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**IN THE FAMILY COURT  
AT TAURANGA**

**I TE KŌTI WHĀNAU  
KI TAURANGA MOANA**

**FAM-2019-070-000162  
[2021] NZFC 5151**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[MORRIS WILLIAM MARLOWE] Applicant
AND	[EVELYN LYON GARDINER] Respondent

Hearing: 31 May 2021

Appearances: D Eades as Lawyer for Applicant  
L Jack as Lawyer for Respondent  
P Bromiley as Lawyer for the Child

Judgment: 8 June 2021

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**RESERVED JUDGMENT OF JUDGE S J COYLE  
[IN RELATION TO DAY-TO-DAY CARE AND CONTACT ISSUES]**

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[1] [Owen Gardiner-Marlowe] was born on [date deleted] 2007 and is therefore nearly 13 and a half years old. He has no relationship with his father, Mr [Marlowe], at all. That is what [Owen] and his mother, Ms [Gardiner], want.

[2] [Owen]'s parents lived together for 10 years, separating in October 2016. From the outset Ms [Gardiner] placed barriers to Mr [Marlowe]'s attempts to have a relationship with [Owen] following their separation. It is well-known that delay is the ally of a parent seeking to negatively influence a child's relationship with the other parent,<sup>1</sup> and in this case the delays that occurred have directly informed the issues that I need to resolve in the context of this hearing. Some of those delays were systemic. For example, before Mr [Marlowe] could file his application for a Parenting Order, he was required to complete a Parenting Through Separation programme and FDR. I accept his evidence that there was a consequent and substantial wait time before he could attend the Parenting Through Separation course, and then file his applications.

[3] Secondly, those working with this family following their separation clearly failed to recognise this case for what it was; that is, a case in which there was a real potential for [Owen] to lose his relationship with his father because of [Owen]'s mother's influence. Instead, those working with [Owen], including Ms [Gardiner], embarked upon a process in which [Owen] (who at separation was nine) solely directed his relationship with his father. That is, if [Owen] said he did not want to see his father, that was entirely supported by Ms [Gardiner] and by the counsellors working with [Owen]. At no stage does it appear that anyone gave any consideration to [Owen] being only a nine year old, and recognising that whilst his views were important, ultimately it was the adults who should be making decisions about his care and contact arrangements. No one appear to recognise that this is a case in which [Owen] was steadily being alienated by Ms [Gardiner].

[4] Then, once an application was filed in Court, it again appears that none of those involved in this case appeared to recognise that [Owen] was becoming alienated from

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<sup>1</sup> And whether that is called alienation or unrealistic estrangement matters not.

his father. The Court eventually directed a s 133 report, and as is clear from that report by Ms Lightfoot,<sup>2</sup> [Owen] is now entirely alienated from his father.<sup>3</sup>

[5] The issues I need to determine therefore are:

- (a) Whether I make a Final Parenting Order, confirming that [Owen] is to remain in the day-to-day care of Ms [Gardiner], and an order that he has no contact with Mr [Marlowe].
- (b) Whether I make a Parenting Order providing [Owen] to remain in the day-to-day care of Ms [Gardiner] but make orders for [Owen] to have contact with Mr [Marlowe].
- (c) Whether I change [Owen]'s day-to-day care and place him in the day-to-day care of Mr [Marlowe], and order restricted contact with Ms [Gardiner].

### **Legal Principles**

[6] As in all decisions affecting children, the Court's first and paramount consideration is the welfare and best interests of [Owen]. That requires an individualised assessment recognising that [Owen] is a unique child in a unique family.<sup>4</sup> Pursuant to s 4(2)(a)(ii) I am also required to consider the relevant principles in s 5 of COCA. The Supreme Court has held in *Kacem v Bashir* that I need to identify not only those principles that are relevant but also those that are irrelevant and to set out why I have reached that view.<sup>5</sup> Given the facts of this case, the principles in s 5(a) to (e) inclusive are relevant. There is no evidence requiring consideration of [Owen]'s identity in terms of s 5(f) of the Act.

[7] Finally, in terms of the overarching legal principles, pursuant to s 6 of the Act I need to take into account the expressed views of [Owen]. [Owen] has been

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<sup>2</sup> Neither Ms Lightfoot's qualifications nor her methodology in preparing the s 133 report were challenged by counsel.

<sup>3</sup> Notes of Evidence p 76, lines 1–10.

<sup>4</sup> Section 4(2) Care of Children Act 2004; *Brown v Argyll* [2006] NZFLR 705.

<sup>5</sup> *K v B* [2011] 2 NZLR 1, [2010] NZFLR 884, (2010) 28 FRNZ 483 (SCNZ).

represented throughout these proceedings by Ms Bromiley and has been clear in his views throughout that he wants to have no contact with his father at all. He has expressed identical views to Ms Lightfoot, the s 133 report writer, and in a judicial interview with him prior to the hearing, [Owen] was quite clear to me that he wants no contact with his father at all. Given [Owen]’s age and maturity I need to give significant weight to [Owen]’s views.<sup>6</sup> [Owen]’s views are not, however, automatically determinative of the outcome. For I still need to be satisfied that giving effect to [Owen]’s views is in his welfare and best interests. As Priestley J set out in *Brown v Argyll*, there will be some cases in which the views of children are determinative in that they accord with what is in a child’s best interests and welfare, but in other cases, their views, whilst being given significant weight, will not be determinative of the ultimate outcome because of other factors.<sup>7</sup> That is, each case needs to be determined on its own particular facts. What I am clear about, however, is that [Owen]’s views must be given very significant weight by me in this case.

[8] [Owen]’s views are also before the Court through email communications from a counsellor working with Mr [Marlowe], Ms [Gardiner] and [Owen], and [person A], and through a letter from Mr Hansen, a clinical psychologist who had been seeing [Owen] in accordance with the recommendations of Dr Calvert. [Owen] was quite clear to both of them that he did not want any contact with his father, and it appears that [person A] adopted the view that it would be counter to good practice and therapeutically abusive of [Owen] to try and work in restoring the relationship between [Owen] and Mr [Marlowe], when [Owen] had such clear views.

## **Section 5 Principles**

[9] Section 5(a) provides for [Owen] to be protected from all forms of violence. Violence is given the wide definition set out in the Family Violence Act 2018. It additionally provides that [Owen]’s safety must be protected, and a number of authorities have made it clear that a child’s safety includes their psychological safety. [Owen] described to Ms Lightfoot his view that he had been abused by Mr [Marlowe]. However, he was unable to articulate any concrete examples of abuse. There is simply

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<sup>6</sup> *C v S*; Article 12 of the United Nations Convention on the Rights of the Child.

<sup>7</sup> *Brown v Argyll* [2006] NZFLR 705, (2006) 25 FRNZ 383.

no evidence before the Court to justify a finding, that Mr [Marlowe] has in any way harmed or abused [Owen]. It is clear to me, particularly accepting the evidence of Ms Lightfoot, that [Owen] has a view that Mr [Marlowe] has abused him, but that is simply a fictional construct by [Owen] to justify his refusal to have a relationship with his father.

[10] It is also clear to me that [Owen]’s psychological safety is distinctly at risk in the care of Ms [Gardiner]. I will set out in detail the reasons for reaching that view when considering Ms Lightfoot’s evidence. Ms Lightfoot was clear in her evidence that [Owen] has become alienated from Mr [Marlowe], and that his refusal to have contact with Mr [Marlowe] has been supported and enabled by Ms [Gardiner]<sup>8</sup>. It is clear from her evidence that not having a relationship with Mr [Marlowe] will be psychologically harmful to [Owen], both in terms of his short and long-term psychological development.

[11] Sections 5(b) and (c) are centred in [Owen]’s care, development and upbringing being the responsibility of his parents and for there being ongoing consultation and co-operation between his parents. Those are principles that are not being given effect to and are purely aspirational. Ms [Gardiner] has an entrenched hatred of Mr [Marlowe]. Despite knowing of her obligations as a joint and equal guardian, she has consistently refused to consult with Mr [Marlowe] as a guardian. Throughout her evidence she devalued and demeaned Mr [Marlowe] as a parent. For example, when Mr Eades put to Ms [Gardiner] emails that Mr [Marlowe] had sent [Owen]<sup>9</sup> and signed those emails with “love you dad”, Ms [Gardiner] response was dismissive. She stated that Mr [Marlowe] was simply using those words without any genuine meaning, and that anyone can write the words “love you”. She was quite clear in her evidence, and this evidence was given with some vitriol, that she believes Mr [Marlowe]’s sole motivation in continuing to seek a relationship with [Owen] is that Mr [Marlowe] is simply the puppet of his parents who are making him bring the applications so that they can have a relationship with [Owen]. She did finally and begrudgingly concede the possibility that Mr [Marlowe] may now be developing some love for [Owen], but she does not see that he ever has historically loved his son.

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<sup>8</sup> See for example Notes of Evidence, p 75, line 14 to p 76, line 10.

<sup>9</sup> That Mr [Marlowe] was to email [Owen] had been agreed between the parties at FDR.

[12] That entrenched view by Ms [Gardiner] is devoid of reality and is simply symptomatic of her absolute hatred and antipathy towards Mr [Marlowe]. It is clear from Ms Lightfoot's report that Mr [Marlowe] and Ms [Gardiner] had and have a different parenting and interpersonal skills. Mr [Marlowe], with a fair degree of insight, acknowledged that he could have been a more available father to [Owen] during their relationship. However, it is clear that the end of their relationship was a period of great stress which Mr [Marlowe] coped with by being absent both emotionally and physically from the family home. He is by nature quiet and reserved and not as demonstrably affectionate and emotionally available as Ms [Gardiner] is to [Owen].

[13] The tragedy is that Ms [Gardiner] cannot see that whilst she and Mr [Marlowe] have a different parenting style, that Mr [Marlowe] clearly loves [Owen]. Evidence of that can be seen in the efforts he has made to pursue a relationship with [Owen], and his distress while giving evidence about his lack of relationship with [Owen]. It was abundantly clear to me observing Mr [Marlowe], and reading his evidence in the affidavits filed, that Mr [Marlowe] loves his son deeply and that he is distraught at the lack of relationship. What was equally clear to me is that Ms [Gardiner]'s entrenched hatred of Mr [Marlowe] means that she is blind to that reality, and that she will only ever perceive Mr [Marlowe]'s relationship with [Owen] as being one that has neither meaning nor benefit to [Owen], and that whatever Mr [Marlowe] says or does she will treat with disrespect and disdain.

[14] It was interesting observing the manner in which she gave her evidence. When talking of Mr [Marlowe] while being cross examined she had a look of pure hatred and disdain on her face. I observed that as Ms Lightfoot gave her evidence Ms [Gardiner] would either not look at her or when she did it was with a similar look of disdain and disgust. Ms [Gardiner] was adamant in her evidence that she never says anything negative to [Owen] about Mr [Marlowe]. She clearly, however, is blind as to how she presents both physically and emotionally to others when Mr [Marlowe] is discussed. That is, if she is unable to contain her hatred of Mr [Marlowe] in the Court environment, I have no doubt that [Owen] is similarly exposed through his mother's demeanour to her entirely negative attitudes and beliefs about Mr [Marlowe]. [Owen]'s psychological wellbeing is distinctly harmed when in his mother's care. I

doubt there will ever be any attempts by Ms [Gardiner] to engage in consultation or co-operation with Mr [Marlowe] because of her entrenched hatred of Mr [Marlowe].

[15] Section 5(d) provides for [Owen] to have continuity in his care. As Priestley J held in *Brown v Argyll* that principle is not determinative but needs to be considered on the facts of each case. In this case the fact that [Owen] has been only in the care of his mother, particularly the four years following separation. This is a principle that I give significant weight to.

[16] Finally, s 5(e) provides that [Owen] should have a relationship with both of his parents and with his wider family group. Ms [Gardiner] is English and has no family in New Zealand at all. Prior to Covid her father was travelling out to New Zealand for around three months each year, and [Owen] would spend time with his maternal grandfather every year. Obviously, with Covid that has ceased.

[17] Mr [Marlowe]'s parents are alive and well, as are his siblings. [Owen] has no relationship with his paternal family at all. Thus, at present there is no relationship to preserve and strengthen because Ms [Gardiner] and [Owen] have expunged the paternal family from [Owen]'s life. Mr [Marlowe] believes it is important for [Owen] that he has not only a relationship with himself but with his parents in particular, they having been significant people in the past in [Owen]'s life. [Owen] also has a half-sister, [Danielle], an older child of Mr [Marlowe]'s. Mr [Marlowe] and his wife have children from their blended family who are also part of [Owen]'s family group. [Owen] has no relationship with either his half-sister [Danielle] or Mr [Marlowe]'s stepchildren. Ms [Gardiner] and [Owen] are entirely enmeshed in each other's lives and have no significant relationships outside of their relationship.

### **Other Evidence**

[18] On the evidence it is clear that there are a number of factors which have impacted the present reality. As set out above Mr [Marlowe] acknowledges that he was not always physically and/or emotionally available to [Owen] during the period in which he and Ms [Gardiner] lived together, and particularly towards the end of their relationship when it was in its death throes. When Mr [Marlowe] left, he also did not

spend any time with [Owen] explaining why he was leaving and what his relationship with [Owen] would look like following his parents' separation. Instead, he just simply left with no communication with [Owen] at all. Given that he was nine at the time, some sort of discussion with [Owen] would have been wise, and with the benefit of hindsight Mr [Marlowe] accepts that he was wrong. Then following separation there was a period in which he simply disappeared and had no contact with [Owen] and/or Ms [Gardiner]. When Mr [Marlowe] did seek to reconnect with [Owen], he did so with his then new partner and her children. That was insensitive of him to the needs of [Owen], and [Owen] clearly found that very difficult. Mr [Marlowe] now accepts that he was wrong to do so; as Ms Lightfoot sets in her evidence, there is fault by both parents in how this current reality has developed for [Owen].<sup>10</sup>

[19] However, from the point in which Mr [Marlowe] did seek to have a relationship with [Owen], any attempt he made was constantly stonewalled by Ms [Gardiner]. For example, in a letter from Ms [Gardiner]'s then solicitors dated 14 March 2017<sup>11</sup> her then lawyer recorded:

Ms [Gardiner] proposes that [Owen] is in her day-to-day care and that Mr [Marlowe] has contact with [Owen] as agreed.

[20] The difficulty is that nothing was ever agreed on the basis that [Owen] did not want contact. This can be evidenced in his subsequent letter from Ms [Gardiner]'s then solicitor dated 3 April 2017<sup>12</sup> in which it is recorded:

[Owen] has been very clear to his mother that he does not want contact with Mr [Marlowe]...Ms [Gardiner] has been encouraging [Owen] in everywhere possible to have some contact with Mr [Marlowe]...while also taking into consideration [Owen]'s feelings and views...we do not believe that it would be helpful if Ms [Gardiner] forces [Owen] go to with Mr [Marlowe] when he is expressing a clear wish that he does not want to go.

[21] As Ms Lightfoot set out in her evidence, Ms [Gardiner] is a mother who in every other respect is able to challenge the views of [Owen], for example to get him to school when he does not want to go to school. Yet in relation to this sole issue, namely whether [Owen] has contact with his father, Ms [Gardiner] has chosen to

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<sup>10</sup> Notes of Evidence, p 81, line 16–24.

<sup>11</sup> Curiously produced in a bundle of letters notwithstanding that it is headed “without prejudice save as to costs”; other counsel did not object to the letter being referred to despite the clear breach.

<sup>12</sup> Also headed “without prejudice save as to costs”.



acquiesce to the views of [Owen]. But she has done more than simply acquiesce; she has enmeshed [Owen] in her negativity. [The report writer] put it thus:<sup>13</sup>

I think I've made my point very clearly that [Owen] and his mother have a shared negativity about Mr [Marlowe], whether that's being primarily communicated by the kind of conversation there...it's in a parent talking to a child about experiences and memories that an understanding of what happened is communicated...there were a number of occasions where [Owen] had a very negative memory of an event or an experience or even of a family...And all of those kinds of discussions, whether they are intended to be negative or not do have an effect so it's a layered negative effect."

[22] The FDR agreements reached also provided for there to be contact between [Owen] and Mr [Marlowe], but only if [Owen] wanted that contact. With the benefit of hindsight, it is regrettable that once the application was filed, no one sought that the Court be immediately seized of the application and have an urgent hearing to consider orders requiring [Owen] to have contact with Mr [Marlowe] at that point in time.

[23] Thus, while there were factors in Mr [Marlowe]'s personality and parenting style which at the time of separation meant that his ongoing relationship with [Owen] was challenging, it is quite clear to me on the evidence that the subsequent reason [Owen] now has no relationship with Mr [Marlowe] is because Ms [Gardiner] has actively thwarted any attempts to ensure that relationship occurs. She has consistently deferred to the views of [Owen], views which she has reinforced and encouraged, and is devoid of any insight as to her own agency in creating the current situation. She has let [Owen] become aware of her negativity towards Mr [Marlowe]. The subsequent systemic delays, both through the requirement of attending PTS and FDR programmes, and a lack of recognition by "the system" that this case had all the hallmarks of a child who was being actively estranged from his relationship with his father by his mother, and the subsequent delays that have occurred have resulted in a situation where [Owen] is implacably opposed to having any contact with his father.

[24] The strength of [Owen]'s opposition can be seen in his discussions with me during the judicial interview. I suggested to [Owen] that there were three outcomes. The first was that in accordance with his wishes there would be a Parenting Order in which he is in the care of his mother and has no contact with his father. The second

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<sup>13</sup> Notes of Evidence, p 75, lines 14–24.

was that he and his mother retain some control (as opposed to giving up control of the decision to me) and agree upon orders which provide for some form of contact between [Owen] and his father. I suggested, in accordance with that proposal of Mr [Marlowe], that it be an hour every two to four weeks at an activity of [Owen]’s choice. The third option was that the Court makes an order providing for [Owen] to have contact with Mr [Marlowe]. I went on to explain to [Owen] that if the Court made an order it needed to be complied with, and that if it was not there would be consequences, not for him but for his mother. I took him through those consequences in terms of s 68 remedies for breach of a Parenting Order. I also discussed with [Owen] the option of his mother being prosecuted for not complying with the Parenting Order or if the breach is continued, for her being held in contempt of Court which may result in his mother being imprisoned because of decisions made by [Owen]. I explained to him that given he had no other family, that would mean he would have to go and live with his father. [Owen]’s response was an emphatic “option one”; that is, an order that he has no contact with his father. He made it clear to me and has consistently made it clear to Ms Bromiley, that he would not comply with any order that is made.

[25] I raised this with Ms Lightfoot in the context of seeking clarification as to what this meant for [Owen] in terms of his psychological wellbeing. She described [Owen] as having a sense of entitlement which has been enabled by Ms [Gardiner]. Her concern for [Owen]’s long-term psychological wellbeing is that [Owen] will take this sense of entitlement into all of his relationships, including his intimate relationships.<sup>14</sup> If [Owen] has not learnt to navigate a situation in which his will is directly challenged and to find a compromise resolution, then in Ms Lightfoot’s opinion, which I accept,<sup>15</sup> that [Owen] will have great difficulty in sustaining long-term intimate relationships. She was quite clear in her evidence that Ms [Gardiner] needs to change the way in which she parents [Owen]. As she pointed out if [Owen] is this much in control at 13, what will he be like at 15 and 16. But more fundamentally, if [Owen] is to have any hope of successful relationships in the future, then he needs to have modelled and to learn a different parenting style. Thus, Ms Lightfoot’s evidence was that Ms [Gardiner] needs to be clear with [Owen] that if a decision is made that he is to have

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<sup>14</sup> Notes of Evidence, p 99, line 20 to p 100, line 8.

<sup>15</sup> She is an experienced, reliable and highly regarded s 133 report writer, both with Judges of this Court and higher Courts.

contact with Mr [Marlowe], that she 100 per cent supports it, and that there will be consequences for [Owen] if it is not supported by him and/or undermined by him. Ms Lightfoot went further to say that Ms [Gardiner] needs to be quite clear with [Owen] that not only has an order been made, but that she accepts it, she believes 100 per cent that such contact is best for [Owen], and that it must occur and that she unequivocally supports [Owen]'s relationship with Mr [Marlowe].

[26] Having observed Ms [Gardiner] while Ms Lightfoot was giving that evidence, and having heard the evidence of Ms [Gardiner], I do not believe she is capable of supporting the relationship. For as I have set out above, she was unable to mask, in a Court environment in which she is seeking to impress, her disgust and hatred towards [Owen]'s father. I would be surprised if she has the capacity to wholeheartedly support and implement orders made by the Court.

### **Discussion**

[27] Mr [Marlowe] had come to this hearing on the basis that he sought an order for contact. His proposal is that it be graduated but eventually moving to every second weekend contact. He recognises that [Owen] is involved in his sporting activities, and that any contact will need to ensure that [Owen]'s sporting activities are supported by him. He clearly had not seriously considered or sought a change in [Owen]'s care. If he had mounted a strong case for changing [Owen]'s care, I would have made an order that [Owen] be in Mr [Marlowe]'s care and that he have no contact with Ms [Gardiner] for a period. But given the lack of evidence and forethought by Mr [Marlowe] around those issues, that is not an order that I am satisfied is in [Owen]'s best interests and welfare at this point in time. A parentectomy, as Ms Lightfoot put it, is an option of last resort and is a serious step to take. It will present huge challenges for Mr [Marlowe] and for [Owen] and would require significant wraparound supports for him. On Mr [Marlowe]'s evidence he has not even begun to explore the potential implications of a change in care and nor has he arranged the necessary supports.

[28] What this case distils down to therefore is whether I make an order that Mr [Marlowe] has no contact with [Owen], or whether I make an order requiring there

to be contact, recognising that it is likely to require some future enforcement action by the Court.

[29] The advantage of making an order that Mr [Marlowe] has no contact with [Owen] is that it is reflective of [Owen]'s views. He has been consistent in his views whether it be to counsellors, Ms Bromiley, or myself, that he wants no relationship with his father at all. A further advantage for [Owen] in an order for no contact is that his involvement with the Court process is at an end. That is there will be no potential for further applications relating to the breach of the Parenting Order if [Owen] did not have contact with his father.

[30] The disadvantages for [Owen] are the loss of the potential for a relationship with his paternal family. That is significant for [Owen] for a number of reasons. As Ms Lightfoot set out, and as Ms [Gardiner] was questioned about, should Ms [Gardiner] have a car accident and be incapacitated and/or killed, the only potential care options for [Owen] are with Mr [Marlowe] as his father. There is no other family support available to [Owen] at all. A loss of relationship with his paternal family also means a loss of relationship with his half-sister [Danielle], and a loss of relationship with his grandparents. These are essential aspects of [Owen]'s identity and of who he is.

[31] Giving effect to [Owen]'s views also has the potential to reinforce his negativity towards his father. That is, if a Judge decides that [Owen] is to have no contact with his father, then that must mean that [Owen]'s views and negative perceptions of his father have some validity, potentially, from [Owen]'s perspective.

[32] There are similarly a number of concerns around making an order that [Owen] has contact with his father. Firstly, it is contrary to the expressed views of [Owen] and his views are strongly held. There is a risk that if [Owen] is forced to see his father that he will simply run away, although Ms Lightfoot expressed some scepticism as to whether that would in fact occur.<sup>16</sup> It is likely that if the Court makes an order for contact, that some form of enforcement action may be required. That will involve [Owen] in further litigation, and further conflict.

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<sup>16</sup> Notes of Evidence, p 90, line 28 to p 91, line 2.

[33] Ms Lightfoot was clear in her evidence that she is reluctant to “give up”. She suggested that Court sanctioned contact occur, that Ms [Gardiner] to [Owen] was entirely supportive of that contact, and that it be made clear to [Owen] that he must comply with any orders.<sup>17</sup> The hope is that [Owen]’s bravado will dissipate, and that he will be compliant. Ms Lightfoot was pretty clear at the level of support that Ms [Gardiner] would need to provide. For example, Ms Lightfoot stated that Ms [Gardiner] would need to say to [Owen], “I want you to have a relationship with your dad. I think it’s important. You need to listen to me. This is as important as anything else in your life.”<sup>18</sup> However, as set out above I am not at all confident that Ms [Gardiner] is cognitively capable of supporting to [Owen] Court ordered contact with Mr [Marlowe]. She was clearly, however, distraught at the prospect that she may be imprisoned for not complying with an order and/or being held in contempt of Court, and it may be that the possibility of that eventually occurring if there are multiple breaches of the order may be sufficient for her to effectively parent [Owen] and ensure his compliance with any Court orders.

[34] Ms Lightfoot in her evidence stated that she would like to see a final attempt through Court ordered sanctions. The difference she saw between what has occurred to date is that the agreements have not been Court sanctioned but rather have been through FDR or attempted through counsel. However, if after four months there was still no contact, then Ms Lightfoot indicated that the future contact should not be pursued at that point in time. Ms Lightfoot’s written report contains suggestions for counselling between Mr [Marlowe] and Ms [Gardiner], and separate counselling/therapy for [Owen]. This has in fact occurred and has been entirely unsuccessful. Counselling between the parties has stalled, in essence because Ms [Gardiner] has refused to move from her position of what [Owen] wants [Owen] gets. Mr Hansen, a psychologist working with [Owen], has been unable to make any progress in changing [Owen]’s mind, and has decided there is no point in any further counselling in an effort to change [Owen]’s views.

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<sup>17</sup> See for example Notes of Evidence, p 93, lines 2–9.

<sup>18</sup> Notes of Evidence, p 96, lines 6–9.

[35] Ms Lightfoot also set out several times in her evidence her clinical experience which showed that when resisted contact was in fact ordered, it often went well, including with teenagers.<sup>19</sup>

### **Decision**

[36] This is a very difficult case to decide. On the one hand, while both parents have contributed to the current situation, increasingly [Owen] has been enabled by his mother to lose his relationship with his father. Forcing him to have contact with his father is going to be a major challenge to the construct of how [Owen] views the world and his relationship with his father. But on the other hand the consequences for [Owen] in not having a relationship are dire. If he does not learn now how to navigate life without the sense of entitlement that he has been allowed to develop, then as Ms Lightfoot has stated he will have severely compromised relationships throughout his adult life. His grandparents are elderly and he will lose the opportunity to have a relationship with them, they being people who should form an important part of his life. He will lose the opportunity to develop a relationship with his half-sister, [Danielle]; sibling relationships are some of the longest enduring relationships that we as humans experience. But I remain hopeful Ms [Gardiner] is able to find it in herself to support the relationship, that there could be an opportunity for [Owen] to develop a relationship with his father. As Ms Lightfoot has said she needs to be clear with [Owen] that she supports contact occurring, that she believes it is what [Owen] needs, and that her clear expectation is that [Owen] will go, he will stay and not run away, and he will develop a relationship with his father. As I suggested to her she may also like to consider whether, if [Owen] sabotages contact, that there are consequences for [Owen].

[37] By the narrowest of margins therefore I have decided that now is not the time to give up on [Owen]'s relationship with his father. I have given [Owen]'s views very significant weight, but complying with [Owen]'s views is not, in my view, in [Owen]'s best interests and welfare. Rather I have determined that the desirability of [Owen] having a relationship with his father, that being in his best interests and welfare,

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<sup>19</sup> See for example, p 85, lines 18–25.

outweighs the disadvantages of not giving effect to [Owen]’s views. As I explained to [Owen] when I met with him, I could not promise to give effect to his views but rather my role is to determine an outcome that I believe to be in his best interests and welfare. I have determined, having considered all of the evidence available to me, that an outcome that is contrary to his views is what is required in order to meet his best interests and welfare.

[38] As I also explained to [Owen], when the Court makes an order it is the Court’s expectation that the order will be complied with by everyone, including [Owen]. I reiterate to [Owen] that if he sabotages the orders that I make, then if there are consequences, those consequences are likely to be borne by his mother. It is for [Owen] to choose therefore whether his mother may potentially be “punished” because of decisions he now chooses to make. Ms [Gardiner] also needs to consider whether she will now actively and wholeheartedly support the orders that are made in the manner suggested by Ms Lightfoot, or whether she will continue to seek to actively undermine [Owen]’s relationship with Mr [Marlowe].

[39] I have made a final order as that is what the Act requires.<sup>20</sup> But if there is an application for breach filed by Mr [Marlowe], and it is accompanied by an application under s 139A for leave to vary this Parenting Order within 2 years, then the proceedings may need to be reconsidered by the Court. For, as Ms Lightfoot stated, if there is no progress in the next 4 months then the order may need to be varied to either provide for no contact between [Owen] and Mr [Marlowe], or there may need to be a change in [Owen]’s day to day care.

## **Orders**

[40] Against that background and for those reasons I now make the following orders:

- (a) I make a Final Parenting Order in relation to [OwenOwen Gardiner-Marlowe], born [date deleted] 2007, in the following terms:

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<sup>20</sup> Section 49C(2) COCA.

- (i) [Owen] is in the day-to-day care of Ms [Gardiner].
- (ii) [Owen] is to have contact with his father as follows:
  - (1) Every second Sunday from 12 noon to 1.30 pm commencing Sunday, 13 June 2021 with the changeover to be outside the [food stand] in [the Mall] in [location A].
  - (2) From 1 August 2021 every second Sunday from 10 am to 4 pm with the changeover to be at the same place.
  - (3) From the weekend of 3 September 2021 from after school Friday until Sunday 3 pm with the changeover on the Sunday to be at the same place at [the Mall], [location A], and thereafter every second weekend from after school Friday until Sunday afternoon.
  - (4) From 12 noon on 23 December in odd numbered years through until 12 noon on 26 December in even numbered years with the changeover to be at the same place. In even numbered years, from 2 pm on Christmas Day through until 3 pm on 30 December.
- (b) Any application for variation or any application for admonishment is in the first instance to be referred to me for consideration.
- (c) I would ask that Ms Bromiley meet with [Owen] to discuss this decision with him and the reasons why and the Court's clear expectation that [Owen] will comply, and that if he does not, that there may be subsequent consequences as discussed with [Owen]. Ms Bromiley's appointment is therefore terminated in 21 days' time so as to give her time to meet with [Owen].

S J Coyle  
Family Court Judge