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**IN THE FAMILY COURT  
AT CHRISTCHURCH**

**I TE KŌTI WHĀNAU  
KI ŌTAUTAHI**

**FAM-2021-070-000226  
[2021] NZFC 8280**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[MORRIS CARSON] Applicant
AND	[JOAN HOLT] Respondent

Hearing: 12 August 2021

Appearances: D Iosefa for the Applicant (via AVL)  
L Gamble for the Respondent (via AVL)  
M Sandom as Lawyer for the Child

Judgment: 12 August 2021

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**ORAL JUDGMENT OF JUDGE N A WALSH**

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[1] This is a submissions hearing with limited cross-examination to make s 5(a) and s 59 Care of Children Act 2004 safety assessments for the child [Jay Carson] born [date deleted] 2016, aged [five years] ([Jay]) in having contact with his father.

[2] In an oral judgment it is neither desirable or necessary to recite all of the background factual issues, however, I have considered all of the evidence and

counselors' submissions and with today's time constraints I have focused on making findings on the major issues.

[3] [Jay]'s parents are [Joan Holt] aged 24 (Mother) of [location 1] and [Morris Carson] aged 28 (Father) of [location 2].

[4] Mother's unequivocal position is that Father's parenting is unsafe. Therefore, Mother says that Father's contact should be supervised by his parents or grandparent.

[5] [Jay]'s parents met in June 2015 in Auckland. In September 2015, Mother fell pregnant with [Jay] and, in February 2016, Mother relocated to [location 3] to live with her grandparents.

[6] In 2015 Father was diagnosed with [condition deleted] ([joint] pain). Father was prescribed codeine for four years and he concedes that he became addicted to codeine.

[7] In May-June 2016 Father moved to [location 3] just before [Jay]'s birth.

[8] In 2017 Father, Mother and [Jay] moved to [location 2] where Father's parents reside.

[9] Mother alleges Father was physically, psychologically and financially violent towards her during their relationship.

[10] In 2018 Father was diagnosed with ADHD and was prescribed Ritalin to address this condition.

[11] The parties separated in October 2019 and Mother and [Jay] moved to [location 4].

[12] Three months later, Mother formed a relationship with [Marco Cunningham] ([Marco]) and they moved to [location 3] in July 2020. She fell pregnant and gave birth to [Josh Cunningham] on [date deleted] 2020.

[13] On 30 April 2021, Father discovered during a video call with [Jay] that Mother had relocated with [Jay] and [Marco] to [location 5]. It transpired that [Marco] obtained employment as [profession deleted] and members of his family live [near location 5].

[14] On 3 May 2021, Judge Jo Hambleton considered Father's without notice application for an order preventing [Jay]'s removal from [location 3] and she made an interim order that [Jay] was to remain living in [location 3] until further order of the Family Court.

[15] On 30 June 2021 [Jay]'s lawyer for child (Sarah Mather) reported that the parties had resolved a number of issues between them. She said that it was proposed that [Jay] would remain in [location 5] and Mr [Carson]'s eventual plan was to relocate from [location 2] to [location 5]. She further advised that proposals were made for unsupervised contact between [Jay] and Mr [Carson] pending his relocation to [location 5].

[16] On 6 July 2021 Judge Christina Cook in the Tauranga Family Court, by consent, made an order that, "[Jay] is to remain living [near location 5] until further order of the Court." She transferred the file to Christchurch and a new lawyer for child was appointed.

[17] Judge Cook observed that as Sarah Mather identified some safety issues the Family Court would need to make determinations. Therefore, Judge Cook directed a two-hour hearing with "limited" cross-examination of [Jay]'s parents.

[18] Counsel filed very helpful submissions identifying the issues, the relevant statutory provisions, the legal principles and applicable case law.

## **Mother's allegations of family violence**

[19] Mother's allegations of family violence include the following:

### **Physical**

- (a) Pushing, punching on arms and legs leaving bruises, head butting and spitting every few months, from early on in the relationship before [Jay] was born until separation;
- (b) That there was an incident in 2018 when Father grabbed Mother by the neck. She says this led to Father seeking professional assistance from a psychiatrist and being diagnosed with ADHD;

### **Psychological**

- (c) Arguing, swearing, and name calling by Father on a daily basis;
- (d) Threats by Father to end his own life in person and via Facebook Messenger; and
- (e) Hacking of Mother's social media accounts and threats by Father to post videos of the applicant on Pornhub in or about June 2017.

[20] Mother alleges that post separation psychological family violence continued including at times when Father had the care of [Jay]. Mother alleged that in November 2017 while she was out of town for the weekend Father sent concerning Facebook messages to her while [Jay] was in care such as: **“You want your little boy to see his dad hanging from a ceiling? Me and [Jay] might end up over a cliff...so get bk here.”** [Emphasis added] Apparently the police were called by Father's parents.

[21] In February 2020 Father visited Mother's home in [location 4] and became very intoxicated and attempted to sleep in her bed. Father then walked in the middle of an 80-K road while intoxicated.

[22] In January 2021 while [Jay] was in Father's care he sent abusive messages to Mother and [Marco] without provocation including the comment: **"No wonder I want to take your fucking head off,"** to [Marco]. **"I thought you were a good mum. You are a shit mum."**

[23] [Jay] returned from contact with Father in January 2021 saying he wanted to punch things and people and that: **"Dad wants me to hurt someone, but I said no because that's bad."**

[24] Three months ago in April 2021 while on a FaceTime call with [Jay] Father began yelling and telling [Jay] that he was going to "Smash," [Marco] and was "Going to fucking stomp his head in."

[25] Mother proposes that Father's [location 2] based parents (with whom she has a positive relationship) or a grandparent could supervise Father's contact.

#### **Father's response**

[26] Father readily admitted he was addicted to prescription medication, namely codeine but not methamphetamine. Currently, father takes Ritalin for ADHD and he gets a set amount per month which means that he cannot get any more Ritalin than the pharmacy prescribes. Father, under cross-examination by lawyer for child, said that Ritalin is of benefit to him in regulating his emotions. Father said that he has undertaken a urine screening test at work, and he is awaiting an appointment for a hair follicle test.

[27] Father said that he has no issue with the inclusion of a condition that he is not to consume alcoholic liquor whilst [Jay] is in his care.

[28] Father emphatically denies Mother's allegation of physical family violence and deposed , "I did not punch, kick, headbutt, spit or grab [Joan] by the neck."

[29] Father's evidence is that he has not consumed or been under the influence of illicit drugs since the date of separation. Currently, Father takes two times 30 mg extended release Ritalin tablets per day.

[30] Mother says Father used methamphetamine a couple of times during their relationship but has not used since they separated. Mother conceded, under cross-examination by lawyer for child, that she has not actually seen methamphetamine in Father's possession but when she was away and returned she found light bulb paraphernalia.

[31] Father concedes he did threaten to commit suicide and explains:

**I acknowledge that I threatened to commit suicide. I was emotionally in a bad headspace due to the stress that came from not being able to see [Jay]. I accept that this was not an appropriate way to deal with the emotional baggage I was carrying at the time. [Emphasis added]**

[32] Father accepted that he and Mother argued "Almost every day." He denied threatening to post videos of Mother on Pornhub, "Nor have I taken any sexual videos of her to do so."

[33] However, under cross-examination by lawyer for child, Father readily accepted that, at exhibit B at 9.37 am, he said "There is 1,700 deleted videos. It's found. Ha, ha, ha. If I find anything dodgy I am legit putting you up on Pornhub."

[34] Father accepts that the messages he sent to Mother around the time they separated in October 2019 were "Inappropriate." Father says that he and Mother separated due to his addiction to prescription medication and not because of alleged violence.

### **Determination on physical abuse**

[35] Section 12A(4) of the Family Court Act 1980 provides that I may receive any evidence whether it is admissible under the Evidence Act 2006, that the Court considers may assist it to determine the proceeding.

[36] Ms Gamble for Mother elected not to cross-examine Father.

[37] Ms Gamble at the conclusion of the evidence submitted that I use inconsistencies between Father's evidence and the messages exhibited to Mother's affidavit as grounds for not accepting the credibility of Father's evidence, particularly

about the use of physical violence. However, I am cautious about making potentially far-reaching credibility findings based on selected text or Facebook messages. I would first need to read the entire text or message exchange between both parties and to have cross-examination of both parties concerning the messages. Therefore, I reject the submission that I should use the inconsistencies as grounds for finding that Father is not a credible witness.

[38] After applying s 12A(4), I find Mother's allegations of physical abuse against Father are unproven for the following reasons:

- (a) There is no independent corroborating evidence and the allegations are solely based on Mother's unsubstantiated allegations and perception;
- (b) Mother at no time applied for a protection order during their relationship or after they separated. I readily acknowledge and accept that a lot of family violence in New Zealand goes undetected and unreported and is hidden. There is no evidence of notifications of family violence to the police or Oranga Tamariki. There is no evidence from friends or members of the family; and
- (c) There is no medical evidence of Mother sustaining injuries such as the bruising that she claims she sustained as a result of Father's physical assault.

[39] After hearing and seeing the witnesses being cross-examined, albeit briefly in a "she said," and "I said," situation where, quite frankly, I do not know who to believe, I find it would be unjust and irresponsible for a judge to make findings within the confines of today's restricted hearing.

[40] Therefore, I am unable to find as proven that Father physically abused Mother.

## **Determinations on psychological abuse**

[41] I find Mother's allegations of psychological abuse by Father are proven for the following reasons:

- (a) Father accepts that messages sent to Mother around about the date of separation were inappropriate; and
- (b) Father at exhibit B at 9.23 made threats to end his life, for example: "You won't have to worry about that soon 'cos I'll be dangling from a fucking ceiling," and exhibit C at 1.10 pm: "You want your little boy to see his dad hanging from the ceiling?" I find Father's threats to Mother were intended to manipulate and coerce Mother. At exhibit B at 10.24 am Father said: "Fuck off. You're a piece of shit. Kill yourself cunt." At 7.06 Father repeatedly said: "Get fucked you bitch."

[42] In my opinion, the majority of Father's psychological abuse towards Mother occurred at a time when he was deeply stressed about the ending of a parties' relationship. Father said that, after five years of codeine addiction, in November 2019, he was not in a "Good space," and it was a "Horrible thing to say," for example, to throw himself off a cliff. Father accepted that his comments were "Unacceptable." When Ms Sandom asked Father to consider what Mother would have thought being the recipient of such messages he, without hesitation, said "She would have been absolutely beside herself."

[43] Father also said "I was not a good partner – we both raised voices – it was a toxic relationship."

[44] Father said he was a different person today compared to what he was when he discovered three months ago on 30 April 2021 that Mother, [Jay] and [Marco] had covertly left the North Island and moved to [location 5] and explained "...it was frustrating for me to find out this way about the move and how I had been treated as the other parent."



[45] Father readily admitted that he called [Marco] a “Fuckwit,” in [Jay]’s presence.

[46] Father, under cross-examination, said that “I am willing to stop this with [Marco] now as whether we like it or not we are both part of [Jay]’s life...we need to both put everything aside...”

[47] Father in his affidavit deposed “I acknowledge that this is inappropriate however I was incredibly distressed having to process the fact that [Joan] relocated to [location 5] with [Jay] without my consent.”

### **Father’s drug use and mental health issues**

[48] The relevance of Father’s mental health issues and his drug use are further grounds advanced by Mother as to why Father should have supervised contact.

[49] Ms Gamble submitted that the Family Court cannot be satisfied Father is not under the influence of illicit drugs or that Father is abusing his prescription medication.

[50] Father says that he consulted a psychiatrist in [location deleted] in order to get a prescription for Ritalin. Shortly, there will be a review with the psychiatrist in order to review his condition and his need for further medication going forward, particularly whilst he will be out of New Zealand for four months (October 2021 – February 2022) to visit his [US] based fiancé.

### **[Jay]’s comments in January 2021**

[51] I accept Father’s explanation in his affidavit, and I place no evidential weight on [Jay]’s comment that “Dad wants me to hurt someone but I said no ‘cos that's bad.”

### **Will [Jay] be safe with Father?**

[52] Having found that Father subjected Mother and her partner [Marco] (overheard by [Jay]) to psychological abuse by way of Facebook messages in November 2019, the drunken visit to [location 4] in February 2020 and by way of the verbal threats

during the video call on 30 April 2021 and in January 2021 when he said “You are a shit mum,” I must now consider s 59 and decide if I am satisfied that [Jay] will be safe in having unsupervised contact with his father.

[53] After seeing and hearing Father being cross-examined by Ms Sandom and being able to make my own assessment of [Jay]’s parents’ evidence, I will order that Father is to have unsupervised contact with [Jay] for the following reasons:

- (a) Father impressed me with the sincerity of his evidence, under Ms Sandom’s cross-examination, that [Jay] now needs both he and Mother’s partner, [Marco], in [Jay]’s life without exposing [Jay] to conflict;
- (b) Father, in my opinion, showed insight in expressing genuine remorse to [Marco] for his actions on 30 April 2021 and with respect to [Jay] being a spectator to his outburst. He readily acknowledged “I do agree it would have been upsetting,” for [Jay];
- (c) Father attended a Parenting Through Separation programme and in response to my questions revealed that he had learnt about not exposing children to adult conflict;
- (d) Both parties have moved on post-separation. For example, Mother is in a relationship with [Marco Cunningham] and they are the parents of [Josh] aged 10 months. Father is engaged to [a US-based woman] whom he has known since [date deleted]. He is visiting [his fiancée] between October 2021 – February 2022;
- (e) There is no evidence that Father has ever been hospitalised in a psychiatric institution. Father is employed as a manager/storeman in [location 2] and is well advanced in his university studies to obtain [degree deleted]. Father lives with his parents whom the Mother respects. Father has no criminal convictions. Father has never been subject to a protection order;

- (f) I find that safety-focussed protective conditions can be attached to Father’s unsupervised contact going forward in order to minimise risk to [Jay]. For example, Father’s future contact could be subject to conditions to undertake and provide hair follicle test results together with a condition not to consume alcoholic liquor whilst caring for [Jay]. Father says that he is awaiting the receipt of his GP’s medical notes. In my opinion, Father should disclose his psychiatrist’s forthcoming review to Mother. In my opinion, future contact between Father and [Jay] should increase on a staged basis but also not be supervised. I predict and recommend that Father’s parents conduct a monitoring role whilst [Jay] is reintroduced to Father; and
- (g) Mother appears to have a good and positive relationship with Father’s parents.

### **The way forward**

[54] Therefore, with the conclusion of the Family Court safety assessment I understand that Ms Sandom will convene a further round table meeting in her role as [Jay]’s lawyer to negotiate the terms of interim contact as [Jay] last had direct contact with Father seven months ago in January 2021.

[55] As today’s evidence unfolded two significant new developments were disclosed.

- (a) Mother, [Jay] and [Marco] will be relocating from [location 1] to [location 6] in about two months’ time and Father consents to the move. Mother explained, “It hasn’t worked out.” Mother said that there were housing issues and the bottom line is that [Jay] does not like being in [location 1] and wishes to return to the North Island to see his North Island based family;
- (b) Father will be overseas between October 2021 – February 2022 visiting [his fiancé] in [the US].

I raised the issue with counsel of transferring the Family Court file to the Family Court in [location 6] or [location 2] but all counsel were unanimous that, at least in the meantime, the Family Court file should remain in [location 5] as it will be September – October 2021 before [Jay] physically returns to the North Island.

[56] At the conclusion of counsels' submissions and the evidence, I signalled to [Jay]'s parents that, after today's decision they need to be reflective and take stock on what has been happening in their respective lives by putting themselves in [Jay]'s shoes.

[57] [Jay] as a five-year-old has been exposed to:

- (a) His parents' dysfunctional relationship described by father as "toxic" where at the very least both parties admit to heated verbal arguments;
- (b) Their final separation in October 2019;
- (c) Five residential moves (including to [location 6] later this year) within three/four years;
- (d) Two changes in primary school in four/five months (ie [location 1] and [location 6]);
- (e) Mother's new relationship with [Marco] and the arrival of [Josh] now aged 10 months; and
- (f) Father's verbal outburst on the video call on 30 April 2021 in [Jay]'s presence.

[58] I can see from what I have seen and heard that [Jay] is a delight to both of his young parents but [Jay]'s parents have the potential to blight [Jay]'s full development and upbringing if they do not "bury the hatchet" and promptly conclude their Family Court litigation.

[59] With this objective I am going to provide them with free and independent help by the provision of counselling through the Family Court.

[60] Mother at 27 who has been at the coalface providing the majority of [Jay]'s primary day-to-day care and with a 10-month-old baby would benefit from the input and support of Father and his family without the spectre of ongoing conflict in the Family Court.

[61] The *best news* that I heard today was that Mother, [Jay] and [Marco] (and [Josh]) are returning to the North Island to live 50 minutes' drive from Father and his parents in [location 2] and [location 6].

[62] Mother I hope will learn to trust Father and relax as time goes by, however, I predict that this can only happen if Father is transparent and forthcoming about his drug use and state of mental health and promptly makes required information available.

[63] Both of [Jay]'s parents need to be cognisant of Father's ADHD diagnosis. I am aware that the treatment of ADHD can help but this condition cannot be cured. I am aware that with an adult, ADHD may contribute to low self-esteem, troubled relationships and difficulties in work performance. Father needs to be open with Mother about this health issue.

### **Orders and directions**

- (a) Father is to have unsupervised contact with [Jay];
- (b) Ms Sandom is briefed to convene a round table meeting with the parties and counsel, the primary objective being to negotiate the terms of a parenting order;
- (c) Lawyer for child is to provide an updated report for the Court within 28 days and there is to be case management review coinciding with the expected receipt of the report;

- (d) The parties, once Mother has relocated to [location 6] are to be referred to s 46G counselling (up to 20 sessions authorised) the primary objective being to assist them in making a parenting order work and to equip them with communication strategies as separated parents and guardians of [Jay]; and
- (e) Costs to lie where they fall.

Judge N Walsh  
Family Court Judge

Date of authentication: 18/08/2021  
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