shall occur until such time as [Lucas] has been assessed by a child psychiatrist and the source of [Lucas]'s increased anxiety and/or deteriorating behaviours are identified and, if required, a treatment plan made and agreed to by his parents.

[162] I direct [Kirsty] and [Carl] to attend six sessions of s 146G communications counselling and approve funding for six sessions.

[163] I encourage [Kirsty] and [Carl] to enter into family dispute resolution as a first option in progressing [Carl Blake]'s contact with [Lucas] as a preferred option to the Family Court.

L King
Family Court Judge