

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

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**IN THE FAMILY COURT  
AT WHANGAREI**

**I TE KŌTI WHĀNAU  
KI WHANGĀREI-TERENGA-PARĀOA**

**FAM-2019-088-000059  
[2020] NZFC 2610**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[ANGELIQUE CANN] Applicant
AND	[GIA FARLEY] [DEVON FARLEY] Respondents

Hearing: 9 April 2020

Appearances: A Patterson for the Applicant (via telephone)  
L O'Boyle for the Respondent [G Farley] (via telephone)  
No appearance by or for the Respondent [D Farley]  
D Whitehead as Lawyer for the Child (via telephone)

Judgment: 9 April 2020

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**ORAL JUDGMENT OF JUDGE L KING**

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[1] It is important that I deliver a decision today so that the parties have some certainty around care arrangements for this child, [Jaida] until the matter comes back before me in accordance with this decision. I reserve the right to amend my judgment without changing the end result.

[2] This is a file which I declared as complex pursuant to r 416UA in July 2019. I have been case-managing this matter since then. I have presided over a number of interlocutory hearings and conferences and therefore am very familiar with the issues and dynamics involved with these parties in relation to their competing applications for day-to-day care of Ms [Farley]'s daughter, [Jaida].

[3] The matter has been set down for hearing today. This followed directions I made recently, on the e-duty platform, in relation to a without notice application filed by the child's caregiver, Ms [Cann], for an order suspending the interim parenting order I made in January this year which provided for Ms [Farley] to have contact with [Jaida] on certain terms by consent.

[4] Ms [Cann]'s evidence was that her family were at risk and that she needed to protect them from the possibility of catching the COVID-19 virus. The background is that at 11.59 pm Wednesday, 25 March 2020, our country moved to COVID-19 alert level 4 which, at this stage, will continue for four weeks through to midnight Wednesday, 22 April 2020. As part of her evidence, Ms [Cann] deposed that her father lives in the same household and described him as 73 years old, and that both Ms [Cann] and her husband have health issues. Nothing more specific has been provided by Ms [Cann] regarding her and her husband's health issues.

[5] On the basis of the evidence filed, I varied the interim parenting order made 31 January 2020 by suspending Ms [Farley]'s face to face contact with [Jaida], directed service on the respondent, the input of lawyer for child and an urgent submissions only hearing to review my decision made on an ex parte basis.

[6] Ms [Farley] has given evidence and it has now been clarified that in fact Ms [Cann]'s father lives next door to Ms [Cann]. He has his own self-contained place. Ms [Cann] and her father share a driveway but they have separate homes. Ms [Cann]'s

position is that although he lives next door he is very much a part of her bubble. This is a different position to that set out in Ms [Cann]'s evidence at the time she filed her without notice application. Ms [Cann] did not provide that extra detail and it is my view that level of detail was required given Ms [Cann] was seeking to displace the status quo care and contact arrangements that were agreed to by the parties two months prior.

[7] We have had much discussions today and I have heard submissions from all counsel. I have indicated my view is that contact should proceed this weekend. I am not convinced on the evidence before me that I should continue to displace the status quo that has been in place, on a consent basis, since 31 January 2020. Furthermore, overnight contact was in place for many months before then.

[8] Ms [Cann] raised a concern on who was in Ms [Farley]'s bubble and the possible exposure to [Jaida] of coming into contact with persons who may test positive for COVID-19.

[9] Ms [Farley]'s evidence includes an affidavit filed by Ms Jodie Harris who is described as the team leader for [residence deleted], [location deleted] Women's Refuge. She has set out their health and safety policies, the steps that have been taken and the protocols and procedures in respect of the Women's Refuge being able to deal with COVID-19. I have also been told that the house that Ms [Farley] occupies has been closed and there are no new admissions being accepted at this stage.

[10] There is one other mother that resides at [the residence] who has [children]. There is less specificity around whether the childcare worker is staying at [the residence]. That clarity is to be provided by Ms [Farley] when this matter is next called.

[11] Counsel for Ms [Cann] has advised her client's position is that if the Court determines that [Jaida] ought to be able to enjoy face-to-face contact with her mother, then Ms [Cann] will elect not to have [Jaida] back in the family home at this stage because of her real concerns about her own family's health issues. That is a matter

that Ms [Cann] needs to consider carefully. As it stands, the interim order provides for [Jaida] to be in Ms [Cann]'s day-to-day care at Ms [Cann]'s request.

[12] The information provided by the Director-General of Health, as part of his daily updates to the New Zealand public, is that for four days in a row the number of new and possible cases of COVID-19 in New Zealand have been tracking down. Whilst Ms [Cann] may have had a heightened level of concern when she filed her affidavit on 30 March 2020, it is my view that New Zealand's understanding of COVID-19 has increased over the last two weeks of lockdown and that Ms [Cann] can take comfort from the information provided by Dr Ashley Bloomfield.

[13] I am not satisfied that the threshold of concern for [Jaida]'s safety has been reached. I agree with Mr Whitehead that a further condition could attach which will ensure that no extra persons are included within [Jaida] and her mother's bubble.

[14] Furthermore, the principles regarding continuity in care for [Jaida] and continuity in her relationship with her support face to face contact resuming. In my view, to further suspend such contact goes against [Jaida]'s best interests and welfare.

[15] Given Ms [Cann]'s rather unhelpful position, and after hearing from Counsel, I intend to call this matter again next week in the event Ms [Cann] chooses not to resume day to day care of [Jaida].

[16] On that basis, I make the following orders and directions:

- (a) I discharge the order varying contact made by me on a without notice basis on 31 March 2020. The interim parenting order made by consent on 31 January 2020 is to continue.
- (b) I vary the interim parenting order by adding the following conditions:
  - (i) Ms [Farley] shall ensure that the persons that are within her COVID-19 "bubble" as at today's date shall be the only persons that [Jaida] will come into contact with whilst in her mother's care.

- (ii) It shall be the responsibility of Ms [Farley] to travel to Ms [Cann]'s home on her own and to collect [Jaida] for the purposes of contact. Ms [Farley] is to wait at the end of the driveway on the outside of the gate at the appointed time. Ms [Cann] is to ensure that [Jaida] exits her home and goes down the driveway and goes to her mother.
  - (iii) Ms [Cann] shall be responsible for collecting [Jaida] at the conclusion of contact. Ms [Cann] shall collect [Jaida] from the driveway at [the residence] with neither party to have contact with each other at changeovers.
- (c) Contact for the purposes of this weekend shall commence tomorrow, Thursday at 10am through to Easter Monday 12 April at 7.00 pm.
- (d) Ms [Cann] is to text Ms [Farley] no later than Monday 12 noon, to advise whether Ms [Cann] will collect [Jaida] from Ms [Farley]'s home in accordance with the terms of the interim parenting order.
- (e) In the event that Ms [Cann] elects to continue with the terms of the interim parenting order, then those care arrangements shall continue.
- (f) In the event Ms [Cann] maintains her position that [Jaida] is to remain with her mother throughout the duration of COVID-19 alert level four, then I direct a further one-hour hearing on 16 April at 10.00 am. Ms [Farley] will be required to file brief evidence in respect of two issues:
  - (i) Ms [Farley]'s ability to support [Jaida] in her online learning whilst the schools remain closed during COVID-19. The submissions I have heard today suggest that Ms [Farley]'s ability in the IT area may be a bit limited. I say this because, as I understand, even though I allowed daily contact by electronic means, particularly by video messaging for Ms [Farley] and

[Jaida], that has not occurred, and I am told that is because of the difficulties at Ms [Farley]'s end.

- (ii) To provide further details as to the persons that are in Ms [Farley]'s "bubble". There was a lack of specificity around whether a childcare worker may or may not still be at [the residence] and therefore within Ms [Farley]'s bubble.

[17] I direct the s 133 report writer does not require the formal consent of Mr [Farley] to proceed with the Court report. Mr [Farley] has not taken part in these proceedings which have been ongoing since January 2019.

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Judge L King  
Family Court Judge

Date of authentication: 25/05/2020  
In an electronic form, authenticated pursuant to Rule 206A Family Court Rules 2002.