

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

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**IN THE FAMILY COURT
AT NORTH SHORE**

**I TE KŌTI WHĀNAU
KI ŌKAHUKURA**

**FAM-2015-004-000904
[2022] NZFC 1817**

IN THE MATTER OF	ORANGA TAMARIKI ACT 1989
BETWEEN	CHIEF EXECUTIVE OF ORANGA TAMARIKI – MINISTRY FOR CHILDREN Applicant
AND	[CA] Second Applicant
AND	[MV] First Respondent
AND	[LA] Second Respondent
AND	[BA] Born on [date deleted] 2015 Child or Young Person the application is about

Hearing: 1 March 2022

Appearances: C Mullord for Second Applicant
P Le'au'anae for the First Respondent
M Bird for the Chief Executive
G Webster as Lawyer for the Child

Judgment: 2 March 2022

RESERVED JUDGMENT OF JUDGE S J MAUDE
[Section 121 Oranga Tamariki Act – Application by Paternal Grandmother for
Access Orders]

- [1] This decision is about [BA], who is aged 6.
- [2] [BA]’s paternal grandmother, Ms [CA] seeks orders defining her access with [BA].
- [3] [BA] is the son of [MV] and [LA].
- [4] [BA] is the subject of care and protection orders that provide for him to be in the custody of the Chief Executive, the Chief Executive also being his additional guardian.
- [5] [BA] has been in the custody of Oranga Tamariki since shortly after his birth.
- [6] [BA] initially lived in the care of his mother, subsequently however, moved to caregivers Mr and Mrs [name deleted], then transitioned to the care of Ms [CA] in January 2020.
- [7] [BA] lived in the care of his paternal grandmother, Ms [CA], until March 2021 when he moved into the care of his mother Ms [MV].
- [8] The above plan progressed from January 2021 family group conference which provided for [BA]’s return to his mother and which envisaged no contact between [BA] and his father.
- [9] The return of [BA] to his mother, as envisaged by family group conference plan, anticipated proximate release from prison of Mr [LA], [BA]’s father.
- [10] The plan reflected lack of social work confidence in the ability of Ms [CA] or Ms [MV] to keep [BA] safe from Mr [LA].

[11] While Ms [CA] initially sought injunction to prevent the uplift of [BA] from her, she, to ensure that return to Ms [MV] was not destabilised after his return on 27 March 2021 withdrew her application.

[12] Social work provision for Ms [CA]'s Access in plan of 30 July 2021 was for supervised access at a specialised contact centre.

[13] In the seven months that followed uplift of [BA] from Ms [CA], she claimed to have had only three access visits, coupled with fortnightly video calls.

[14] Ms [CA] accordingly sought orders pursuant to s 121 of the Oranga Tamariki Act providing for her access to [BA].

[15] Ms [CA] sought at hearing:

- (a) Fortnightly contact from collection from school Friday until return to school Monday (or return on Sunday evening).
- (b) The above access to extend on public holidays to include the Monday.
- (c) Access on [BA]'s birthday and on Christmas Day.
- (d) One week's holiday during each school holiday (amended at hearing to four days and three nights each holiday aligning with the social work proposal and Ms [MV]'s proposal).

[16] Ms [CA] indicated that while she hoped that access between [BA] and his father could occur, overseen by her, she would await social work approval for such to occur.

[17] Ms [MV]'s proposition was as follows:

- (a) That [BA] has fortnightly phone/video calls with Ms [CA].

- (b) That [BA] has monthly contact on the last weekend of each month with Ms [CA] from 10:00am Saturday until 3:00pm Sunday.
- (c) That [BA] have three nights and four days in Ms [CA]'s care each school holiday.

[18] [Social worker]'s position by hearing was:

- (a) [BA] had been in Ms [MV]'s care since March 2021 and was still settling into that care arrangement.
- (b) Ms [MV] was still completing programmes to assist her, those programmes impacted by Covid.
- (c) Movement back and forth for [BA] between households had the potential to destabilise him.
- (d) She recognised Ms [CA] as the next most important person in [BA]'s life to Ms [MV] and recognised the need to maintain what is, she described, an affectionate, loving relationship, without however creating instability.
- (e) Her evidence was that she had consulted with the psychologists working with [BA] in preparation of her propositions for access which were:
 - (i) After initial daytime visits (which have now occurred) [BA] to have monthly access with Ms [CA] from 10:00am Saturday to 3:30pm Sunday.
 - (ii) [BA] to have three nights and four days with Ms [CA] each school holiday commencing in the upcoming April school holidays.

- (iii) [BA] to have an additional weekend in his grandmother's care on either side of [BA]'s birthday.
- (iv) [BA] to have weekly phone calls with Ms [CA].
- (v) [BA] to have seven hours with Ms [CA] in the Christmas week.

[19] Mr Webster, appointed by the Court to represent [BA], reported that [BA] thoroughly enjoyed the monthly contact that he has with Ms [CA] and all the various activities they do during their limited time together.

[20] He indicated that [BA] would like to see Ms [CA] more often and for longer and to have sleepovers at her home.

[21] Mr Webster also reported that [BA] said that he would like to be able to talk to his father by video, like he used to when he lived with Ms [CA].

The law

[22] Section 5 of the Oranga Tamariki Act sets out principles that the Court must take into account when determining issues relating to a child falling under its ambit.

[23] Section 5 of the Act reads as follows:

5 Principles to be applied in exercise of powers under this Act

- (1) Any court that, or person who, exercises any power under this Act must be guided by the following principles:
 - (a) a child or young person must be encouraged and assisted, wherever practicable, to participate in and express their views about any proceeding, process, or decision affecting them, and their views should be taken into account:
 - (b) the well-being of a child or young person must be at the centre of decision making that affects that child or young person, and, in particular,—
 - (i) the child's or young person's rights (including those rights set out in UNCROC and the United Nations Convention on the Rights of Persons with

Disabilities) must be respected and upheld, and the child or young person must be—

- (A) treated with dignity and respect at all times:
- (B) protected from harm:
- (ii) the impact of harm on the child or young person and the steps to be taken to enable their recovery should be addressed:
- (iii) the child's or young person's need for a safe, stable, and loving home should be addressed:
- (iv) mana tamaiti (tamariki) and the child's or young person's well-being should be protected by recognising their whakapapa and the whanaungatanga responsibilities of their family, whānau, hapū, iwi, and family group:
- (v) decisions should be made and implemented promptly and in a time frame appropriate to the age and development of the child or young person:
- (vi) a holistic approach should be taken that sees the child or young person as a whole person which includes, but is not limited to, the child's or young person's—
 - (A) developmental potential; and
 - (B) educational and health needs; and
 - (C) whakapapa; and
 - (D) cultural identity; and
 - (E) gender identity; and
 - (F) sexual orientation; and
 - (G) disability (if any); and
 - (H) age:
- (vii) endeavours should be made to obtain, to the extent consistent with the age and development of the child or young person, the support of that child or young person for the exercise or proposed exercise, in relation to that child or young person, of any power conferred by or under this Act:
- (viii) decisions about a child or young person with a disability—
 - (A) should be made having particular regard to the child's or young person's experience of

disability and any difficulties or discrimination that may be encountered by the child or young person because of that disability; and

- (B) should support the child's or young person's full and effective participation in society:
- (c) the child's or young person's place within their family, whānau, hapū, iwi, and family group should be recognised, and, in particular, it should be recognised that—
 - (i) the primary responsibility for caring for and nurturing the well-being and development of the child or young person lies with their family, whānau, hapū, iwi, and family group:
 - (ii) the effect of any decision on the child's or young person's relationship with their family, whānau, hapū, iwi, and family group and their links to whakapapa should be considered:
 - (iii) the child's or young person's sense of belonging, whakapapa, and the whanaungatanga responsibilities of their family, whānau, hapū, iwi, and family group should be recognised and respected:
 - (iv) wherever possible, the relationship between the child or young person and their family, whānau, hapū, iwi, and family group should be maintained and strengthened:
 - (v) wherever possible, a child's or young person's family, whānau, hapū, iwi, and family group should participate in decisions, and regard should be had to their views:
 - (vi) endeavours should be made to obtain the support of the parents, guardians, or other persons having the care of the child or young person for the exercise or proposed exercise, in relation to that child or young person, of any power conferred by or under this Act:
- (d) the child's or young person's place within their community should be recognised, and, in particular,—
 - (i) how a decision affects the stability of a child or young person (including the stability of their education and the stability of their connections to community and other contacts), and the impact of disruption on this stability should be considered:
 - (ii) networks of, and supports for, the child or young person and their family, whānau, hapū, iwi, and family group that are in place before the power is to

be exercised should be acknowledged and, where practicable, utilised.

(2) Subsection (1) is subject to section 4A.

Consideration

[24] I must take into account [BA]'s views.

[25] [BA] wants more time with his grandmother with whom he lived for a period of some 14 months and who he feels connected to and who provided him with safety from his parents when they could not provide for such safety.

[26] The above observed, Ms [MV] has turned a corner and is supported in her recovery by the Oranga Tamariki social work team and participating in programmes provided by them.

[27] There is a strong need for Ms [MV]'s role as caregiver/mother to be supported and not undermined by either:

- (a) conscious undermining (not suggested); or
- (b) his reliance on his grandmother (Ms [CA] at hearing recognised that it was important that [BA]'s relationship with his mother be prioritised).

[28] [BA] has been in his mother's care now for some 11 months and there has been a delay in the programmes provided for her resulting from Covid lockdowns.

[29] The parties remarkably, while perhaps not recognising it at hearing, were close to agreement as to their proposals.

[30] The only material differences between Ms [CA] and Ms [MV]'s proposals were:

- (a) the frequency of weekend access; and
- (b) the length of weekend access.

[31] In my view, fortnightly weekends with Ms [CA] with regular video calls has the potential to delay growing reestablishment of [BA]'s attachment with his mother.

[32] Equally, there must be balanced against the above observation, the need to ensure that if the unwanted occurred, that is, relapse by Ms [MV], that then Ms [CA] would remain available as the first port of call for care.

[33] I am mindful also of the important need to maintain [BA]'s link to and relationship with paternal whanau, hapu and iwi, Ms [CA] at this point in time being the only gateway for [BA] to them.

[34] In my view, the social work proposal and Ms [MV]'s proposal of monthly overnight contact meets the above needs.

[35] The social worker and Ms [MV]'s proposal as to the length of such weekend access visits however, in my view, is inadequate.

I conclude that access for [BA] with Ms [CA] should occur from after school Friday (collection from Ms [MV] at 5:00pm) to return to Ms [MV] at 5:00pm Sunday (I would have provided for return to school on Monday but for the reality that emerged at hearing that [BA] is often not in attendance at school on Monday due to therapeutic input that he receives and other reasons.

[36] I accept that holiday access proposed by Ms [CA], Ms [MV] and the social worker is appropriate, i.e. that during each school holiday [BA] spends three nights/four days in Ms [CA]'s care from 5:00pm to 5:00pm.

[37] I accept also that the agreed fortnightly phone calls/video calls are appropriate, indeed listening to Ms [CA], they contain a wealth of opportunity for connection and relationship building that encouraging me that to provide for Monthly face to face access meets [BA]'s needs.

They are to occur each fortnight on a day to be agreed by the parties, or failing agreement, on a Sunday.

[38] An issue arose at hearing as to whether during school holidays when holiday access occurs, the monthly weekend contact provided for in these orders should be waived.

I received submissions from counsel as to this issue and accept the position taken by Mr Webster that it is important for the monthly weekend contact not to be waived.

The weekend access provided for by me in these orders is to continue each month without exception.

[39] In respect of Christmas access, I order that if Christmas Day falls in an access weekend then that access weekend is to occur on the weekend before or after it in lieu of on Christmas Day in accordance with Ms [MV]'s submission.

I make the same provision with respect to [BA]'s birthday.

[40] Each party and social worker made proposals as to the various conditions that would apply to the above access orders. There was largely agreement as to the conditions. The conditions imposed are as follows:

- (a) Changeovers are to occur in [Auckland suburb] in accordance with the existing status quo. Ms [CA]'s proposal that they change to [location 2] rejected on the basis that no evidence was adduced as to why there should be change.
- (b) At all times during access visits [BA] will reside at Ms [CA]'s address while in her care, not to be in the care of any other person.
- (c) In the event that Auckland should return to a full Covid lockdown whilst [BA] is in the care of Ms [CA], he is to be returned immediately to Ms [MV].
- (d) [BA] is not to leave the wider Auckland area without Ms [MV]'s knowledge and to that end Ms [CA] is to give Ms [MV] notice of any intention to travel with him out of the Auckland area not less than 14

days prior to the proposed travel. Ms [MV] is not to unreasonably withhold her consent.

- (e) Oranga Tamariki (by consent) are to complete an inspection of Ms [CA]'s home and to confirm those that reside with her.
- (f) Ms [CA] is to provide in respect of herself a clear Covid test (RAT test to be sufficient) prior to each access visit so long a government protocols indicate that the same is necessary.

[41] Submissions were made with relation to whether [BA]'s father, Mr [LA], could have phone/video calls with [BA] while in Ms [CA]'s care during access visits.

[42] The reality is that Mr [LA] has application before the Court for access orders, the same not being at hearing before me. It is accordingly not for me to make orders in this judgment with relation to Mr [LA]'s access to [BA], though I observe that it was the social work view that Ms [CA] was capable of safely supervising phone/video contact between [BA] and his father.

[43] I am not prepared to make any order with relation to the prohibition of access by phone between [BA] and his father, however, given that [BA] is in the legal custody of the Chief Executive pending the hearing of Mr [LA]'s application, it is a matter for the social worker to determine as to whether such calls can occur.

Review

[44] It was the submission of Ms Bird for the Ministry and Mr Le'au'anae for Ms [MV] that access orders were not necessary and that rather the Court should give indication as to its views, leaving implementation and reviews to occur under the umbrella of the custody order in place and planned review each six months.

[45] It is my clear view that it is necessary for access orders to be made and I make them in accordance with what is set out in the judgment above. I ask Mr Webster as [BA]'s lawyer to present draft orders for sealing.

[46] I direct that the orders be reviewable in conjunction with each plan review that occurs, noting that the next review is said to occur in late May (in three months' time).

[47] I envisage that review in three months' time of these orders may be premature; however, I leave it for the social worker to give consideration to whether there should be review and for that to be a subject for consideration at the main review and subsequent reviews.

Judge SJ Maude

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 02/03/2022