

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

**NOTE: PURSUANT TO S 139 OF THE CARE OF CHILDREN ACT 2004, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE <https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/>**

**IN THE FAMILY COURT  
AT DUNEDIN**

**I TE KŌTI WHĀNAU  
KI ŌTEPOTI**

**FAM-2013-012-000671  
[2020] NZFC 3899**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[SHARON PUCKETT] Applicant
AND	[ABIGAIL MASON] [BILL LYNN] Respondents

Hearing: 2 June 2020

Appearances: Applicant appears in Person  
L Garthwaite for the Respondent  
J Hambleton as Lawyer for the Children

Judgment: 2 June 2020

---

**ORAL JUDGMENT OF JUDGE E SMITH**

---

**Application**

[1] This is an application to determine the applicant, Ms [Puckett]'s, application for orders relating to contravention of a parenting order as against the Respondent, Ms [Mason].

[2] The matter proceeded by way of submissions only in the way described below.

### **Background**

[3] By way of background, [Abigail Mason] and [Bill Lynn] are the parents of [Frances], born [date deleted] 2010 and [Billie], born [date deleted] 2013.

[4] The applicant, Ms [Puckett], is the children's paternal grandmother and she lives in Australia.

[5] Extraordinarily tragically father is alleged to have attempted murder of maternal grandfather. He was ultimately convicted of wounding and imprisoned in New Zealand. On any view those circumstances and events were extremely traumatic for all of the maternal family including the children who have some knowledge of those events.

[6] After those events, however, by consent a parenting order was made on 28 February 2019 that provided Ms [Mason] (who lives in New Zealand with the children) with day-to-day care of them and the applicant grandmother, Ms [Puckett], was provided defined contact with the children by video call once each week and on special occasions, with provision for face-to-face contact in [the New Zealand location] up to twice a year.

[7] There were also clear conditions to that order including Ms [Puckett] ensuring that she would prohibit contact as between the children and their father, and also she would not discuss their father with them. Ms [Puckett] has consented to those very serious conditions willingly, understanding entirely the difficulties for the children and maternal family in that regard.

[8] It is clear that at the time of the parenting order of 28 February 2019 was made that it was in the clear welfare and interests of both of the children to have that defined and specific contact with their paternal grandmother, particularly given that their relationship with their father had ended and Ms [Puckett]'s love for them and their attachment with her and all of the matters in the Care of Children Act 2004 that speak

loudly of the need to preserve paternal relationship and wider whānau contact and affiliation to ensure wellbeing and development. It was in all regards an appropriate order.

[9] I am satisfied that after that order was made that Ms [Puckett] travelled twice in 2019 to [the New Zealand location]. She said she had a good relationship with mother and from her point of view those visits went particularly well with the children and she understood there was no difficulty with them.

[10] Similarly, she undertook the telephone video calls regularly and in fact the last she had prior to in or about November 2019 lasted for about an hour. Again, no difficulties present and the children happy and willing to speak with her.

[11] Ms [Puckett] advised at no time did she detect reticence, or distress, or concern from the children about those calls and therefore she advised of any. That said, Ms [Puckett] is well aware that [Billie] can find it difficult to participate in video calls. While he has received a recent diagnosis of [a developmental disorder] Ms [Puckett]'s evidence was she is well aware that he had difficulties concentrating and/or knew that prior to the consent orders being made and Ms [Puckett] understood that he could not always talk for very long and in her view he had been flexible about that and is well able to manage if he is not engaging.

[12] Ms [Puckett]'s evidence was that at no time did she breach the conditions that prevented her from talking about Mr [Lynn] with the children.

[13] It transpires that in late 2019 Mr [Lynn] was released on parole and he was deported from New Zealand to Australia where he now resides with his mother.

[14] Ms [Puckett]'s evidence is that a commensurate with that event Ms [Mason] simply stopped the telephone/video contact that was preserved to Ms [Puckett] in the order claiming twofold, that: the children were disturbed and upset by them; and/or a fear that the children would be exposed to their father during the calls or otherwise, given he was living with his mother.

[15] I am satisfied that at no time contemporaneous to Ms [Mason]'s then concerns, or since, has she made an application to the Court to vary or discharge the order to accommodate what she said were difficulties for the children or claiming the orders were no longer in the children's interest.

[16] As a result of that cessation of contact, Ms [Puckett], from Australia, made an application pursuant to s 68 for orders relating to contravention of the parenting order, and in particular, that the children were not being facilitated in contacting her by their mother.

[17] Mother filed a notice of response outlining the above reasons (see paragraph [14]) for her failure to comply with the order and also for other proceedings indications she would apply for a variation, although she has not.

### **Children's views**

[18] As a result of the proceedings Ms Hambleton was appointed for [Frances] and [Billie] to advocate in terms of the Act of their views, wishes and their welfare and interests.

[19] Ms [Mason] indicated to Ms Hambleton that she would not be meeting with Ms Hambleton at all, that she had no intention of the contact occurring, that Ms [Mason] stated she was advocating for the children, given their wish not to have contact with their grandmother because of the effect that had on them.

[20] Ms Hambleton met with the children. [Frances] said to her that when the phone calls started they were good, the first calls were short and then it became longer, but she went with it. She said at the start she was happy but the last few times speaking with Grandma reminded her of Dad too much and she felt pressured by that, although it was clear from [Frances] that Grandma was not putting her under pressure. [Frances]'s view was that the phone calls were making her think about stuff. [Frances] did confirm that Grandma did not talk about Dad. [Frances] said she does not like talking about her dad because of what he did. She did agree that the last phone call she had with Grandma went for about an hour and she still wants Grandma to be happy

and does not want her to be sad. She said she was scared and nervous of seeing Grandma in [the New Zealand location] because she reminded her of her dad and it felt more worrying. She said then when Grandma came to [the New Zealand location] her mum and Grandma, she did not see her mum and grandma together, and that made her feel bad. [Frances]'s view was that she thought her mum wanted her to see Grandma when she thought [Frances] wanted it. She was able to recall that Grandma sends some food sometimes and that this really does not bother her and it is okay if Grandma sends things, so as long as she does not puts notes in it. [Frances] felt kind of better once the phone calls stopped.

[21] [Frances] can recall that when she was upset about it she talked to her mum and her mum asked if she wanted to help and her and make it stop, and [Frances] said, "Yes." She believes her mum knew she was upset and her mum wanted her to be happy. [Frances] believes Mum is happy now because she ([Frances]) is happy and not worrying about anything anymore. She is glad her mum understands.

[22] [Frances] said to Ms Hambleton that Mum told her ([Frances]) would have a chat with Ms Hambleton and if she did not want to explain [Frances] could say that it makes her feel worried and that she does not want to do it, (that is the phone calls).

[23] With respect to Ms Hambleton's discussions with [Billie] he said that [his maternal grandparents] live [nearby]. He recalled he did not have a dad because Dad tried to [hurt his grandfather] and he said, "Dad's in prison," and he does not know where Dad is now. He could recall Dad had a [particular type of vehicle]. When asked about Grandma [Billie]'s reply was, "I don't really know." His favourite thing to do was play [a particular video game].

[24] Given the parties were implacably opposed in their position, and given Ms [Puckett]'s difficult position, given she lives in Australia, I am satisfied that her application in essence was the only meaningful remedy at least at this time she could seek was one of admonishment and a bond.

## Law

[25] In terms of the law s 68 of the Act provides:

### **Court may make certain orders or respond in other ways to contravention of parenting orders.**

- (1) On an application for the purpose by a party to a parenting order, the court may, if satisfied that another party to the order has contravened the order, do any of the following:
  - (a) admonish the party who has contravened the order:
  - (b) vary or discharge the parenting order under section 56 (for example, by reducing the time during which the child is in the care of, or has contact with, the party who has contravened the order).
- (2) The court may (as well as, or instead of, exercising its powers under subsection (1)) consider making an order or issuing a warrant under any of sections 70 to 77 if—
  - (a) the contravention that is the subject of the application under this section is of a serious nature; or
  - (b) the party who has contravened the parenting order has previously contravened that order or another order under this Act.
- (3) Nothing in this section limits other powers of the court to deal with a contravention of a parenting order.
- (4) On receiving an application under this section, the Registrar—
  - (a) must appoint a date and time for the hearing of the application and, by notice in writing to the parties to the application, inform them of that date and time:
  - (b) may, if the court directs, request them to attend.

[26] Further, s 64(1) of the Act provides:

### **Guiding consideration and principles**

- (1) In determining whether to make an order or to issue a warrant or to respond in another way under any of sections 68 to 77, the court must (as required by section 4) consider whether the order or other response would serve the welfare and best interests of the child who is the subject of the parenting order concerned.

[27] The Court's jurisdiction to order a bond is set out in s 70 of the Act. It provides:

### **Ordering party to enter into bond**

- (1) On an application for the purpose or on its own initiative, the court may order a party who has contravened a parenting order to enter into a bond as an assurance that the party will not contravene the parenting order again.
- (2) Before making an order under subsection (1), the court must consider the extent (if any) to which the party has sufficient means to deposit an amount of money in the court.
- (3) The bond must specify—
  - (a) the amount of money to be deposited in the court; and
  - (b) the conditions the breach of which may lead to some or all of that money being forfeited to the Crown; and
  - (c) that, if that money is forfeited by a direction under subsection (4), the court may, by an order under section 71(1) made at the same time as that direction, require costs incurred by another party to the parenting order to be satisfied from that money; and
  - (d) a date after which the bond will no longer be required (if the bond does not cease to be required earlier, because the parenting order ceases to have effect earlier).
- (4) If, after entering into the bond, the party contravenes the parenting order again, the court may, at its discretion and on an application for the purpose, direct that some or all of the bond is forfeited to the Crown, but the court must exercise its discretion by taking into account—
  - (a) the reason the bond was imposed; and
  - (b) the extent to which the conditions of the bond have been met or breached; and
  - (c) any explanation given for the breach of the bond conditions; and
  - (d) all other matters the court considers relevant.
- (5) Following the earlier of the following dates, the bond is no longer required, and the court must make all reasonable efforts to refund to the party any money not forfeited by a direction of the court under subsection (4):
  - (a) the date on which the parenting order ceases to have effect:
  - (b) the date specified under subsection (3)(d).
- (6) Nothing in this section prevents the court, on an application for the purpose or on its own initiative, from revoking the order and directing that any money not forfeited by a direction of the court under subsection (4) be refunded to the party.

[28] In my view, when effecting or considering matters under ss 68 and 70 the Court must still be guided by the paramountcy principle in s 4, and those mandatory matters in ss 4A and 5 of the Act apply.

[29] In terms of the prevailing caselaw in *LH v FD* the meaning and purpose of admonishment was considered.<sup>1</sup>

Interpretation of s 68 does not raise any jurisprudential difficulties or complexities. It is a model of simplicity. Its purpose is obvious. The power to admonish is to administer a warning or reprimand. It is a mark of the Family Court's disapproval, which is designed to act as both a deterrent and an incentive. It also constitutes a formal record of a party's previous misconduct in the event of recurring disputes about compliance with parenting orders.

[30] In *LH v FD* the Court held that there is a two-step process to be followed:

- (a) To determine if one party has contravened the parenting order, and if so;
- (b) Whether admonishment should be made.

[31] The first step is jurisdictional and the quarry is one of proof of fact of contravention. In general terms a contravention will occur when a party responsible for providing contact fails to satisfy or breaches his or obligations according to the order. The duty of compliance is strict.

[32] Issues of excuse or explanation fall for consideration at the second discretionary stage of the inquiry. In addition to the mandatory fact of the child's welfare and best interests the Court should also take into account concepts of culpability, understanding such factors as responsibility for the contravention and whether it was deliberate or beyond the party's control.

---

<sup>1</sup> *LH v FD* [2010] NZFLR 926 (HC).



[33] In terms of welfare and best interests I am satisfied that in *C v W* the effect of both welfare and best interests being paramount considerations were at paramount considerations were discussed at paragraph 24 where the Court said:<sup>2</sup>

The addition of the term “best interests” in s 4 COCA underline that a decision must focus not only on the immediate day-to-day welfare of the child such as care and nurture, but also the long-term interests of ideally maintaining relationships with both parents. The inclusion of best interests in the new legislation highlights of the importance of the Court looking at the longer term developmental, educational, cultural and familiar needs of the child.

[34] In *LH v FD*, the Court considered the best interests and welfare and admonishment contract at paragraph 37 and said the following:<sup>3</sup>

The principles in s 5 of the Act provide the mandatory considerations of assessment of welfare and best interests. The assessment is in the values of one, involving the identification and weighing of all factors whether referred to in s 5 or not relevant to the case, *Bashir v Kacem* [2010] NZCA 96 at paragraph 52.

[35] It is reasonable to take into account the views and wishes of the children but what weight the Court provides to them must be commensurate with the issues before the Court, age, maturity and influence.

### **Parties' positions**

[36] I pre-trialled the matter on 23 March 2020. I refer to my minute of that day in its entirety. It was clear that there was no consent regarding the material facts and accordingly the matter was to be set for a two hour submissions only hearing with the parties to file submissions at least seven days prior to the fixture. The parties were advised of this fixture date. The applicant and Ms Hambleton duly filed their submissions.

[37] When the fixture began Ms Garthwaite as counsel for Ms [Mason] advised that she was without instructions, that after the directions conference of 20 March that she had emailed her client with the need for instructions and also the relevant Court dates. She telephoned her number on a number of occasions and it went to voicemail.

---

<sup>2</sup> *C v W* [2005] 24 FRNZ 872.

<sup>3</sup> Above n1 at [37].

[38] Despite knowing the Court date Ms [Mason] did not appear today. As a result Ms Garthwaite advised she was in the position of having to either seek an adjournment or to withdraw as counsel.

[39] I considered the adjournment and declined to provide that. I was of the firm view that it was in the welfare of the children for the matter to proceed. All had notice and the applicant Ms [Puckett] was permitted to attend by telephone, which she did, given her residence in Australia.

[40] Accordingly, given no adjournment was granted Ms Garthwaite was then granted leave to withdraw. Ms Garthwaite was able to advise the Court, however, in terms of whether or not the Court might consider effecting a bond, that her client was legally aided, that she was without income other than benefit. She had the care of two young children, one of whom was challenged. That she has no assets.

[41] Ms [Puckett] for her part formed the very firm view (as to Ms Hambleton) that even though a bond might be efficacious that she would not seek one as she thought it would likely cause hardship to her grandchildren which she did not want to effect.

[42] Therefore, the matter proceeded on the submissions that the Court had received. Ms Hambleton updated her position by saying she had contacted the school this morning who advised the children were at school as both grandmother and Ms Hambleton wanted to make sure that occurred as that had happened as Grandmother was worried about the children's position. Grandmother also advised that she had sent an Easter parcel which may have been delayed because of COVID and she has prior sent food.

## **Decision**

[43] In terms of the first limb I am easily satisfied that from late November 2019 the respondent mother Ms [Mason] has repeatedly deliberately contravened the parenting order by failing to effect the telephone/video contact that is provided. She has done so in a very determined fashion that is repeated weekly and is continuous.

[44] On the evidence the breach by Mother is clearly found.

[45] In terms of the second step this is a matter where Ms [Mason] was put on notice early that if she sought to vary the order she would need to make such an application, particularly if she relied on the children's views and wishes, and her own assessment of welfare. She has not done so.

[46] There was no evidence at all that Ms [Puckett] has breached the conditions of the parenting order so as to have talked the children about their father, or that there is any risk at all that he will be present during the calls or video links.

[47] Ms [Puckett]'s advocacy is she desperately wants a connection with her grandchildren. She does not want to harm them or hurt them in any way. But without that telephone or video connection at least there will be no paternal contact or connection and the children will be absent that as they develop.

[48] I assess from the information that Ms Hambleton has provided that [Frances] particularly has a reticence at this time of contacting her grandmother. It is unclear whether that is a reticence that is easily able to be resolved with the assistance of Mother in assuring her that there will be no harm or difficulty. In fact, the past calls that have taken place, and even the physical visits suggest [Frances] is extremely comfortable with her grandmother.

[49] Ms Hambleton takes the view that this is one of those rare matters where having regard to the mandatory matters in the Act that it is actually in the welfare and interests, particularly having regard to current and future development for the children that the respective of what reticence that they made have, or concerns (which have been assisted in the past by the use of counselling or other interventions which would be available to Mother if she wanted to use them) that their welfare and development is best served by their contact continuing.

[50] I am not immune to the very difficult circumstances, potentially for maternal family and potentially even [Frances] having knowledge of what her father did to Mother's father. Of course, it is going to be distressing. But the Court was well aware

of that when it made the order in February 2019 and in my view the matters raised by Ms [Mason] in her notice of defence insufficient for the Court to not effect a remedy for her ongoing breach.

[51] In coming to that decision I have clearly formed a view that the breach is version deliberate against a background where matters were going well. Mother did not raise any concerns or effect any kind of suggestion or way to alleviate any distress. It was not a coincidence that she ceased the calls commensurate when father was released from prison.

[52] It is in my view, therefore, right to find Mother has contravened the parenting order repeatedly and deliberately so.

[53] In terms of remedy, a bond would be appropriate I am satisfied that it is likely to cause hardship and Ms [Puckett]'s care for the children in no longer seeking matters to be noted.

[54] There is only one remedy available at this time and that is an admonishment. I will effect it.

[55] This, of course, may come as little solace to the applicant grandmother and it does not reinstate the contact. Mother needs to do that and urgently so. A failure by her do so will constitute at least at this time continued breaching of the order.

[56] Now, how Ms [Puckett] enforces that if at all is a matter for her. There has not, of course, been a testing as to whether or not there will be face-to-face contact in 2020 and what Mother's reaction will be if Ms [Puckett] was able to propose that. Grandmother may have to seek a warrant to effect that or other remedy.

[57] For the above reasons, therefore, I make the following orders and directions:

- (a) I find the contravention proved.
- (b) I now administer an admonishment to the respondent mother, Ms [Mason].

[58] There shall be no cost contribution orders.

E Smith  
Family Court Judge