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[SQUARE BRACKETS]

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**IN THE FAMILY COURT  
AT PALMERSTON NORTH**

**I TE KŌTI WHĀNAU  
KI TE PAPAIOEA**

**FAM-2021-054-000268  
[2022] NZFC 803**

IN THE MATTER OF      THE CARE OF CHILDREN ACT 2004  
  
BETWEEN                      [VINEETA AHUJA]  
   Applicant  
  
AND                              [URVASHI ROBERTSON]  
   [ERAKA ROBERTSON]  
   Respondents

Hearing:                      26 January 2022  
  
Appearances:                Applicant appears in Person  
   S Worboys for the Respondents  
   C Linton as Lawyer for Child  
  
Judgment:                    2 February 2022

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**RESERVED DECISION OF JUDGE K BROUGHTON**

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[1]      These proceedings are about [Ngaio Robertson] born [date deleted] 2020 ([Ngaio]).

[2]      The applicant is Ms [Vineeta Ahuja] (Ms [Ahuja]). Ms [Ahuja] is the maternal grandmother of [Ngaio].

[3] The respondents are Mrs [Urvashi Robertson] (Mrs [Robertson]) and Mr [Eraka Robertson] (Mr [Robertson]). Mr and Mrs [Robertson] are [Ngaio]'s parents.

[4] [Ngaio] is currently in the interim day-to-day care of her grandmother, pursuant to an interim parenting order that was made on 16 July 2021.

[5] Mr and Mrs [Robertson] have been exercising supervised contact at [agency name deleted]. They seek for their contact to move away from [the agency], with supervision conditions being loosened to allow for more supported contact with a third party monitoring. They seek for contact to then be unsupervised, and that contact developing into overnight contact. Their end goal is for [Ngaio] to move back into their day-to-day care.

[6] Ms [Ahuja] supports Mr and Mrs [Robertson] having the day-to-day care of [Ngaio] in the future. She however is concerned about various safety concerns and the risk of family violence occurring in the [Robertson] household. She wishes to see any progress away from supervised contact to move at a pace that will ensure that [Ngaio]'s safety is not compromised. She is concerned about "speed" in which Mr and Mrs [Robertson] propose unsupervised contact and overnight contact. Ms [Ahuja] believes that a further seven months of supervised/supported contact is required.

[7] The parties agree that contact be managed in a staged manner as follows:

- (a) Stage 1 – supervised contact through [the agency];
- (b) Stage 2 – supported contact by Ms [Sturgess];
- (c) Stage 3 – unsupervised and overnight contact;
- (d) Stage 4 – increased overnight contact;
- (e) Stage 5 – [Ngaio] moving to the day-to-day of her parents.

[8] The issues for this Court to determine are therefore as follows:

- (a) The timeframe moving between each stage;
- (b) What further directions are required to resolve these substantive proceedings in regards [Ngaio]'s day-to-day care.

### **Brief background**

[9] Ms [Ahuja] is the mother of Mrs [Robertson].

[10] Mr and Mrs [Robertson] met at school. As I understand it, Mr [Robertson] first moved into Ms [Ahuja]'s home where Mrs [Robertson] was also living, sometime in 2018. Mr and Mrs [Robertson] married in [late] 2019.

[11] Mr [Robertson] was in [the South Island] prior to the COVID-19 lockdown in 2020, for approximately five months. He returned back to Palmerston North. He and Mrs [Robertson] lived with Ms [Ahuja]. The parties, being Mr and Mrs [Robertson], separated sometime in [late] 2020. They reconciled in [late] 2020, and left Ms [Ahuja]'s home. They now reside together in their own home.

[12] In March 2020, Ms [Ahuja] applied on a without notice basis for a protection order against Mr [Robertson]. Mrs [Robertson], was [under 18] years old at the time. Mr [Robertson] was [under 18 years old].

[13] A final protection order was made on 23 July 2020. Mr [Robertson] did not have a lawyer, but due to his age, counsel to assist was appointed. Mr [Robertson] instructed counsel to assist that he did not intend to take any steps with respect to the temporary protection order and did not wish to instruct counsel. By virtue of the law, the temporary protection order became final. As a result of that application, both Mrs [Robertson] and [Ngaio] are recorded as protected persons. Mrs [Robertson] does not want to be part of that protection order at all.

[14] On 16 July 2021, Ms [Ahuja] was granted an interim parenting order and interim additional guardianship order for [Ngaio]. As a result, [Ngaio] has been in her care and has been having professionally supervised contact with her parents.

### **Relevant legal considerations when determining the issue of contact**

[15] The Court's first and paramount consideration is the welfare and best interests of [Ngaio] pursuant to s 4 of the Care of Children Act 2004 (the Act).

[16] Section 4(2)(a)(ii) requires the Court to consider the relevant s 5 principles as found in the Act.

[17] In determining the issues, I have considered section 5(a) of the Act. That relates to [Ngaio]'s safety and that she is to be protected from all forms of violence as defined in the Family Violence Act 2018.

[18] I have considered principle 5A of the Act, which states that any family violence must be taken into account. This section is linked to s 5(a), referred to above.

[19] Section 5(b) reminds me that [Ngaio]'s development and upbringing should be the primary responsibility of her parents and s 5(c) relates to [Ngaio]'s care, development and upbringing and that that should be facilitated by ongoing consultation and cooperation between her parents. Section 5(d) reminds the Court that [Ngaio] should have continuity in her care, development and upbringing and in accordance with s 5(e), that her relationship with both of her parents and family group should be preserved and strengthened.

[20] The Court must also consider s 6, being [Ngaio]'s views. As [Ngaio] is only two years old, her wishes cannot be obtained. Her lawyer, Ms Linton, has therefore made submissions based on [Ngaio]'s welfare and best interests.

### **Agreement to move beyond [the agency] for supervised contact**

[21] At the hearing, Ms [Ahuja] agreed that contact could be progressed beyond [the agency].

[22] With the assistance of Pastor [Rick Shilling] (Pastor [Shilling]) from [name of church deleted], it is agreed that Ms [Sturgess] (Ms [Sturgess]) support contact between Mr and Mrs [Robertson] and [Ngaio] at their home.

[23] Notwithstanding this agreement, evidence was heard from Ms [Amiri Nopera] (Ms [Nopera]) who is a contact supervisor with [the agency].

[24] Ms [Nopera]'s evidence was that the interaction between [Ngaio] and her parents was natural and fun, and that in her observations, there are no concerns that she holds in regards contact between [Ngaio] and her parents. If anything, what Ms [Nopera] did raise as a concern, was the dynamics between the adults.

[25] Ms [Nopera]'s evidence is that Ms [Ahuja] raised allegations around Mr [Robertson] doing "something" to [Ngaio] at contact and that she has raised concerns around the supervisors being manipulated by Mr and Mrs [Robertson]. Allegations made by Ms [Ahuja] include the risk of Mr [Robertson] doing something to [Ngaio] when he took her down an enclosed slide at the park and that [Ngaio] screamed while being held by Mr [Robertson], insinuating he had done something to harm her, at contact handover with Ms [Nopera] present. Ms [Nopera] was quite clear that she did not think that the concerns raised by Ms [Ahuja] were valid or corroborated.

[26] I include Ms [Nopera]'s evidence because it provides an independent assessment of contact between [Ngaio] and her parents. Ms [Nopera]'s reports and oral evidence are positive. She has no concerns about how [Ngaio]'s parents conducted themselves when exercising contact.

[27] I can indicate that had no agreement been reached by the parties in regards professionally supervised contact, I would have directed contact to move away from [the agency]. It is timely that [Ngaio] enjoy contact with her parents in a more natural space and where they are supported but not supervised to the extent that a professional agency provides.

### **Ms [Ahuja]'s concerns**

[28] It is important that the Court acknowledges Ms [Ahuja]'s concerns for [Ngaio] and Mrs [Robertson].

[29] Ms [Ahuja] wishes to protect [Ngaio]. Her evidence is that she has also tried to protect her daughter from being exposed to family violence.

[30] Ms [Ahuja] accepts that she herself has been the victim of serious family violence. She does not want either her daughter or granddaughter to experience the same, hence the reason why she applied for a protection order and also why she applied to the Court to have [Ngaio] in her interim day-to-day care.

[31] I have listened to Ms [Ahuja]'s evidence carefully. She is sensitive and hypervigilant when it comes to family violence. This is no doubt based on her own trauma and experiences. Ms [Ahuja] was quite tearful when talking about how she wishes to protect [Ngaio]. I consider her stance comes from a very genuine place. She wants to ensure that [Ngaio] is not subjected to any form of abuse or violence. That being said, having heard from all parties, there is a real risk that Ms [Ahuja] draws her own conclusion around family violence/abuse without having all information before her. She herself accepted that she does not always believe what Mrs [Robertson] tells her. The impression given is that Ms [Ahuja]'s processing of information leads to the worst outcome or scenario rather than assessing the facts.

[32] What has been troubling in these proceedings is that not only has Ms [Ahuja] made allegations of family violence (which have to an extent been validated by the acceptance of Mr and Mrs [Robertson] that family violence has occurred in their home), she has also suggested that there is a safety concern for [Ngaio] in terms of her father, which borders on sexual allegations.

[33] While Ms [Ahuja]'s initial affidavit evidence suggests that she is not trying to make this claim, her oral evidence and other affidavit evidence implies this. Mr [Robertson] is referred to as a "suspect" in Ms [Ahuja]'s affidavit evidence sworn 17 January 2022.<sup>1</sup>

[34] Ms [Ahuja] has spoken about a video that she has of [Ngaio] having blood on her vagina and around her legs after returning early from contact with her parents. Mrs [Robertson] says that it was nothing more than nappy rash. Ms [Ahuja] says that

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<sup>1</sup> Bundle of evidence, p 22, para 4.

on seeing the blood, she became very upset and did not want to see her granddaughter in that state. She says she wiped the blood away but retained the nappy to show her daughter. Her evidence is that her daughter did not wish to look at the nappy at all, nor did she wish to believe that her husband was capable of such things. Ms [Ahuja] went onto say that she did not seek help because she wanted Mrs [Robertson] to do this. Her evidence was also that she did not know who to turn to and it was only until later that she discovered that Oranga Tamariki could have been contacted. Despite the allegations made, Ms [Ahuja] did not contact police at the time. She says that Mrs [Robertson] did not respond to her calls and turned up later to her home. Mrs [Robertson] says she went to her mother's straight away. She says she told her mother that they could go to the doctors but suggested they go to the doctors that next day given they would have to wait at ED and [Ngaio] was unsettled. [Ngaio] was not seen by a doctor, services were not contacted and Mrs [Robertson] says [Ngaio]'s nappy rash cleared after three days of having cream applied.

[35] Under careful cross-examination from Ms Linton, Ms [Ahuja] accepted that she had in fact been involved with Oranga Tamariki previously in relation to various reports of concern made between 2011 and 2014. The involvement of Oranga Tamariki would indicate that Ms [Ahuja] was well aware of that organisation's role as a child protection agency.

[36] Ms [Ahuja] has sought additional time from the Court to provide video evidence of what she says corroborates this incident. Ms [Ahuja]'s evidence is that as her phone broke, she was unable to provide this material. She accepts that she sent a video and pictures to another phone that she had on 16 May 2021, but the affidavit evidence she has provided, also shows that the pictures and videos were unsent some four seconds later.<sup>2</sup> Ms [Ahuja]'s evidence is that the deleted images are the ones that she is trying to get from her broken phone, however, it would seem that those images are the ones that she sent in the first place and which have been attached to her affidavit filed 17 January 2022.<sup>3</sup> It is difficult to therefore reconcile why these videos and images are not readily assessable.

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<sup>2</sup> BOE, p 27-28.

<sup>3</sup> BOE, p 18.

[37] When giving closing submissions, Ms [Ahuja] asked the Court for leave to file what she says is relevant evidence, and in particular, evidence corroborating her concerns about Mr [Robertson]’s conduct. Ms Linton filed a report dated 27 January 2022, which addressed this issue. From Ms Linton’s report, Ms [Ahuja] maintained that the evidence related directly to [Ngaio]’s safety and alluded it was a of sexual nature.

[38] Ms Linton reports that she received a video on 26 January 2022 at 6.03 pm. That video is 28 seconds long and is entitled “One of the three pestering videos”. Ms Linton has advised the Court that the video is of [Ngaio] dressed in her pyjamas and a dressing gown sitting on the couch. A person is holding [Ngaio] (it is implied that this is Mr [Robertson]) and this person is holding a potato chip in front of her, which [Ngaio] is trying to reach it. That is the extent of the video. It is Ms Linton’s position, having viewed the video, that it does not corroborate any concerns about [Ngaio]’s safety.

[39] Ms [Ahuja] also alleges that the parties have been the perpetrators of bruising and scratching [Ngaio] and that Mr [Robertson] has manhandled her. None of these allegations are corroborated. Mrs [Robertson] says that she has not witnessed Mr [Robertson] acting this way. Ms [Nopera]’s reports do not suggest that [Ngaio] is scared or cautious of her father – in fact they suggest that [Ngaio] is more inclined to go to her father. This does not support Ms [Ahuja]’s allegations that [Ngaio] has been distressed by her father’s behaviour towards her.<sup>4</sup>

[40] I now consider Ms [Ahuja]’s concerns around family violence between the parties. Mr and Mrs [Robertson] accept that there has been family violence within their relationship.

[41] In cross-examination, Mrs [Robertson] accepted that there had been physical violence, which included pushing, shoving and slapping. She accepted that there was mutual verbal abuse but said that while [Ngaio] may have heard both her and Mr [Robertson] arguing, they did try to move into another room, so their arguing was

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<sup>4</sup> BOE, p 8, para 59.



not in front of her. Mrs [Robertson] accepted that there has been psychological abuse before and after [Ngaio] was born, which included threats being made to the other.

[42] Likewise, Mr [Robertson] accepts that there has been family violence but does not accept the extent to which Ms [Ahuja] alleges. He accepts that there was physical violence, including pushing and shoving. He accepts that he hit Mrs [Robertson] on the hand on one occasion. He accepts name calling and swearing, and also accepts that there was an aspect of control and psychological abuse present in the first two years of their relationship.

### **Outcome**

[43] Mr and Mrs [Robertson] do not deny that there have been episodes of violence within their relationship. They acknowledge that this is unacceptable. What is evident is that they are working on strategies and developing tools to deal with stress and frustrations as and when they arise. In evidence they said that they are beginning to understand the other's "triggers".

[44] Mr [Robertson] has completed the non-violence programme. The completion report comments that Mr [Robertson] was engaged in that programme.<sup>5</sup> The parties have engaged in various support. They attend a Life Group through their church on a Friday. They attend church every Sunday and touch base with their Pastor on a weekly basis. Mrs [Robertson] attends a Mother's Group on Tuesdays and Thursdays, which [Ngaio] attends with her. One of the supervisors there, Ms [Anthony], provides additional parenting support to the couple on a Monday evening. Ms [Anthony] has assisted Mr and Mrs [Robertson] developing a parenting plan and goals they want to achieve. Mr [Robertson] also said that he has also started mentoring with a friend, [Geoffrey]. That gives him a chance to talk to someone, one to one. They meet once or twice a week. Neither party take issue with lawyer for child making enquiries with Ms [Anthony] or [Geoffrey]. Both parties agree to communication counselling with Ms [Ahuja] to address the unhealthy dynamic and communication block that currently exists.

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<sup>5</sup> BOE, p 63.

[45] This engagement, coupled with a lack of corroborating evidence that [Ngaio]'s safety is compromised in the care of her parents, leads me to conclude that contact between [Ngaio] and her parents must progress. This can be achieved by a staged process, on the basis that they continue to engage with support and where there is no further incident of family violence. Such a transition meets [Ngaio]'s needs as well as the relevant principles found in the Act.

[46] In reaching this conclusion, I take into account the disclosure that Mr [Robertson] has pleaded guilty to charges of a breach of a protection order and family violence against a family member. This incident relates to an incident in April 2021, whereby Mr and Mrs [Robertson] had an argument at home and Mrs [Robertson] rung her mother to collect [Ngaio]. Ms [Ahuja] was not present at this incident but contacted the police after. Mrs [Robertson]'s evidence is that Mr [Robertson] pushed her against the wall and smacked her hand. The police report refers to Mr [Robertson] punching the back of Mrs [Robertson]'s hand. The parties accept this incident of family violence and Mr [Robertson] has completed the non violence programme as a result of these charges. The completion of that programme as well as the supports in place, the safety plan that has been prepared by Ms Linton and the staged approach, satisfies me that [Ngaio]'s safety will not be compromised.

[47] In terms of the transition, I have considered the submissions made as well as the outline of a staged approach prepared by Ms Linton.

[48] Ms [Ahuja] would like her daughter to complete a programme in relation to the family violence. She agrees that overnight contact could occur in one and a half months, progressing up to two nights after another one and half months. Thereafter, Ms [Ahuja] was unsure as to how care would progress. Ms [Ahuja] agrees to communication counselling with her daughter and is open to that extending to Mr [Robertson] in the future. She also supports the safety plan as proposed by lawyer for child.

[49] Mr and Mrs [Robertson] agree to supported contact with Ms [Sturgess] for a month. Thereafter they would seek unsupervised and overnight contact. They agree to the safety plan, with the condition that they remain engaged with supports. They

agree to communication counselling with Ms [Ahuja] in an attempt to resolve the communication and trust issues that are apparent.

[50] Lawyer for child supports a staged approach, increasing each month. She supports Ms [Sturgess] assisting with contact handover while the parties work on their communication. She supports stage three being unsupervised contact and that stage four would see an increase of overnight contact. By June 2022, Ms Linton supports the parties having the majority of [Ngaio]'s care.

[51] I agree that the staged approach as proposed by lawyer for child meets [Ngaio]'s needs. The proposal for contact on a Tuesday at stage two, includes [Ngaio] being with her mother at her women's group and then going back to her parent's home to have a nap before Ms [Sturgess] arrives at approximately 3.30 pm. I consider that this "unsupervised" contact does not compromise [Ngaio]'s safety on the basis that:

- (a) [Ngaio] will be having her afternoon nap;
- (b) Mr [Robertson] will be at work;<sup>6</sup>
- (c) The time between the end of the women's group and Ms [Sturgess] attending at Mrs [Robertson]'s home would be approximately two to two and a half hours.

[52] I further agree that the safety plan as well as a condition that the parties continue to engage with their supports is appropriate as it will provide a safety net for [Ngaio] in terms of having other "eyes" on her (which is particularly relevant while she is not attending a day care). I agree that the support of Ms [Sturgess] to assist with handover is important to reduce any conflict between the parties.

### **Orders and directions**

[53] I make the following orders and directions:

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<sup>6</sup> Mr [Robertson]'s oral evidence was that he was commencing full time employment within the week.

- (a) The interim parenting order made 16 July 2021 and variation order made 16 August 2021, are discharged.
- (b) A new interim parenting order is made, recording that:
  - (i) [Ngaio] is in the interim day to day care of Ms [Ahuja].
  - (ii) Mr and Mrs [Robertson]’s contact with [Ngaio] is as set out in the schedule attached to Ms Linton’s report dated 27 January 2022, marked “A”.
  - (iii) Stage 2 is to commence immediately, with the parties’ contact being supported by Ms [Sturgess] and occurring on a Tuesday and Saturday each week, as well as there being contact at church on the Sunday. Tuesday’s contact is to include [Ngaio] attending at the women’s group (handover to occur at the commencement of the women’s group). Mrs [Robertson] will then take [Ngaio] to her home. Ms [Sturgess] is to arrive to support contact from 3.30 pm to 5.30 pm. Ms [Sturgess] is to then facilitate handover back to Ms [Ahuja]. Saturday’s contact is to be from 10.00 to 3.00 pm, with Ms [Sturgess] supporting contact and facilitating handover.
  - (iv) Stage 3 is to be implemented on 1 March 2022. That will involve overnight contact on Tuesday until Wednesday. Contact handover is to take place at the women’s group at the beginning of contact and then on Wednesday at 5.30 pm, with Ms [Sturgess] facilitating handover back to Ms [Ahuja]. Contact on Saturday is to commence from 10.00 am (Ms [Sturgess] facilitating contact) until Sunday, with handover being at the end of church.
  - (v) Stage 4 is to be implemented on 5 April 2022. That will involve overnight contact from Tuesday at the start of the women’s

group until Thursday morning at 9.00 am. Contact on Saturday is from 10.00 am until Monday morning at 9.00 am. Handover is to be at the women's group on Tuesday, and at the end of contact, Mrs [Robertson] delivering [Ngaio] to day care if she is enrolled at a centre or to Ms [Ahuja] outside the women's group centre. Mr [Robertson] is not to be involved in contact handover.

(vi) Stage 5 is to be implemented as per lawyer for child's schedule, subject to her discussing with the parties, the arrangement for Friday and whether that will be treated as Ms [Ahuja]'s "grandparent time" with [Ngaio]. Further directions are made as to this transition below.

(vii) Conditions of contact:

- a. Mr [Robertson] is not to be involved in contact handover for stages 2, 3 and 4.
- b. No party is to contact Ms [Sturgess] as to her views around how contact is progressing. Any reports of contact are to be provided by lawyer for child. No party is to question Ms [Sturgess] at contact handover or at church about these proceedings.
- c. Mr [Robertson] is not to bath or change [Ngaio] without Mrs [Robertson] being present.
- d. The safety plan as prepared by lawyer for child is to be signed by the parties as their undertaking to adhere to those safety measures for [Ngaio], acknowledging that the parties engagement with some services may need to be changed to accommodate

- e. There is to be no use of alcohol or non-prescription drugs during the time that [Ngaio] is exercising contact with her parents in accordance with this interim order.

[54] Lawyer for child is specifically able to contact either:

- (a) Ms [Sturgess];
- (b) Pastor [Rick Shilling];
- (c) Ms [Anthony];
- (d) [Geoffrey];
- (e) Daycare;

To discuss [Ngaio]'s progress, contact progress and the progress of the parties engagement with their programmes/supports.

[55] Lawyer for child is directed to provide a report in mid May 2022, to update the Court as to contact and the progression to stage 5, including her recommendation as to when that should occur, Ms [Ahuja]'s contact with [Ngaio] and how handover moving forward could be facilitated.

[56] Mr [Robertson] is to complete and file the results of a six month hair follicle test. The test is to be completed within 21 days.

[57] The parties are referred to s 46G counselling. Mrs [Robertson] and Ms [Ahuja] are to commence counselling first. Mr [Robertson] is to join counselling when the counsellor recommends. A total of 10 sessions are provided to ensure that the parties are supported in implementing the terms of this order.

[58] Lawyer for child has leave to bring proceedings back on 48 hours' notice.

[59] Proceedings adjourned to case management review on 16 May 2022, to monitor the filing of lawyer for child's report.

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Judge KNP Broughton  
Family Court Judge | Kaiwhakawā o te Kōti Whānau  
Date of authentication | Rā motuhēhēnga: 02/02/2022