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[SQUARE BRACKETS]

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**IN THE FAMILY COURT  
AT WELLINGTON**

**I TE KŌTI WHĀNAU  
KI TE WHANGANUI-A-TARA**

**FAM-2014-085-001896  
FAM-2014-085-001895  
[2022] NZFC 856**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
AND	THE FAMILY VIOLENCE ACT 2018
BETWEEN	[ADAM MAY] Applicant
AND	[GINA BOOTH] Respondent

Hearing: 28 and 31 January 2022

Appearances: F Manning for Applicant  
A Gulbransen for Respondent  
K Pearce as Lawyer for Child

Judgment: 11 February 2022

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**JUDGMENT OF JUDGE A P WALSH**

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## **Introduction**

[1] The applicant [Adam May] (the father) and the respondent [Gina Booth] (the mother) are the parents of [Josh May] born [date deleted] 2013.

[2] The father has applied for variation of a parenting order relating to the care of [Josh]; the issues for determination are whether:

- (a) The father can have overnight contact;
- (b) Contact can be extended over the weekend period;
- (c) Contact will be fortnightly or weekly; and
- (d) Any conditions are required.

He has also applied for discharge of a protection order in favour of the mother and [Josh]. The mother opposes these applications.

[3] The mother applied for a guardianship direction that [Josh]'s surname be hyphenated to "[Booth-May]". The father has agreed to that change of surname.

[4] There is a history of mistrust between the parties. The mother, who has been the primary caregiver of [Josh], is concerned the father has come in and out [Josh]'s life by choice. She maintained contact between [Josh] and the father had been inconsistent as a result of the father's unreliability.

[5] The father perceived the mother as being obstructive in his attempts to maintain and enhance his relationship with [Josh].

[6] In determining future care arrangements for [Josh], it is necessary to address safety issues affecting him having regard to the protection order in favour of the mother and [Josh] and issues arising from the father's history of alcoholism.

## **Background**

[7] The parties met in 2011. They started living together about August 2012 and were still living together when [Josh] was born. They separated [date deleted] 2014.

[8] According to the mother, throughout the relationship the father had subjected her to ongoing psychological abuse comprising verbal abuse and damage to property. There was an altercation between them on 31 March 2014 and the father assaulted her. He was subsequently convicted for this assault.

[9] On 4 April 2014, the mother applied without notice and obtained an interim parenting order granting her the day-to-day care of [Josh]. The Court ordered the father was to have supervised contact. She also applied without notice and obtained a temporary protection order against the father for the protection of herself and [Josh].

[10] The father filed a response in respect of the application under the Care of Children Act 2004 and a notice of an intention to appear in respect of the application under the Family Violence Act 2018. Subsequently on 12 September 2014, he applied to withdraw the notice of intention to appear and a final protection order was made by consent.

[11] Under the interim parenting order made 4 April 2014, the father was to have supervised contact 10 am to 6 pm on Sundays and 2 pm to 6:30 pm on Thursdays supervised by either of his parents. It appeared supervised contact proceeded satisfactorily. On 23 December 2014, a consent memorandum was filed; the requirement for supervised contact ceased. The interim parenting order was varied to include a further condition recording it would not be a breach of the protection order for the parties to communicate directly regarding [Josh]'s care arrangements. An existing condition relating to either party being adversely affected by alcohol or using illicit drugs while [Josh] was in their care was to continue.

[12] When [Josh] was aged approximately 2½ years, the father began having overnight contact one weekend per month. This arrangement lasted approximately six months before breaking down resulting from the father's alleged unreliability over contact arrangements. Overnight contact resumed when [Josh] was aged six years. At

that stage, the father was living with his parents; in those circumstances the mother agreed to overnight contact resuming. Such contact occurred every second weekend and there were some additional days during school holidays. This resumption of contact lasted for approximately 12 months before breaking down again over alleged unreliability of the father in exercising contact.

[13] About May 2021, the mother became aware of the father's addiction issues arising from his abuse of alcohol. The father failed to make full disclosure to the mother about his alcoholism. That failure compounded the mother's concerns about the father's lack of honesty with her and reinforced the barrier in their communication and rebuilding of trust between them. It appeared throughout this period there was volatility in their relationship from time to time and at changeovers when arguments occurred. The mother alleged the father would become argumentative and would react quickly and impulsively.

[14] On 23 July 2021, the father applied without notice for a warrant to enforce the parenting order and on notice for variation of the parenting order. The application for a warrant was declined.

[15] Communication between the parties has continued to be problematic. The father maintained the mother used the protection order "*as a sword*" and not as a "*shield*" and this posed a barrier in their relationship and communication with each other. The mother denied abusing the protection order as alleged by the father. Throughout the relationship, she considered the father had been dishonest from time to time and she could no longer trust him. She retained an ongoing concern about being subjected to further psychological abuse if the protection order was discharged.

[16] The mother supported the relationship between [Josh] and his father but believed there were safety issues arising from the father's history of family violence and his issues with abuse of alcohol.

## Application for Discharge of the Protection Order

### The Law – The Family Violence Act 2018 and General Principles

[17] Family violence is defined in s 9 of the Family Violence Act 2018:

#### 9 Meaning of family violence

- (1) In this Act, **family violence**, in relation to a person, means violence inflicted—
  - (a) against that person; and
  - (b) by any other person with whom that person is, or has been, in a family relationship.
- (2) In this section, **violence** means all or any of the following:
  - (a) physical abuse:
  - (b) sexual abuse:
  - (c) psychological abuse.
- (3) Violence against a person includes a pattern of behaviour (done, for example, to isolate from family members or friends) that is made up of a number of acts that are all or any of physical abuse, sexual abuse, and psychological abuse, and that may have 1 or both of the following features:
  - (a) it is coercive or controlling (because it is done against the person to coerce or control, or with the effect of coercing or controlling, the person):
  - (b) it causes the person, or may cause the person, cumulative harm.
- (4) Violence against a person may be dowry-related violence (that is, violence that arises solely or in part from concerns about whether, how, or how much any gifts, goods, money, other property, or other benefits are—
  - (a) given to or for a party to a marriage or proposed marriage; and
  - (b) received by or for the other party to the marriage or proposed marriage).
- (5) Subsection (2) is not limited by subsections (3) and (4) and must be taken to include references to, and so must be read with, sections 10 and 11.

[18] Under s 109, the Court may discharge a protection order if all the following apply:

- (a) The applicant or the respondent applies for the discharge.
- (b) The discharge complies with s 110.
- (c) The Court is satisfied the order should be discharged.

[19] The test and criteria for discharging a protection order are set out in s 110:

**110 Test and criteria for discharging protection order**

- (1) The court must not discharge a protection order under section 109 unless satisfied that the order is no longer necessary for the protection of any protected person.
- (2) In determining whether to discharge a protection order under section 109, the court must have regard to the following matters to the extent that they are relevant in the particular case:
  - (a) the length of the period since the order was made:
  - (b) the behaviour that led to the making of the order (including its nature, its seriousness, and how often violence occurred):
  - (c) whether, and if so how, the respondent acknowledges the respondent's past behaviour that led to the making of the order:
  - (d) whether the respondent to the order complied with required attendance at or engagement with, and achieved objectives of, any assessment or programme or prescribed services:
  - (e) any relevant safety concerns that an assessor or a service provider has notified or advised under section 186 or 204:
  - (f) any family violence or breaches of the order since it was made:
  - (g) the necessity for contact and the likelihood (if the order is discharged) of future contact:
  - (h) the risk of future family violence:
  - (i) whether areas of concern that led to the order are no longer evident:
  - (j) any protected person's ascertained views on the application (whether it is made by, or on behalf of, the applicant or the respondent).
- (3) Subsection (2) does not limit the matters to which the court may have regard in determining whether to discharge a protection order under section 109.

[20] Under s 110(1), the Court must not discharge a protection order unless it is satisfied the order is no longer necessary for the protection of any protected person. When considering the requirement of “*necessity*” in s 110(1), the observations of the Court of Appeal in *Surrey v Surrey* [2010] 2 NZLR 581; [2010] NZFLR 1 about the requirements of necessity for a protection order under the Domestic Violence Act 1995, provide guidance as to what factors should be considered. Although the Domestic Violence Act 1995 has since been repealed, the observations of the Court of Appeal in *Surrey v Surrey* about the requirements of “*necessity*” remain relevant, as do the observations, about necessity, subsequently made by the Court of Appeal in *SN v MN* [2017] 3 NZLR 448; [2017] NZCA 289.

[21] When a Court makes a protection order, it must have regard to the requirements set out in ss 79 – 85 of the FV Act. Under s 82 the Court must consider whether some or all of the behaviour, the subject of the application, appears to be minor or trivial when viewed in isolation, or appears unlikely to recur. The Court must consider also whether this behaviour forms part of a pattern of behaviour against which an applicant, or a child of the applicant’s family or both need protection. Section 83 requires the Court to have regard to the perception of the applicant, a child of the applicant’s family or both, as to the nature and seriousness of the alleged abusive behaviour and the effect of that behaviour on the applicant, a child of the applicant’s family or both. It does not limit the matters the Court may consider when determining whether to make a protection order.

[22] In *Surrey v Surrey*, the Court of Appeal observed, when having regard to an applicant’s perception and the effect of alleged abusive behaviour, a Court is entitled to consider the applicant’s subjective fears for the future. When considering the effect of past family violence, a Court should note such effect may also vary depending on any particular vulnerability of an applicant or any child. The Court indicated the subjective views of an applicant as to the nature and seriousness of past family violence, the effect of that violence, whether there is a pattern of violence and the applicant’s concerns about the future risk of family violence will not be definitive considerations. Any other relevant factors also had to be considered, including those that pointed towards an applicant being protected from future violence. The Court also noted it was important to remember the effect of past violence on an applicant;

the more serious the effect of the past violence, the more grounds there may be for the Court to grant a protection order to ensure the applicant feels safe.

[23] In *SN v MN*, the Court noted at [24](f), when conducting an inquiry into necessity, it is not a question of weighing factors pointing to an order being necessary against those which operate to the contrary. The Court stressed it is an evaluative exercise to determine whether the protection order is necessary.

[24] The assessment of those factors specified in subparas (a) – (j) of s 110(2), is mandatory. It is clear, however, under s 110(3), the Court may consider other matters when determining whether to discharge a protection order under s 109.

### **Analysis and Findings**

*Section 110(2)(a) – The length of the period since the order was made.*

[25] A final protection order was made by consent on 12 September 2014. This order has continued to operate from that date without variation. A final parenting order was made by consent on 22 September 2014 and contained provision that it would not be a breach of the protection order for the parties to communicate directly regarding [Josh]’s care arrangement.

*Section 110(2)(b) – Behaviour that led to the making of the order (including its nature and seriousness and how often the violence occurred).*

[26] Although the father filed a notice of intention to appear after the mother obtained the temporary protection order on 4 April 2014, he subsequently withdrew that notice and the final protection order was made by consent. In those circumstances, the Court was not required to make findings of fact regarding alleged family violence.

[27] As noted, the mother alleged throughout the relationship the father had subjected her to ongoing psychological abuse comprising verbal abuse, derogatory terms and damage to property. While the father acknowledged the relationship had broken down he claimed the mother had also subjected him to psychological abuse involving verbal abuse.



[28] On 30 March 2014, tensions escalated between the parties. An argument arose over care arrangements with [Josh]. In heat of the argument, the father threw a plate across the room. The mother alleged he said he wanted to smash in her face but he denied that allegation. A tussle developed when the father tried to remove [Josh] from the mother's arms. In that confrontation, he twisted the mother's finger and grabbed her right breast and twisted it. He then left the home taking [Josh] with him but returned a short time later. The police were called. The father was arrested and subsequently charged with male assault female. On 7 July 2014, the father was convicted and sentenced to 12 months supervision. It appeared he was also convicted for driving with excess alcohol and disqualified from driving. The conditions of supervision required the father to attend an alcohol and drug assessment, treatment or programme as determined by his probation officer. He was directed to attend a recidivist driving programme. He was also ordered to pay reparation to the mother.

[29] In reviewing the evidence relating to the making of the protection order, it is apparent the relationship between the parties had become dysfunctional and volatile. While each party alleged the other had engaged in psychological abuse, it is likely in the heat of argument the parties each resorted to psychological abuse as alleged. The father alleged the mother had physically assaulted him on 30 March 2014. The mother claimed she acted in self-defence. Overall, I preferred the account of the mother taking into account the fact the father pleaded guilty to assaulting her. It appeared there was only one significant incident involving physical abuse and that occurred on 30 March 2014.

*Section 110(2)(c) – Has the father acknowledged his past behaviour that led to the making of the order?*

[30] In an affidavit 23 September 2014, the father accepted a lot of his behaviour had been inappropriate and he had anger issues. He confirmed he had assaulted the mother as alleged on 30 March 2014. At the hearing, I was left the impression at times the father was defensive when questioned about the family violence that had occurred. He emphasised the violence was “two sided” but expressed regret for his actions and acknowledged he had to live with what he had done.

*Section 110(2)(d) – Whether the father complied with engaging in a stopping violence programme.*

[31] A review of the court file confirmed on 21 October 2014, the registrar recorded the father had been directed to attend a programme. The programme provider had filed a notice of conclusion of programme. The report from the programme provider does not appear to be on the file and there is no indication the father failed to comply with the programme direction.

*Section 110(e) – Has an assessor or service provider notified the Court about any the relevant safety concerns?*

[32] The court file does not record an assessor or a service provider notified any relevant safety concerns.

*Section 110(2)(f) – Has there been any family violence in breach of the order since it was made?*

[33] The father maintained he had complied with the protection order. It did appear, after the protection order became final, there were occasions when there were arguments between the parties over contact arrangements particularly at changeovers, but the mother confirmed no breach of the order was ever reported.

*Section 110(2)(g) – Necessity for contact and likelihood (if the order is discharged) of future contact.*

[34] It is clear there will be ongoing contact between the parties over care arrangements for [Josh]. Given [Josh]’s age there will be issues relating to his care until he retains the age of 16 years. As the parties are his guardians, they will need to consult and communicate about guardianship issues affecting him until he attains the age of 18 years.

*Section 110(2)(h) – The risk of future family violence.*

[35] As noted, there have been no reported breaches of the protection order since it became final in September 2014. There are, however, ongoing tensions between the parties over care arrangements. A significant feature of past family violence was the alleged psychological abuse. At this stage, time is needed for trust to develop between

the parties. Communication remains problematic. Since the parties separated, there have been ongoing issues over contact; at times there have been disagreements and confrontations especially at changeovers. Weighing all those factors, I find there still remains a risk of future family violence particularly in the context of psychological abuse. In reaching that view, I consider the potential for conflict arises from the fixed perceptions the parties have of each other; the mother believes the father is dishonest and does not trust him. The father believes the mother is being obstructive and is preventing him from developing and enhancing his relationship with [Josh]. It was apparent after hearing the father give his evidence he is frustrated by the position adopted by the mother.

*Section 110(2)(i) – Whether areas of concern that led to the order are no longer evident.*

[36] While it appears the risk of physical violence has dissipated, I find for the reasons set out when addressing the risk of future family violence, there is still the potential for psychological abuse to occur.

*Section 110(2)(j) – The mother’s views about the application.*

[37] The mother stressed in her evidence that since the making of the protection order she had felt safe. Overtime the order had given her the confidence to stand up to the respondent when there was disagreement about issues relating to the care of [Josh]. The mother described how she was affected by the family violence, particularly the physical violence that had occurred, and how she would become nauseous and feel anxious when having to have contact with the respondent.

[38] When I weighed all the factors I must take into account under s 110, I felt more time was needed for the father to demonstrate the changes in his behaviour he claimed he had made at the hearing and for some trust to develop between the parties over future contact arrangements. The reality is there has been very little communication between the parties. It did appear the father had been reluctant to make full disclosure about his personal circumstances and particularly about issues relating to his alcoholism and the steps he had taking to address those issues.

[39] I also considered the views of the mother were significant. I did not find she exaggerated her concerns about safety having regard to the nature and the history of the family violence that had occurred previously. Although the parties have been able to interact previously and resolve contact arrangements from time to time, such arrangements continue to be problematic. I noted also the mother has felt safe with the existence of the protection order.

[40] The father maintained the mother would use the protection order effectively as a “*sword*” to prevent him developing his relationship with [Josh], but I was not satisfied this would happen. After the protection order became final, it is apparent from time to time there were difficulties and disagreements between the parties as noted but on none of those occasions did the mother report any alleged breach of the protection order by the father. I noted the mother’s assertion she wanted the relationship between [Josh] and his father to develop and accepted how [Josh] enjoyed his ongoing relationship with him. The breakdowns in overnight contact arrangements in the past arose from the alleged unreliability of the father and were not attributable to any abuse of the protection order by the mother.

### **Decision – Application for Discharge of the Protection Order**

[41] For the reasons I have set out, I am not satisfied at this stage the grounds to discharge the protection order either are established. Having regard to my assessment of the factors under s 110 I consider the continuation of the protection order is necessary for the protection of the applicant and [Josh]. Accordingly I dismiss the application for discharge of the protection order.

### **The Application for Variation of the Parenting Order**

[42] Given the history of issues arising from the breakdown of contact arrangements in the past, I accept the submissions of Ms Gulbransen and Ms Pearce that it would be premature to make a final order at this stage. I am satisfied time is needed for the father demonstrate:

- (a) He has made the changes he claimed to have made at the hearing.

- (b) He will comply with the parenting order as varied to ensure his scheduled contact with [Josh] will be regular and consistent.

[43] In determining the application for variation of the parenting order, I considered the following issues relevant:

- (a) What were the safety issues and how should they be addressed?
- (b) The lack of trust between the parties.
- (c) The poor communication between the parties.
- (d) The history of inconsistent exercise of contact by the father.
- (e) The need for stable and regular contact in the future.
- (f) How the variation of the parenting order should be implemented?
- (g) What condition should be incorporated in the varied parenting order.

**The Law – Care of Children Act 2004 and General Principles.**

[44] Section 4 provides the welfare and best interests of [Josh] in his particular circumstances must be the first and paramount consideration. The Court must take into account the principle that decisions affecting [Josh] should be made and implemented within a timeframe that is appropriate to his sense of time and the principles in s 5. The Court may also take into account the conduct of [Josh]’s parents to the extent that conduct is relevant to his welfare and best interests.

[45] Section 5 sets out principles relating to [Josh]’s welfare and best interest and can be summarised as follows:

- (a) Section 5(a) provides [Josh]’s safety must be protected and in particular he must be protected from all forms of violence as defined in the Family Violence Act 2018.

- (b) Section 5(b) provides [Josh]’s care, development and upbringing should be primarily the responsibility of his parents.
- (c) Under s 5(c) [Josh]’s care, development and upbringing should be facilitated by ongoing consultation and cooperation between his parents.
- (d) Section 5(d) stipulates [Josh] should have continuity in his care, development and upbringing.
- (e) Section 5(e) provides [Josh] should continue to have a relationship with each of his parents and his relationship with his family group should be preserved and strengthened.
- (f) Under s 5(f) [Josh]’s identity (including without limitation his culture, language and religious denomination and practice) is to be preserved and strengthened.

[46] In *Kacem v Bashir*<sup>1</sup>, the Supreme Court clarified and confirmed the approach to be adopted by the Court when applying the principles in s 5 of the Act. Subsequent to that judgment, s 5 was amended to provide the mandatory requirements, as set out in s 5(a), must be given weight and emphasis as required in the particular circumstances of the case. The approach to the application of the s 5 principles can now be summarised as follows:

- (a) Section 5(a) is mandatory; before the Court can make any parenting order it must be satisfied [Josh] would be safe and protected from all forms of violence as defined in the Family Violence Act 2018.
- (b) The Court must consider and address all the principles in s 5(a) to (f). If a s 5 factor is not relevant, the Court should note the position.

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<sup>1</sup> *Kacem v Bashir* [2010] NZFLR 884.

(c) Apart from the mandatory provisions of s 5(a), no weighting or emphasis is to be given to any of the other s 5 factors; none of the factors identified in s 5(b) to (f) are to be prioritised over the other s 5 factors.

(d) In the application of the principles there are no prior assumptions.

[47] Section 5A provides family violence must be taken into account as the father is subject to a final protection order. Under s 5A(2) in taking into account the principle in s 5(a) the Court must have regard to whether a protection order is still in force, the circumstances in which that order was made and any written reasons given by the Judge who made the order. In this case, the final protection order made on 12 September 2014 continues to operate. The circumstances that led to the making of the protection order are set out at [26] to [29] of this judgment. The order became final by operation of law as the father withdrew his opposition to the making of the final order and consented to the order being made final; in these circumstances the Judge was not required to provide written reasons.

[48] Under s 5A(3)(a) I note the father has not been convicted for breaching the final protection order. There has been no notification of any safety concerns from an assessor or a service provider under s 5A(3)(b).

[49] Section 6 provides [Josh] must be given reasonable opportunities to express views or matters affecting him. Ms Pearce was appointed to represent [Josh] and has filed written reports setting out his views. In assessing the views of [Josh], I must have regard to his age and development in determining what weight can be given to his views.

[50] In her report 26 January 2022, Ms Pearce advised [Josh] was positive about both his parents. He talked about seeing the father on Sundays. He like playing computer games and spending time with him. He had been to the new home where his father now resided and thought that was “OK”. He still had dinner with his paternal grandparents each time he was with his father and liked seeing them. He volunteered

he would like more time with his father. This was consistent with what he had told Ms Pearce previously.

[51] [Josh] was proud of his [sporting activity deleted] ability and his maternal grandparents were involved with that activity. The father had taken him to [sport] during term time on Sunday evenings and he enjoyed that activity.

[52] Ms Pearce noted [Josh] enjoyed [activities] on Saturday mornings and [sport] on Sunday evenings. She understood both these activities carried on throughout the year. She considered it would be good for [Josh] if he could get to his extra activities each week. Care arrangements would need to be determined around those activities or the parents would need to commit to getting [Josh] to these activities during their time with him.

[53] The parents are the guardians of [Josh] until he turns the age of 18 years. Section 16 sets out the duties, powers, rights and responsibilities of guardianship when making decisions relating to important matters affecting [Josh]. Section 16(2) defines (without limitation) important matters such as [Josh]'s name, changes to his place of residence, medical treatment, education, culture, language and religious denomination and practice. In this case there is an issue relating to [Josh]'s health as he suffers from [a health condition] and requires medical treatment for that condition.

[54] Fundamental to the exercise of guardianship is the obligation of [Josh]'s parents to consult and communicate with each other and act jointly in their capacities as his guardians.

### **Analysis and Findings**

[55] In addressing s 5(a) the focus is on safety issues affecting [Josh] arising from the father's past abuse of alcohol and the family violence that had occurred between the parties.

[56] The father accepted, when he was experiencing drinking problems, he did say he was sick a lot. The evidence established contact did not occur on numerous



occasions when the father was adversely affected by his use of alcohol that compromised his ability to care for [Josh] during contact visits.

[57] The father maintained he had abstained from the use of alcohol since April 2021. It is imperative he sustains and demonstrates the changes he has made regarding his use of alcohol and that he is able to abstain from the use of alcohol in the future. This is a particular concern of the mother. Presently she does not trust the father given the events that led to her finding out about his alcohol addiction and the implications that issue had for the safety of [Josh] when in his care.

[58] The father's failure to make full disclosure of this alcohol issue to the mother caused her to doubt his credibility. He produced a certificate 1 June 2021 from his medical practitioner confirming he was seeing his doctor on a regular basis for alcoholism and was taking daily prescribed Antabuse for his alcoholism. It is understood he will need to take Antabuse for some time. If a decision is made in the future for the father to stop taking this medication, he will need to advise the mother immediately.

[59] The father produced a letter 21 July 2021 from [a treatment programme] confirming he was an outpatient on that programme. He first attended the service on 22 March 2021 and had since attended four appointments as directed. It was noted, given the father's ability to maintain abstinence from alcohol while living in the community, his willingness to take medication to aid his abstinence and the positive benefits to his health he derived from seeking gainful employment, he was better served by attending weekly alcohol and other drug counselling sessions rather than residential rehabilitation. At the hearing the father advised he was no longer having counselling; it appeared he had attended five or six sessions of counselling.

[60] The father acknowledged there was a risk of relapse and accepted if this occurred the mother needed to be notified immediately. He agreed to his parents being able to inform the mother if he suffered a relapse. He accepted he had to keep the mother informed; time will tell whether this occurs. There is a need for transparency about this issue on the part of the father. If he was to suffer a relapse and not inform the mother, it would be inevitable, in my view, contact arrangements would breakdown

to the detriment of [Josh]'s welfare and best interests. In the past, he has experienced the father's inability to be consistent and regular in exercising contact and this has distressed him. Such history cannot be repeated. The father must appreciate it will take time for him to build up trust with the mother over issues relating to his alcoholism. Such trust, once established, may be irreversibly undermined if it breaks down because he has not been honest with the mother over any relapse.

[61] Given the principle in s 5(b) [Josh]'s care, development and upbringing should be primarily the responsibility of the parties. The mother confirmed she accepted the importance of this principle and acknowledged the importance of the father being an active figure in this role. The father has maintained throughout he does wish to have an active role in [Josh]'s upbringing and it will be up to him to demonstrate his commitment to that role. While he perceived the mother was being obstructive and was effectively isolating him from carrying out the role, I was not satisfied that was the case. When I reviewed the history of [Josh]'s care and contact arrangements, I was satisfied the mother had been proactive in promoting the relationship between [Josh] and the father. Despite the existence of the protection order, the mother had been prepared to negotiate contact arrangements with the father. As noted contact had been unsupervised on two occasions when [Josh] was approximately 2½ years old and then again when he was 6 years old. On those occasions contact arrangements broke down because of the issues arising from the father's alcoholism and his inability to maintain regular contact.

[62] In considering the principle under s 5(c) relating to ongoing consultation and cooperation between the parties, there was a focus on addressing communication issues. At the start of the hearing, the father indicated an unwillingness to participate in communication counselling, however, after exploring this issue in further detail he advised he would be prepared to participate in s 46G counselling to improve communication. I was satisfied the mother accepted the importance of communication with the father and she was also prepared to attend s 46G counselling. As noted [Josh] has [a health condition]. The father was critical of the mother in not providing full information to him about this condition. In the future it is imperative the parties focus on consultation and cooperation in respect of all matters relating to [Josh]'s care, development and upbringing. The fact the protection order continues to operate should

not, in my view, prevent this process occurring. While the father expresses concerns about the impact of the protection order continuing for the reasons I have set out already, I do not consider the order will be a barrier to future communication so long as all ongoing consultation and cooperation is civil and respectful to each other.

[63] The issues associated with the breakdown in communication and contact arrangements and the need for those matters to be addressed highlights the importance of the continuity in the care, development and upbringing of [Josh]. Throughout he has experienced continuity in his care, development and upbringing from his mother but this has not occurred as far as the father is concerned because of problems associated with contact as discussed. In the application of the principle under s 5(d) I was satisfied the mother accepted the importance of continuity in [Josh]'s care. This principle emphasises, from the perspective of [Josh]'s welfare and best interests, the need for the father to be consistent and regular in his exercise of contact in the future.

[64] Applying the principle in s 5(e), I am satisfied the mother will promote relationship between [Josh] and his father; throughout she has been prepared to negotiate contact arrangements with the paternal grandparents. I did not find the evidence indicated the mother had not taken steps to preserve and strengthen the relationship [Josh] has with his paternal and maternal family groups. Again it will be up to the father to demonstrate his commitment to maintaining his relationship with [Josh] and supporting the mother's relationship with him.

[65] No issues arise under s 5(f) relating to [Josh]'s identity being preserved and strengthened.

[66] As I already indicated it would be premature to make a final parenting order. Time is needed for [Josh] to adjust to having regular contact with the father on an unsupervised basis. The parties will also need to demonstrate to each other their commitment to s 46G counselling to assist them in resolving communication issues.

[67] Having regard to the matters set out in discussing the various factors in s 5, I am satisfied a stage has been reached where the father should have unsupervised

contact with [Josh] subject to conditions to address safety concerns taking into account the protection order continues to operate between the parties.

[68] The paternal grandfather gave evidence at the hearing and advised it was no longer practical for the paternal grandparents to continue to provide supervised overnight contact. The mother was concerned the father had not fully disclosed the situation regarding his accommodation. In the past, issues have arisen because the father had changed his address on a number of occasions. He was now renting accommodation from a friend and her husband and claimed there were adequate facilities at the residence to accommodate [Josh] staying with him overnight.

[69] The father appeared to resent having to make full disclosure to the mother about his accommodation but I consider her concerns are reasonable having regard to issues that have arisen in the past over his transience. Ms Gulbransen submitted the Court should obtain a s 132 report to address the accommodation arrangements of the father. Given the narrow focus of that report, I am satisfied the Court will be assisted by that report being completed during the time the father has unsupervised contact during the day with [Josh], as I will set out, before moving to overnight contact.

[70] Ms Pearce reported [Josh] has been spending unsupervised time with the father each Sunday since late 2021. Overnight contact has not occurred for sometime. On occasions contact has not happened at short notice for [Josh] or did not happen when he would like it.

[71] Presently [Josh] attends [school deleted]. The mother lives nearby and it is easy for [Josh] to get to school. The father is now flatting in [Lower Hutt]. As the parents work full time, [Josh] attended holiday programmes and spent time with his mother and maternal family during the holidays. For some years the maternal grandparents had taken him to [activities] lessons on Saturday mornings. Late in 2021, [Josh] began playing [sport] on Sunday evenings at [location deleted] and his father was involved in that activity. It is understood the [sport] is training in drills and runs all year during term time.

[72] Ms Pearce noted there is a distance of approximately 32 kilometers between the residences of the parents. The driving time estimate is about 33 minutes with no traffic but with the combination of the motorway and getting through Wellington at peak times the trip can take about an hour. Ms Pearce observed the distance factor was challenging for the parents because of their restricted budgets. Given the father's work commitments, face to face contact was not an option during the week. I understand the father accepts that situation. If the father was to get [Josh] to school on Mondays, he would need to leave Hutt Valley at around 7.30 am to allow for traffic. I am satisfied this would not be a realistic option given the travelling time, the impact on [Josh] and taking into account [Josh]'s participation in the [sport] activity that occurs on Sundays. In these circumstances, I accept Ms Pearce's submission it would make sense for changeover to occur on Sunday night at the end of the [sporting] activity.

[73] In formulating the interim contact and the frequency of contact, I have decided the mother should have an entire weekend with [Josh] as she is working full-time during the week. I have determined contact should proceed on a three weekly cycle basis whereby in the first and second weekends of that cycle, the father is to have unsupervised contact and on the third weekend, [Josh] remains in the care of his mother. To bridge the gap, relating to contact between [Josh] and the father, I consider this can be addressed by enabling telephone or video contact on Tuesdays and Thursdays each week.

### **Interim Contact**

[74] In implementing unsupervised contact by way of an interim order, I consider it should proceed in two stages:

- (a) In the first stage:
  - (i) Contact should occur on the first and second Sundays over the three-week cycle starting 20 February 2022 until 2 April 2022.
  - (ii) The father shall be responsible for collecting [Josh] at 10 am on the Sunday at the start of contact and the mother shall be

responsible for collecting [Josh] at the end of [sporting] activity on the Sunday.

- (b) In the second stage, subject to the s 132 report raising no concerns about the father's accommodation:
  - (i) Contact shall occur on the first and second weekends of the three-weekly cycle starting 2 April 2022 after [Josh]'s [activities] lessons on Saturdays until the end of the [sport] activity on the Sunday.
  - (ii) The father shall be responsible for collecting [Josh] from [activities] and the mother shall be responsible for collecting [Josh] at the end of the [sporting] activity on the Sunday.

[75] The father is to have contact with [Josh] each week by telephone between 5 pm and 7 pm on Tuesdays and Thursdays.

[76] The following conditions are to apply to the interim parenting order:

- (a) The father is to abstain from the use of alcohol and for avoidance of doubt he must not consume alcohol or any illicit substance for a period of 24 hours before the start of any contact period and during such contact period. If this condition is breached the interim parenting order will be suspended immediately.
- (b) If the father relapses and uses alcohol, he must give notice of that relapse either directly or through his parents to the mother within 24 hours of such relapse.
- (c) The father is to confirm at least 48 hours before the start of each contact visit that he will be available to have contact as provided in the interim parenting order.

- (d) All communication between the father and the mother is to be by email or text confirming contact arrangements to occur.
- (e) It will not be a breach of the protection order for communication to occur between the parties relating to contact arrangements and care arrangements.

[77] The interim contact arrangements as set out can be varied by agreement but failing agreement they will operate as set out in the interim parenting order.

### **Directions**

[78] I make these directions:

- (a) I direct under s 46G the parties are to attend counselling to address communication issues and initially I approve 12 sessions.
- (b) I direct a s 132 report be obtained. The purpose of that report is to assess the father's accommodation and advise whether there are any safety issues arising from that accommodation.
- (c) I request Ms Pearce to convene a round table meeting with counsel and the parties in early April 2022 to negotiate long term contact arrangements taking into account school term holidays, the Christmas holiday period and contact on special occasions such as birthdays, Father's Day, Mother's Day. If agreement is reached, I request a consent memorandum is filed within seven days of that meeting. If agreement cannot be reached, counsel are to file a joint memorandum within seven days of the meeting setting out directions sought to advance the disposition of the proceeding.
- (d) I request the Registrar to place this matter in CMR for monitoring and review (at a date and time to be advised) in the third week of April 2022.

- (e) I request Ms Pearce in consultation with counsel for the parties to prepare a draft interim parenting order within seven days of the delivery of this judgment and to file that order for approval and sealing.

[79] Leave is reserved to apply for further directions on 72 hours notice if any issue arises relating to implementation of the interim parenting order.

[80] In formulating the interim parenting order, I have taken into account [Josh]'s activities relating to [activities] and [sport]. It is clear from Ms Pearce's report these activities are important to [Josh] and need to continue without disruption.

[81] In implementing the two-stage approach to unsupervised contact, I consider it was important for [Josh] to adjust to the new arrangements over time. By the time the round table meeting is to occur in April 2022, [Josh] will have had unsupervised contact on Sundays with the father. At that stage I consider it is appropriate to extend unsupervised contact to include the overnight arrangement as set out in the second stage of the interim parenting order.

### **Guardianship Direction**

[82] By consent I make a guardianship direction that [Josh]'s surname be amended to [Booth-May].

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Judge APW Walsh Anthony  
Family Court Judge | Kaiwhakawā o te Kōti Whānau  
Date of authentication | Rā motuhēhēnga: 11/02/2022