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

NOTE: PURSUANT TO S 139 OF THE CARE OF CHILDREN ACT 2004, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/

IN THE FAMILY COURT
AT PORIRUA

I TE KŌTI WHĀNAU
KI PORIRUA

FAM-2020-091-000046
[2022] NZFC 4030

IN THE MATTER OF THE CARE OF CHILDREN ACT 2004

BETWEEN [LUCIA BLAIR]
Applicant

AND [BRETT BLAIR]
Respondent

Hearing: 4, 5 and 6 October and 13 December 2021

Appearances: D Dunbar for the applicant
S Jefferson QC and J Rennie for the respondent
M More – Lawyer for Children
J McMillan – Lawyer to Assist the Court

Judgment: 5 May 2022

Submissions: 20 December 2021

RESERVED JUDGMENT OF JUDGE A R McLEOD

---

[1] Mr and Mrs [Blair] are the parents of three little girls, [Melissa] who is 9, [Martina] who is 6, and [Carol] who is now 4. The children have lived with Mrs [Blair] since the parents separated in February 2020 and there is no dispute that that arrangement should continue.

[2] The issue that has proved to be so problematic since these proceedings commenced in February 2020 is how the children can have a safe and meaningful relationship with their father.

The Proceedings

[3] On 13 February 2020 Mrs [Blair] applied without notice for protection and parenting orders. Mrs [Blair]'s application for a protection order was declined and placed on notice. An interim parenting order was made which granted the day to day care of the children to Mrs [Blair] and reserved contact to Mr [Blair] on the basis that it was to be supervised.[1]

[4] Lawyer for child had her first meeting with the children on 27 February 2020. At that stage, [Melissa] was 7, [Martina] was 4 and [Carol] was 1½. Lawyer for child did not talk to the children about recent events, only exploring with them possible contact with their father. [Melissa] is reported as saying that she did not want to see her father, that he was scary, had big eyes[2] and that he yelled. [Martina] agreed that dad was scary. [Martina] is also reported as saying that she did not want to see her father. [Carol] was too young at the time to express a view. [Melissa] agreed that she would see Mr [Blair] if a "friend" of lawyer for child's was present. [Martina] said that she would go to contact if [Melissa] went. Lawyer for child in her first report proposed parameters around contact in accordance with the girls' views.[3]

[5] Although Mr [Blair] did not want his contact with the children to be supervised, he reluctantly agreed, and the first visit was scheduled for 18 March 2020, supervised by [name deleted] of [agency name deleted]. The visit did not proceed. [Melissa] expressed prior to the visit that she was scared of her father and in accordance with the proposed parameters of contact, the children were not made to attend the contact visit. The country then went into a national lockdown and the only contact that was able to occur was by way of video contact.

---

1 BOD page 711.

2 Throughout the reports of lawyer for child, the section 133 reports and the evidence filed by Mrs [Blair] and her witnesses, reference has been made to Mr [Blair]'s eyes variously describing them as big, dark, bulging and scary.

3 BOD page 377, paragraph 30.

[6] A directions conference was held on 1 April 2020. By consent Mrs [Blair]'s application for a protection order was discontinued in exchange for an undertaking.[4] A s 133 report was commissioned. The issue of the progression of interim contact was set down for a one-hour submissions only hearing by teleconference on 24 April 2020.[5]

[7] Pending the hearing, contact commenced by way of twice weekly video calls. The engagement rate of the children in the visits was mixed.[6]

Submissions Hearing of 24 April 2020

[8] On 24 April 2020 Judge Binns determined that the video calls would be maintained at twice a week for up to half an hour, and that once the lockdown levels allowed, face to face supervised contact was to occur once a week on Wednesdays from 3.30 pm – 5.30 pm (including changeover).[7] Judge Binns refers in her decision to the girls' expressed views that they are fearful of their father; the need to validate their views whilst at the same time not keeping their fearful views alive; and, the need for the girls to continue to have a safe relationship with their father and to know that they will be safe during the supervised visits.

[9] Supervised contact continued accordingly, again with a mixed rate of success. Ongoing issues arose, and Mr [Blair] sought to have Mrs [Blair] admonished. Judge Binns declined to do so and instead invited counsel to consider a variety of matters to support the parents to find a way to make contact work.[8]

Submissions Hearing of 28 May 2020

[10] Matters were unable to be resolved and a further submissions-only hearing was held by teleconference with Judge Binns on 28 May 2020. Judge Binns varied the interim parenting order made on 24 April 2020 and added a number of additional

---

4 Copy of signed undertaking dated 31 March 2020 admitted into evidence as exhibit 2.
5 BOD page 653, minute of his Honour Judge Black dated 1 April 2020.
6 The contact details are set out in page 473 of the BOD and her Honour Judge Binns' decision 24 April 2020 on page 665 of the BOD, and in appendix B to the opening submissions of counsel for Mr [Blair] dated 1 October 2020.
7 BOD page 658 – 671, decision of her Honour Judge Binns dated 24 April 2020.
8 BOD page 673, minute of Judge Binns dated 25 May 2020.

conditions, including the involvement of the maternal grandparents, Mr and Mrs [Malcolm], to assist in facilitating getting the girls to and from the contact visits.[9]

[11] Face to face visits proceeded as planned on 3, 10 and 17 June and 1 July 2020. Mrs [Malcolm] attended the visits with the children. From 8 July 2020 onwards, Mrs [Malcolm] transported the children to the visits but did not stay in the room. Despite the children objecting to attend the visits, the supervision reports record that the visits were overall positive experiences for the girls. From 22 July 2020 onwards the success rate of the visits was mixed, and only [Carol] attended the visits on 26 August and 2 and 9 September. An unsupervised visit occurred on 12 September 2020 which all three children attended.

[12] The section 133 report was filed on 28 August 2020.[10] The report writer, Ms Dugdale, concluded that this was a case of resist/refuse.[11] Ms Dugdale identified that there were a variety of factors that contributed to her formulation; including the conflictual relationship between the parents, situational violence, the father's military style parenting, the father not engaging with the children with empathy, the mother's inability to trust the father, and the mother still being scared of the father.[12]

[13] In supporting her proposition that this was a case of resist/refuse Ms Dugdale referenced the research of Greenberg, Fick and Schnider (2016).[13] Those authors concluded that most children under the age of eight do not ordinarily independently produce hostile narratives about a parent.[14] Nevertheless, Ms Dugdale concluded that [Melissa] and [Martina], who were at the time of the first report, 7 ([Melissa]) and 4 ([Martina]), did seem to have a hostile narrative, repeatedly saying that their father was angry, had scary eyes, and complained about their father bribing them and showing off.

---

9 BOD page 674, decision of Judge Binns dated 28 May 2020.
10 BOD pages 590 – 617.
11 BOD page 608; report of Ms Dugdale dated 28 August 2020.
12 BOD page 608.
13 BOD page 608; Greenberg, J. S, Fick, L., & Schnider, R. A., (2016). Catching them before too much damage is done: Early intervention with resistance-refusal dynamics. *Family Court Review 54*(4), 548-563; Tab 8 bundle of authorities opening submissions for Mr [Blair].
14 BOD page 608.

[14] Ms Dugdale went on to say that, consistent with the resist/refuse dynamic, [Martina] was complaining about trivial things. Ms Dugdale commented that there was objectively nothing about Mr [Blair]'s eyes or facial expression that was scary.[15] Ms Dugdale recommended family therapy[16] with Geraldine Keith, clinical psychologist.[17]

[15] The recommendation was accepted by the parties and a joint letter of instruction was sent to Ms Keith dated 17 September 2020.[18]

Interim Hearing - Decision of Judge Grace of 28 September 2020[19]

[16] A one-day hearing was held on 28 September 2020 before his Honour Judge Grace. The issue for determination at that stage was the extension of Mr [Blair]'s contact on an interim basis, how changeovers were to be implemented and communication between the parties.

[17] The only witnesses were the parties. Both parties were cross-examined. The s 133 report writer was not called to give evidence; however, the report was referenced during the hearing and in the decision.[20]

[18] Judge Grace determined that the father's behaviour could be categorised as violent[21], and that the father's parenting skills were inadequate.[22] Judge Grace determined, based on the evidence, that the pattern of violent behaviour had gone on for some years. Judge Grace also found that the father's approach to the hearing and his unrealistic expectation of "an immediate order requiring immediate extended contact the same week as the hearing, indicated that his direct and military style had not changed".[23]

---

15 BOD page 609.
16 BOD pages 614 – 615.
17 BOD pages 590 – 617.
18 Admitted into evidence on 6 October 2020 as exhibit 1A.
19 BOD pages 678 – 692.
20 BOD pages 678 – 692.
21 BOD page 686; *G* v *C* (1997) 16 FRNZ 201 (FC).
22 BOD page 687.
23 BOD page 687.

[19] Judge Grace went on further to note that the father's conduct would have worn the mother down; that the father's conduct had impacted the mother and children negatively; and that the mother was genuinely fearful of the father.

[20] Judge Grace concluded based on the foregoing, that because the children had been primarily in the care of the mother, her feelings and anxiety would be transmitted to the children and would therefore reinforce the views of the children.

[21] Notwithstanding the finding by Judge Grace that Mr [Blair] had behaved in a way that could be categorised as violent, Judge Grace found that the children were not at risk in the care of Mr [Blair] for the following two reasons:

(a) The whole of the proceedings and what had happened over the preceding eight months (as at 28 September 2020) would have been a salutary lesson and warning to Mr [Blair] that his behaviour was inappropriate into the future.

(b) [Melissa] and [Martina] were of an age where they would be able to articulate their concerns if Mr [Blair]'s behaviour was to slip below acceptable standards.[24]

[22] A progressive contact regime was ordered which provided for contact between the girls and their father to be extended to become both unsupervised and to include overnight contact with changeovers at a petrol station. The parents were directed to use Our Family Wizard to communicate. The matter was directed to proceed to a substantive hearing but not until the parties had had the opportunity to engage in family therapy as recommended by Ms Dugdale.

Family Therapy

[23] Ms Keith commenced working with the parents and the children in early October 2020. Ms Keith proposed that the children and Mr [Blair] engage in equine therapy. Following receipt of the decision of Judge Grace on 20 October 2020, it was

---

[24] BOD page 689, decision of Judge Grace dated 28 September 2020.

agreed that the implementation of the orders made by Judge Grace would be deferred to enable the equine therapy to commence.

[24] The first session of equine therapy occurred on 7 November 2020. The children and both parents were in attendance at the therapy session. By all accounts this session was a positive one.

[25] The second equine therapy session was scheduled for 14 November 2020. While there is a dispute on the facts as to what precisely occurred on this day, there is no dispute on the evidence from the parents and Ms Keith, that the incident was traumatic for the children who became extremely distressed and were physically handled by Mr [Blair]. [Martina] had what has been described as a complete collapse of her coping resources and Mr [Blair] lost control and became angry in front of the children. Following this incident there has not been any direct physical contact between Mr [Blair] and the children.

[26] Subsequently, Ms Keith endeavoured to continue to work with the parties in a therapeutic setting. For a period of time, [Martina] continued to attend neurotherapy.

[27] A directions conference was held on 9 December 2020. The minute of Judge Grace notes that a traumatic incident had occurred; that Mr [Blair]'s view was that the therapy had failed, and he was therefore seeking to enforce the orders made on 20 October 2020; and, that Mrs [Blair] did not share Mr [Blair]'s view. Judge Grace directed that if an application for a warrant was filed, it was to be referred to him for consideration given the new information before the court. The court authorised supervised contact and adjourned matters through to a case management review date on 8 February 2021.[25]

[28] A further minute was issued by Judge Grace on 9 December 2020 inviting lawyer for child to liaise with Ms Dugdale, to provide her with a copy of the information received from Ms Keith (under cover of letter dated 8 December 2020), and to ascertain whether Ms Dugdale had any recommendations to make. Judge Grace noted that Ms Dugdale was authorised to liaise with Ms Keith but was to ensure that

---

25 BOD pages 693 – 694.

the boundaries must not be blurred. The hope being that the two professionals together could come up with a plan to assist the parties.

[29] On 17 February 2021 the court directed the appointment of counsel to assist with a brief to look at the best interests and welfare of the children and approved the brief for an updating s 133 report.[26]

[30] Supervised contact visits were scheduled to recommence on 22 February 2021. The visit did not proceed as the children refused to go.[27] A further visit was scheduled for 8 March 2021. Ms Dugdale was present at Mrs [Blair]'s home when the supervisor arrived to collect the children for contact. The children were reported as becoming distressed and the visit did not proceed.[28]

[31] Ms Dugdale filed an interim report dated 19 March 2021 recommending the suspension of contact visits. Ms Dugdale's final updating report was filed on 6 April 2021. Ms Dugdale recommended that contact between the girls and their father should recommence but on an indirect basis only, by way of hand-written letters from Mr [Blair]; that Mr [Blair] continue to work on himself to make changes; and, that [Melissa] and [Martina] should engage in therapy. The ultimate recommendation by Ms Dugdale was a period of "respite" from contact for approximately three to four months with a review to see how matters were progressing.

Suspension of Contact

[32] On 8 April 2021 Judge Grace suspended contact as recommended by Ms Dugdale. Directions were also made for Ms Dugdale to file a supplementary report identifying in more detail the therapy proposed for the girls and how the indirect contact between the children and their father would work. Judge Grace extended lawyer to assist's brief to convene a whanau hui, authorised the attendance of Ms Dugdale at the hui to speak to her supplementary report, and extended lawyer for child's brief to talk to the children about what the plan was moving forward. Directions were made to progress matters towards a three-day hearing.

---

[26] BOD page 697.
[27] BOD page 585: Incident Report for Court Directed Supervised Contact.
[28] BOD pages 618 – 619; interim report of Ms Dugdale dated 19 March 2021.

[33] A whanau hui was convened on 16 June 2021. Mrs [Blair] did not attend the hui.

[34] Ms Dugdale filed a supplementary report dated 1 June 2021.[29] In accordance with the recommendations in the report in respect of the indirect contact, Mr [Blair] commenced writing letters to the children from 6 June 2021 onwards.[30]

The Substantive Hearing

[35] A three-day hearing commenced on 4 October 2021. The issue for determination was what kind of contact, if any, Mr [Blair] should have with the girls.

[36] The parents were subject to extensive and thorough cross-examination. The maternal grandmother Mrs [Malcolm], the paternal aunt [Jane Blair], and Geraldine Keith and were called as witnesses.

[37] Due to the extent of the cross-examination and in particular of Mrs [Blair], the matter ended up being part heard. A further one day of hearing time was found for 13 December 2021. The sole witness on 13 December 2021 was Ms Dugdale, the s 133 report writer.

[38] At the conclusion of the hearing counsel were given the opportunity to file further submissions.[31] I am grateful to counsel for the careful and detailed submissions filed and I acknowledge the work that has gone into advocating the positions of their respective clients, and in assisting the court.

[39] Notwithstanding Judge Grace's findings at the hearing on 28 September 2020 that Mr [Blair]'s behaviour could be categorised as violent, I was mindful at the outset of the substantive hearing to ensure that I approached the hearing with an open mind. It was important from my perspective to make sure that I considered all of the evidence on its merits and drew my own conclusions and assessments after hearing the

---

[29] BOD pages 637 – 640.
[30] BOD pages 731 – 818 and attached as exhibits A and B to the report of Lawyer for Child dated 29 September 2021 and attached to report of Lawyer for Child dated 6 December 2021.
[31] BOD page 710, as directed by Judge Grace at the pre-hearing conference.

evidence, observing the parties and their witnesses give evidence across the four days of hearing and after considering the submissions to be filed by counsel.

[40] The submissions were filed on 20 December 2021. Counsel and the parties were aware that I was going to be on leave for the following month and would then be sitting outside of Wellington. As a consequence, I did not get the opportunity to start fully considering this matter properly until mid-February. In order to ensure that I was genuinely approaching the matter with an open mind, this necessitated a full reconsideration of all of the material before the court, which included three bundles of documents totalling approximately 900 pages, in excess of 400 pages of notes of evidence, lengthy opening and closing submissions, and bundles of authorities and academic literature provided by counsel. This has resulted in a delay in my decision being issued which I am acutely aware is unhelpful from the perspective of both the children and the parents.

[41] I am aware that an application has been filed for new evidence to be admitted on behalf of Mrs [Blair]. This is opposed by Mr [Blair]. In deciding the matter before the court, I have not considered the material filed by either party. I have made directions at the end of this decision in respect of the application filed by Mrs [Blair].

The Law

Welfare and Best Interests

[42] In determining the issue before the court, my first and paramount consideration must be the welfare and best interests of these particular children in their particular circumstances.[32] I am entitled to take into account the conduct of Mr [Blair] only insofar as that conduct is relevant to the best interests and welfare of these children.[33]

---

[32] Care of Children Act 2004, s 4(1); *D v S* [relocation] 2001 FRNZ 331 at [30]; *MBF v SRF* (2007) 26 FRNZ 370 at [24].

[33] Care of Children Act 2004, s 4(2)(b); *K v G* [2005] 3 NZLR 104, (2004) 23 FRNZ 740, [2004] NZFLR 1105 (HC) at paragraph [20].

[43] In determining what is in the welfare and best interests of these particular children in their particular circumstances I must take into account the relevant principles in s 5 of the Care of Children Act 2004 ("the Act").[34]

[44] Prior to 31 March 2014, the Supreme Court had held that the order in which the six principles in s 5 appeared did not affect the weight to be given to each principle.[35] On 31 March 2014 significant amendments were made to the Act. Sections 58 to 62 of the Act were repealed and s 5(e), the former "safety principle", was promoted to the top of the list of the principles.[36]

[45] Section 5(a) [37] of the Act provides as follows:

> a child's safety must be protected and, in particular, a child must be protected from all forms of violence (as defined in sections 9(2), 10, and 11 of the Family Violence Act 2018) from all persons, including members of the child's family, family group, whānau, hapū, and iwi

[46] Pursuant to s 9 of the Family Violence Act 2018, family violence in relation to a person means violence inflicted against that person by any other person with whom that person is, or has been, in a family relationship. Family violence can include physical, sexual or psychological abuse. One single act may amount to abuse.[38] A number of acts that form part of a pattern of behaviour, even if all of those acts, when viewed in isolation may appear to be minor or trivial, may amount to abuse.[39] Section 11 provides a more comprehensive definition of what constitutes psychological violence. The definition is non-exhaustive.

[47] The terminology used in principle 5(a) differs from the terminology used in the other s 5 principles. Section 5(a) uses the word "must". The other s 5 principles use the word "should" which signals "*a desirable objective, the fulfilment of which, and*

---

34 Care of Children Act 2004, s 4(2)(a)(ii); *Kacem v Bashir* [2010] NZSC 112.
35 *Kacem v Bashir* [2010] NZSC 112.
36 In the High Court decision of *Lowe v Way* [2015] NZHC 93 Her Honour Duffy J looked at the effect of the changes on the Supreme Court decision in *Kacem v Bashir* [2010] NZSC 112 in relation to the equal weighting of the section 5 principles. Her Honour concluded at paragraph [9] that there would have been no point in reordering section 5 if Parliament had not intended to stress the importance of the "child safety" principle, what is now section 5(a).
37 Section 5(a) was amended on 1 July 2019 by section 14 of the Family Violence (Amendments) Act 2018 (2018 No 47).
38 Family Violence Act 2018, s 10(1).
39 Family Violence Act 2018, s 10(2).

by what method, will depend on the presence of other desirable objectives and the factors of other individual cases. "Must" signals an essential factual requirement".[40]

[48] In this case, in my assessment, the relevant principles in determining what is in the girls' best interests and welfare are:

(a) Section 5(a);[41] and

(b) Sections 5(b), (c), (d) and (e)[42].

[49] In this case, determining the issue before the court within the context of s 5(a), requires not only an assessment of whether there is a risk that the children will be exposed to family violence while in the care of Mr [Blair], but whether that risk is an unacceptable one.[43] The outcome of that enquiry will inform the outcome of the enquiry into the other relevant principles.

Children's Views

[50] Children must be given reasonable opportunities to express their views on matters affecting them,[44] and any views expressed by them must be taken into account.[45] Children's views, however, are only one factor to be taken into account by the court when making decisions affecting them and are not generally to be determinative of the outcome of any proceedings.[46] This is particularly so where safety is in issue.[47]

[51] In this case, the children have had the opportunity to express their views through their mother, their lawyer and through Ms Dugdale, the court appointed s 133 report writer.

---

40 *Kacem v Bashir* [2010] NZSC 112 at [22].
41 Care of Children Act, s 5(a).
42 Care of Children Act 2004, ss 5(b), 5(c), 5(d) and 5(e).
43 *Y* v *M* [1994] 1 NZLR 527.
44 *C v S* (2006) 25 FRNZ 123.
45 Care of Children Act 2004, s 6.
46 *Brown* v *Argyll* (2006) 25 FRNZ 383 at [49].
47 *Spalding* v *Spalding* [2015] NZFC 9963 at [27].

Alienation, Resist/Refuse

[52] The bundle of authorities provided by, and referred to, collectively by counsel overwhelmingly demonstrates that there continues to be controversy surrounding the concept of parental alienation; and, that flowing from that controversy there continues to be ongoing debate, discussion and international research in respect of parental alienation. The research has resulted in new theories being developed in an endeavour to provide alternate ways of understanding and contextualising a child's refusal to have contact with a parent.

[53] There are some core themes running through the research and authorities, regardless of the theory being espoused. For example, some of the key reference points in respect of a finding of parental alienation include that the child's rejection of a parent is unjustified and disproportionate to the child's experience of the rejected parent, and, that the allegations a child is making against a parent are trivial, false or exaggerated. The literature identifies the importance of needing to differentiate the alienated child from the non-alienated child; to determine the source of the rejection;[48] to ascertain whether the child's response is proportionate to the child's actual experience of the rejected parent; whether the child's negative feeling towards a rejected parents are unreasonable; and, the need to distinguish children who are realistically estranged from one of their parents as a consequence of that parent's violence, abuse or neglect.[49]

[54] The article by Lee James, "Parental Alienation – A Critique of the Current New Zealand Law and Consideration of the Need for Reform" (2018) 9 NZFLJ 79[50] describes a continuum or spectrum, with parental alienation at one end and justified

---

48 James, L. A., Parental Alienation – A Critique of the Current New Zealand Law and Consideration of the Need for Reform. (2018) 9 NZFLJ 79.

49 Kelly, J.B., & Johnston, J. (2001). The Alienated Child: A Reformulation of Parental Alienation Syndrome. *Family Court Review 39*(3), 249-266; Baker, A. J. L., Burkhard, B., & Albertson-Kelly, J. Differentiating Alienated From Not Alienated Children: A Pilot Study (2012). *Journal of Divorce and Remarriage*, *53*(3), 178-193.

50 James, L. A., Parental Alienation – A Critique of the Current New Zealand Law and Consideration of the Need for Reform. (2018) 9 NZFLJ 79. Page 81, Tab 9 bundle of opening authorities for Mr [Blair].

estrangement at the other, with hybrid cases in the middle, which is where the resist/refuse cases seem to sit.[51]

[55] The resist/refuse dynamic is described as a "generic" one in which a child resists or refuses contact with a parent, resists transitions between parents, or demonstrates regressive behaviour that either or both parents associate with parenting transitions. Children may resist or refuse contact with or without a reasonable basis for their objections. Generally, interventions are targeted at children aged eight or over as prior to eight, most children do not independently produce hostile narratives about a parent.[52]

[56] In order to assess justified estrangement, a four-point assessment process is suggested:[53]

(a) Is there evidence of a positive relationship between the child and the now rejected parent prior to the divorce or separation;

(b) Is there a lack of substantiated findings of abuse or other credible information about abuse or neglectful behaviours of the now rejected parent?

(c) Is there evidence that the favoured parent has employed many of primary parental alienation strategies?

(d) Does the child exhibit behavioural characteristics or report ideas and feelings characteristic of alienation?

---

51 This is consistent with the submissions made by counsel for Mr [Blair].

52 Greenberg, J. S, Fick, L., & Schnider, R. A., (2016). Catching them before too much damage is done: Early intervention with resistance-refusal dynamics. *Family Court Review 54*(4), 548-563; BOD page 608, paragraph 122.

53 James, L. A., Parental Alienation – A Critique of the Current New Zealand Law and Consideration of the Need for Reform. (2018) 9 NZFLJ 79. Pages 81 – 82; Baker, A. J. L., Burkhard, B., &Albertson-Kelly, J. Differentiating Alienated From Not Alienated Children: A Pilot Study (2012). *Journal of Divorce and Remarriage*, *53*(3), 178. Page 190.

[57] James[54] reiterates the need to differentiate alienation from justified estrangement and to determine the source of the rejection, as this will assist in determining the appropriate response from the court. For example, not ordering supervised contact with the rejected parent where a child has been alienated from that parent as such an outcome would serve to reinforce "the delusional system".[55] Similarly the author is clear that the court would "seek to avoid mandating reunification between a child and an abusive or extremely incompetent parent".[56]

[58] At the heart of all of the research and authorities is the concept that it is better for children to maintain a meaningful relationship with both of their parents post separation, [57] and that if a child is refusing to have contact with a parent the goal must be to try to understand why and where at all possible to provide some form of intervention to restore the relationship between the child and the rejected parent. This is because there is an overwhelming body of literature that supports the proposition that the loss of a parent, and in particular the loss of a father, post separation can have long term detrimental outcomes for a child.[58]

[59] The advantages of contact with a father, however, only apply where the father is non-violent, emotionally stable and available, free from the effects of substances and the contact environment is suitable.[59]

---

54 James, L. A., Parental Alienation – A Critique of the Current New Zealand Law and Consideration of the Need for Reform. (2018) 9 NZFLJ 79.

55 James, L. A., Parental Alienation – A Critique of the Current New Zealand Law and Consideration of the Need for Reform. (2018) 9 NZFLJ 79. Page 81. This is consistent with the submissions of counsel for Mr [Blair] that lawyer to assist, assist in formulating the basis of the "objective reality of the information for the children", to be provided in a form determined by the children's therapist.

56 James, L. A., Parental Alienation – A Critique of the Current New Zealand Law and Consideration of the Need for Reform. (2018) 9 NZFLJ 79, page 81. Baker, A. J. L., Burkhard, B., &Albertson-Kelly, J. Differentiating Alienated From Not Alienated Children: A Pilot Study (2012). *Journal of Divorce and Remarriage*, *53*(3), 178.

57 This concept is consistent with the principle set out in section 5(e) of the Care of Children Act 2004.

58 BOD page 686, decision of Judge Grace on 28 September 2020; the submissions of all counsel are consistent in this regard as are the authorities relied on.

59 BOD page 686, decision of Judge Grace dated 28 September 2020.

The Parties' Positions

Mrs [Blair]

[60] Mrs [Blair]'s position is that the children need a break, to settle and to build resilience.[60] It is Mrs [Blair]'s position that in the 20 months preceding the hearing there had only been a period of 6 weeks where the children had not been subject to some form of intervention.[61]

[61] Mrs [Blair]'s position is that it is only if the children are afforded a break that they will be able to successfully rebuild a relationship with their father. Mrs [Blair] does support a relationship between the children and Mr [Blair], provided it is a safe one.

Mr [Blair]

[62] Mr [Blair]'s position is set out in comprehensive detail in the opening[62] and closing[63] submissions filed on his behalf.[64] In summary, Mr [Blair] invites the court to place the children under the guardianship of the court for the specific purpose of ensuring that the parties and the children attend therapy. It is proposed that the children remain under the guardianship of the court for 12 months. Mr [Blair] would agree to defer face to face contact for up to six months, with a carefully managed plan by which Mr [Blair]'s relationship with the children would be reinstated in terms of the orders made by Judge Grace following the hearing on 28 September 2020.

---

60 Page 2, paragraph 13 of the opening submissions of counsel for Mrs [Blair] dated 1 October 2021.

61 Affidavit of Mrs [Blair] sworn 3 September 2021, BOD pages 111 – 113, page 2 paragraph 13 of the opening submissions of counsel for Mrs [Blair] dated 1 October 2021.

62 Pages 5 – 10 of the opening submissions of counsel for Mr [Blair] dated 1 October 2021. In the opening submissions Mr [Blair] was seeking a reinstatement of the orders made by Judge Grace on 20 October 2020, with the addition of some conditions alongside a referral to therapy for the parents and the children

63 Pages 9 – 17 of the closing submissions of counsel for Mr [Blair] dated 1 October 2021. In the closing submissions Mr [Blair]'s position was that he would agree to defer the reinstatement of the orders made following the hearing on 28 September 2020 for six months while the therapeutic work was undertaken by the parents and the children.

64 It is noted that the opening submissions were framed more predominately around the concept of alienation, whereas the closing submissions were framed more predominately around the concept of the "resist/refuse" dynamic.

[63] It is proposed that the court's agent[65] would put together a therapeutic plan for the court. This would require [Melissa] and [Martina] and both parents to engage in four separate streams of therapy. The agent would monitor attendance at therapy and would work with the therapists to develop a plan to re-establish the children's relationship with Mr [Blair], and to consider and advise on how Mr [Blair] could apologise to the children. The agent would report to the court fortnightly.

[64] Lawyer to assist would be retained, with their brief being extended to give legal advice to the court's agent; and to liaise with the therapists and the court's agent in relation to the findings of the court,[66] to form the "basis of the objective reality of the information for the children", to be provided in a form determined by the children's therapist.[67]

[65] It is proposed that there would be judicial oversight of the matter by way of fortnightly reports to the court to the designated Judge, who would determine either that there is no further action required, or, initiate a teleconference with the parties and counsel if necessary. There would be a formal six-month review with the designated Judge, with a pre-review teleconference with directions to be given in relation to the filing of evidence if required, and the allocation of a one-day hearing in six months' time. There should be a judicial meeting with [Melissa] and [Martina] to explain the decision and the requirement to attend therapy. The applications before the court would remain undetermined while the therapeutic work is being undertaken.

The Flaw in Mr [Blair]'s Position

[66] There is a fundamental flaw in Mr [Blair]'s position.

[67] Mr [Blair]'s position is premised on the basis that this case is either a case of alienation, or what he describes as a "classic case" of resist/refuse.[68] Mr [Blair]'s

---

65 It is proposed that Kevin Garner, clinical psychologist, would fulfil this role.

66 To include the findings of Judge Grace from the hearing of 28 September 2020.

67 If I understand this submission correctly, this is related to the apology to be given to the children in that the apology needs to be proportionate and within the context of objective reality of the children's experience.

68 Alienation and resist/refuse were advanced in the opening submissions filed on behalf of Mr [Blair]. The closing submissions filed on behalf of Mr [Blair] focused predominately on resist/refuse.

position is also premised on the basis that his relationship with the children prior to separation was "normal" and positive, that he was a safe parent;[69] and, that Judge Grace had determined that the children would be safe in the unsupervised care of Mr [Blair], notwithstanding a finding that Mr [Blair]'s behaviour could be categorised as violence;[70] and that despite the finding that Mr [Blair]'s behaviour could be categorised as violence, that there had been no finding of physical abuse and that the incidents referred to in the decision of Judge Grace were minor, involving a verbal argument on the date of separation and an historic incident of Mr [Blair] grabbing Mrs [Blair]'s wrist.[71]

[68] The evidence does not support a finding that this is a case of alienation or resist/refuse. Nor does the evidence support a finding that the relationship between Mr [Blair] and the children pre-separation was normal, or positive, or that Mr [Blair] was a safe parent. Further, the evidence does not support the position of Mr [Blair] that there was no finding of physical violence by Judge Grace or that the incidents referred to in the decision of Judge Grace regarding Mr [Blair]'s violence were minor.

This Case and What it Is and Is Not About

[69] At the end of the last day of hearing I had a clear sense of what had occurred in this case, what this case was about, and what it was not about.

[70] Insofar as the oral evidence of the parties at the substantive hearing was concerned, overwhelming I preferred the evidence of Mrs [Blair] over that of Mr [Blair]. I found the evidence of Mrs [Blair] to be reliable and consistent with an air of authenticity that gave credibility to both her written and oral evidence. In my assessment Mrs [Blair] gave her evidence openly and honestly.

[71] It was notable that on a number of occasions while giving her evidence Mrs [Blair] "checked in" with Mr [Blair] to ensure that what she was saying was

---

69 Page 22, paragraph 62(a) of the opening submissions of counsel for Mr [Blair] dated 1 October 2021, Mr [Blair]'s affidavit of 24 February 2020, BOD tab 13, NOE page 204.

70 Page 30 submissions of Mr [Blair] dated 20 December 2021; reserved decision of Judge Grace dated 28 September 2020.

71 Page 23 of opening submissions of counsel for Mr [Blair] dated 1 October 2021, and paragraphs 16-18 of Judge Grace's reserve decision dated 28 September 2020.

accurate. Mrs [Blair] did not avoid answering any questions and apologised on a number of occasions if she was unable to provide a more detailed response to questions that were being put to her. At the conclusion of giving her evidence, Mrs [Blair]'s demeanour was one of physical and emotional exhaustion. I found this to be consistent with the observations made by Judge Grace at the hearing on 28 September 2020 in respect of the impact that Mr [Blair]'s violence had had on her.

[72] Insofar as Mr [Blair]'s evidence was concerned, I found his evidence to be predominately avoidant. His use of language, particularly the repeated use of the phrases "situational violence" and "poor dispute management/conflict resolution skills" served only to highlight Mr [Blair]'s lack of insight and understanding about what constitutes violence and the impact of the same on Mrs [Blair] and the children.

[73] Further, the cross-examination by counsel for Mr [Blair] of all witnesses at times bordered on being both flippant and sarcastic. I am entitled to work on the basis that the nature of cross-examination was in line with Mr [Blair]'s instructions to his counsel. The nature of the questioning sought to place the blame for the breakdown in the relationship between Mr [Blair] and the children squarely at the feet of Mrs [Blair], to create a picture of Mrs [Blair] as a poor parent, and sought to avoid any responsibility of the part of Mr [Blair] for his violent behaviour, both pre and post separation. The questioning also sought to trivialise the risk to the children's psychological safety,[72] to minimise the extent of Mr [Blair]'s violence, the impact on the children and the total failure of Mr [Blair] to understand the need for the children's experience of his behaviour to be validated and their voices of their experience of their father to be heard.

[74] Nevertheless, I reserved my decision and counsel were given the opportunity to file submissions.

[75] As noted above, I entered into the hearing with a clear intention to keep an open mind, and while I ended the hearing with a clear picture of what had occurred, and notwithstanding my observations of the parties, I was mindful to ensure that I

---

[72] NOE pages 33 – 60, 13 December 2021.

retained an open mind and did not make any final decisions until I had properly considered the closing submissions to be filed by counsel.

[76] Having now considered all of the material before the court, taking into account my observations of the parties and their witnesses across the four days of hearing, and viewing the whole family's situation holistically[73] I am clear about the following - this is not a case about parental alienation or resist/refuse. It is a case about family violence perpetrated by Mr [Blair] against Mrs [Blair] and the children and Mr [Blair]'s continued failure to acknowledge his behaviour as violence or to take responsibility for the same.

[77] On that basis, the evidence now before the court supports a finding that the children are at risk of being exposed to family violence while in the care of Mr [Blair]. Further, in my assessment, the risk is an unacceptable one. The reasons for this conclusion and my findings are set out below.

Why this is Not a Case About Alienation or Resist/Refuse

The Relationship Between Mr [Blair] and the Children Pre-Separation

[78] I will deal firstly with the issue of the relationship between Mr [Blair] and the children pre-separation, because in my assessment it is the nature and quality of this relationship that provides the context around why the children have resisted having contact with their father. An assessment of the nature of the relationship between children and the rejected parent pre-separation appears also to be relevant in assessing whether there is evidence of parental alienation, resist/refuse or justified estrangement.[74]

---

73 Page 8, paragraph 26 of the closing submissions of counsel for Mr [Blair] dated 20 December 2021.

74 James, L. A., Parental Alienation – A Critique of the Current New Zealand Law and Consideration of the Need for Reform. (2018) 9 NZFLJ 79; Kelly, J.B., & Johnston, J. (2001). The Alienated Child: A Reformulation of Parental Alienation Syndrome. *Family Court Review 39*(3), 249-266; Baker, A. J. L., Burkhard, B., & Albertson-Kelly, J. Differentiating Alienated From Not Alienated Children: A Pilot Study (2012). *Journal of Divorce and Remarriage*, *53*(3), 178-193; Greenberg, J. S, Fick, L., & Schnider, R. A., (2016). Catching them before too much damage is done: Early intervention with resistance-refusal dynamics. *Family Court Review 54*(4), 548-563

[79] As at the date of the hearing on 28 September 2020, Judge Grace had before him affidavit evidence from the parties, Mr [Young][75] and Ms [Monk][76] and the first report of Ms Dugdale.[77]

[80] The evidence as at 28 September 2020 was that Mr and Mrs [Blair] started living together in 2010 and married in 2011. The relationship was described as a traditional one[78], with Mrs [Blair] initially taking care of the home and supporting Mr [Blair] in his career, and then as each child was born assuming full time responsibility for running the home, caring for the children and continuing to support Mr [Blair] in his career. Mr [Blair] worked long hours, leaving home early in the morning after arriving home towards the time that the children were going to bed. His role in parenting the children was limited accordingly.

[81] The evidence was that issues started to arise in relation to Mr [Blair]'s parenting when [Melissa] was quite little. From Mrs [Blair]'s perspective, and as detailed in her written evidence, Mr [Blair] had difficulty staying on task and properly supervising the children, becoming easily distracted, unfocused and failing to pay attention to the girls' needs, at times to a point where the children's safety was put at risk. The children began to express unhappiness about being left in their father's care and as a consequence Mrs [Blair] did not feel able to leave the children in Mr [Blair]'s care, instead being required in effect to "run interference" in relation to Mr [Blair]'s parenting of the children to make sure that the children were safe physically and emotionally.

[82] It is clear from the written evidence of the parties, that the dynamic in the adult and parenting relationship became very difficult. From Mrs [Blair]'s perspective the difficulties in the adult relationship had always been there and the issues around parenting only compounded what was already a complex family dynamic.

[83] Mrs [Blair]'s evidence was that from very shortly following the marriage she experienced psychological violence from Mr [Blair]. Mrs [Blair]'s evidence was that

---

75 BOD pages 34 – 37.
76 BOD pages 38 – 41.
77 BOD pages 590 – 617.
78 BOD page 215.

following the birth of the children, Mr [Blair]'s violence was directed at both her and the children. The violence was alleged to have been both physical and psychological.[79]

[84] Mrs [Blair]'s evidence was that on 3 June 2017 Mr [Blair] threw a bowl on the floor next to [Melissa] because [Melissa] would not tell Mr [Blair] what she wanted for breakfast. [Melissa] would have been approximately 4 years old at the time. There were ongoing allegations of violence from Mr [Blair] to the children including on 20 April 2017 when it was alleged that Mr [Blair] drove off with [Martina] in the car with [Martina] being very upset and not wanting to go with him; on 23 April 2018 when Mr [Blair] smacked [Melissa]; on 26 May 2018 when Mr [Blair] locked [Martina] outside causing her significant distress; on unspecified dates, Mr [Blair] locking [Martina] outside again and in the bathroom twice, again causing her and [Melissa], who witnessed these events, significant distress.

[85] Mrs [Blair]'s evidence was that the children started to resist being left alone with, or cared for by, Mr [Blair], reporting to Mrs [Blair] their fears around their father's "bulging eyes" and his anger.

[86] It was alleged that Mr [Blair] was psychologically and physically violent to Mrs [Blair] including Mr [Blair] grabbing her wrist and ripping the television remote out of her hands; throwing a photo frame off a balcony in the general direction of Mrs [Blair]; physically shoving Mrs [Blair] and that while doing so his eyes were bulging with anger; slamming his fist on the table in anger, frightening Mrs [Blair] and the children; and being verbally abusive to Mrs [Blair]. On 10 March 2018 following a further incident of violence Mrs [Blair] wrote to the women's refuge seeking help.[80]

[87] On 9 February 2019 there was an incident of physical violence. Mr [Blair] physically attacked Mrs [Blair] while she was holding [Carol]. [Melissa] and [Martina] were present. [Martina], who was approximately 3½ at the time, intervened hitting her father yelling at him to "get off mummy". The police were called. Mr

79 It was Mrs [Blair]'s oral evidence at the hearing on 4 October 2021, that she reached out for support in respect of violence in the relationship in 2017

80 A copy of Mrs [Blair]'s letter to the Women's Refuge is attached as exhibit 'D' to her affidavit sworn 13 February 2020.

[Blair] voluntarily left the house for a day or two and enrolled in and completed a living without violence programme.[81]

[88] Mrs [Blair] and the children were not the only people to experience violence and anger from Mr [Blair]. The evidence from [Damon Young], a neighbour who lived directly next door to Mr and Mrs [Blair], is that on 25 May 2019, he went across to the [Blair]'s home to borrow a tool. Mr [Blair] was outside on the driveway with [Melissa], [Martina] and [Carol]. Mr [Young] said that Mr [Blair] yelled verbal abuse at him while holding a six-inch thin Phillips screwdriver. Mr [Young] says that Mr [Blair] was in a rage and he was fearful that Mr [Blair] was going to attack him. Mr [Young] said that he retreated and went home.[82]

[89] Mr and Mrs [Blair] separated following a further incident of family violence on 7 February 2020 to which all three children were exposed. It was alleged that an argument erupted between the parents. Mrs [Blair] walked away from Mr [Blair] who followed her. [Martina] again tried to intervene by hitting her father trying to stop him from following Mrs [Blair] and yelling at her. Mrs [Blair] went to the next-door neighbour, Ms [Rebecca Monk], for help. When Mrs [Blair] left the family home, Mr [Blair] took the girls with him to the local pizza shop. Mrs [Blair] and the neighbour, Ms [Monk], upon returning to the family home found the house empty. When they went back outside, Mr [Blair] and the children were returning. The children are said to have run distressed to Mrs [Blair], and it is alleged that Mr [Blair], who was holding [Carol], was yelling angrily at Mrs [Blair] to get back into the home.[83] Mr [Blair] eventually handed [Carol] over to Mrs [Blair], and Mrs [Blair] and the three children went to Ms [Monk]'s home. The police were called. Ms [Monk] went to the [Blair]s' home and spoke with Mr [Blair] who agreed to leave the family home, following which Mrs [Blair] and the children returned home. Mrs [Blair]'s father came over for the rest of the evening, staying until approximately midnight. Mr [Blair] sent a text to Mrs [Blair] apologising for his behaviour.

---

[81] BOD page 178.
[82] BOD pages 34-37.
[83] BOD pages 38-41.

[90] As noted already, at the hearing on 28 September 2020, the parties only were required for cross-examination. The evidence of Mr [Young] and Ms [Monk] therefore went unchallenged.

[91] At a very broad level Mr [Blair] through his written affidavit evidence acknowledged aspects of the allegations that had been made and acknowledged certain incidents that had occurred. Mr [Blair] acknowledged attending a non-violence course in 2019. However, Mr [Blair] however denied that he had been violent to Mrs [Blair] or to the children. It was Mr [Blair]'s evidence that his relationship with the children pre-separation was positive, normal and happy, that he had a strong and loving relationship with the girls. It was Mr [Blair]'s evidence that Mrs [Blair] was over-protective and had sought to undermine his relationship with the children pre-separation and that there were signs of resist/refuse prior to the separation.[84]

[92] Judge Grace found, based on the evidence before the court as at 28 September 2020, as summarised above, and after hearing from, and observing, the parties give their evidence, that Mr [Blair] had been violent, and that the pattern of behaviour had gone on for a number of years pre-separation.[85] Judge Grace found that Mr [Blair]'s violence had impacted Mrs [Blair] and that Mrs [Blair] had been worn down by Mr [Blair]'s behaviour.[86]

[93] Judge Grace also found that Mr [Blair]'s violence had impacted on the children, and made the following comment:

> … Despite all the education around there still appears to be a failure on the part of many people to either acknowledge or understand the damaging impact that this sort of behaviour has on children and their psychological development. There can be little doubt that these children have been impacted by what they have seen happen between their parents. The fact that there are two instances in the evidence where a child has gone to intervene between the parents is an indication of the level of that impact.[87]

---

84 NOE pages 204, 205, 216 – 219.
85 BOD page 687.
86 BOD page 687.
87 BOD pages 687 – 688.

[94] Judge Grace's findings in relation to the children being exposed to the violence from Mr [Blair] to Mrs [Blair] are, by definition, psychological violence from Mr [Blair] to the children.[88]

[95] Judge Grace also recorded in his decision[89] the father's acknowledgement to Ms Dugdale that his style of parenting could be described as military and direct, that he had not engaged with the children with empathy and that he had not invested sufficient time in his parenting. The father's parenting style of being military and direct was a relevant factor to Judge Grace's finding that Mr [Blair] had been violent.[90]

[96] I had the benefit of hearing further evidence at the substantive hearing which only served to consolidate and support the findings made by Judge Grace. Mrs [Blair] described Mr [Blair] as at times as being seemingly completely disinterested in the children and deposed that he would at times stare out the window and ignore the children. Mrs [Blair]'s evidence was that the children had repeatedly reported him failing to engage, not listening to them and ignoring them.[91]

[97] Further, subsequent to the hearing on 28 September 2020, affidavit evidence was filed by Mr and Mrs [Malcolm][92], Mrs [Blair]'s parents. From all accounts there is no dispute that Mr and Mrs [Malcolm] have played a significant role in supporting Mr and Mrs [Blair] and the three children.

[98] Mr and Mrs [Malcolm] gave evidence regarding an incident that is alleged to have occurred on Christmas Day 2017. Mr and Mrs [Malcolm]'s evidence was that Mr [Blair] became upset about a conversation between Mrs [Malcolm] and Mrs [Blair] (the paternal grandmother) which caused Mr [Blair] to become angry and aggressive towards Mrs [Malcolm].[93] [Melissa] was present and ran to get Mr [Malcolm] to help. Mr [Malcolm]'s evidence is that he intervened and took Mr [Blair] outside away from Mrs [Malcolm]. Mr [Malcolm] deposed that Mr [Blair] was standing over him shaking

---

88 Care of Children Act 2004, s 5(a); Family Violence Act 2018, ss 9(2), 10, and 11.
89 BOD page 683.
90 BOD page 687.
91 NOE page 129.
92 BOD pages 142 – 166.
93 BOD pages 157 – 158.

with his eyes bulging and flashing. It was Mr [Malcolm]'s evidence that he was scared.[94]

[99] Mr [Malcolm] was not called as a witness at the substantive hearing. Mr [Malcolm]'s evidence is therefore unchallenged. Mrs [Malcolm] was called as a witness at the substantive hearing. Her evidence in relation to the events of Christmas Day 2017 was not challenged. I found Mrs [Malcolm] to be a credible witness. Her evidence was given in a considered and thoughtful way. There was nothing about the demeanour of Mrs [Malcolm] that gave me any cause for concern as to the veracity of her testimony. I am therefore entitled to accept the evidence of Mr and Mrs [Malcolm] in relation to this further incident to which [Melissa] was exposed.

[100] The findings made by Judge Grace, combined with the evidence of the parties and Mrs [Malcolm] at the substantive hearing, preclude a finding that the relationship between Mr [Blair] and the children prior to the separation between the parties was normal, positive or safe. The evidence supports a finding that Mr [Blair]'s parenting of the children prior to separation was inadequate and that Mr [Blair] had been physically and seriously psychologically violent to the children directly, and indirectly by Mr [Blair] exposing the children to Mr [Blair]'s violence to Mrs [Blair]. The violence was not trivial, and any attempts made to minimise the impact of Mr [Blair]'s violence on the children are rejected.

Alienation

[101] The evidence before the court does not support a finding of parental alienation for the following reasons.

[102] As noted above, there has already been a finding by Judge Grace that Mr [Blair]'s parenting of the children prior to separation was inadequate and that Mr [Blair] had been violent to the children directly, and indirectly.

[103] I am satisfied on the evidence before the court that Mr [Blair] has used violence against the children post separation, specifically on 14 November 2020 at the second

---

94 BOD page 144.

equine therapy session. Unfortunately, in my assessment, the oral evidence given by the parties and Ms Keith in respect of this incident was unsatisfactory. Ms Keith's recall of the specific details of the incident were, in my assessment, unreliable.[95] Mrs [Blair] was only present at the commencement of the session and so did not witness Mr [Blair] physically handling the children, their distress, and the subsequent loss of control and display of anger by Mr [Blair]. Mr [Blair]'s evidence, in my assessment, was directed as seeking to undermine this incident and the impact on the children.

[104] Having said that, collectively there was no dispute on the evidence as to the following facts which I am satisfied reflect what occurred. The children were delivered to the location of the equine therapy by their mother. Ms Keith, Mr [Blair] and the therapist were present. The plan was for Mrs [Blair] to settle the children and leave. [Melissa] in particular was reluctant to be there. Mrs [Blair] was actively encouraging the children to stay and to engage with their father and the horses. As Mrs [Blair] began to leave, the children started to become distressed. Ms Keith encouraged Mrs [Blair] to leave regardless, which she did.

[105] [Melissa] and [Martina] became increasingly distressed. Mr [Blair] physically gathered the two girls up, physically handling them in their state of distress. The children were kicking and screaming and hitting at Mr [Blair]. It is not clear whether Mr [Blair] was holding [Carol] as well, but it appears that by this stage [Carol] was screaming uncontrollably. At some point, it is not clear when, [Martina] became distraught and threw herself on the ground and had what has been described as a 'complete collapse of her coping resources'.[96] While Mr [Blair], Ms Keith and the therapist worked with the other children, [Martina] remained separated from everyone completely inconsolable. No one took any steps to comfort [Martina].

[106] It came to Mr [Blair]'s attention that [Melissa] was wearing a watch. As I understand the evidence the watch is able to receive and send text messages and had been used by [Melissa] to text her mother when she arrives at and leaves school on her

---

95 NOE pages 293 – 324, particularly pages 293, line 9 and page 294.

96 Exhibit A, email from Ms Keith, handed up at the hearing on 5 October 2021. Ms Keith in her evidence described the screaming as bloodcurdling and as something that she had not seen in her 40 years of practice.

scooter so that Mrs [Blair] knows that she is safe. From [Melissa]'s perspective the watch is a "safety watch".

[107] Mr [Blair] asked [Melissa] about her watch and she described it as her safety watch. Mr [Blair] took this personally and interpreted this as Mrs [Blair] violating his contact time with his children. Mr [Blair] became angry. [Melissa] saw his anger on his face. [Melissa] became frightened and subdued and tried to hide her watch.

[108] Mr [Blair] became "very aroused"[97] and angry and strode angrily towards Ms Keith. Ms Keith was scared and did not know whether Mr [Blair]'s behaviour would become out of control. The three children were aware of Mr [Blair]'s anger and they all became very still. This display of anger in front of the children in my assessment qualifies as Mr [Blair] being psychologically violent to the children.

[109] Insofar as Mr [Blair]'s 'eyes' are concerned, from the commencement of these proceedings, the children have voiced to their mother, their lawyer and to Ms Dugdale in a variety of ways that they are scared of their father and that he is angry. The children have made a variety of comments about Mr [Blair]'s eyes.

[110] The children are not the only persons to comment on Mr [Blair]'s eyes. Mr and Mrs [Malcolm] both gave evidence about an incident when [Melissa] was a baby and they babysat [Melissa] for the night. The following day Mr and Mrs [Malcolm] went for a walk when Mr [Blair] ran up to them in a rage. They both said that Mr [Blair]'s eyes were bulging and that he was raging at them about his parents babysitting the children. Both Mr and Mrs [Malcolm] talked about Mr [Blair] making them feel unsafe and intimidated.[98]

[111] Ms Keith under cross-examination acknowledged that Mr [Blair] had lost control of his anger on 14 November 2020 and that when angry his face evidenced extreme tension and that his eyes were dark and very intense. Ms Keith's evidence was that she herself was scared.[99]

---

[97] As described by Ms Keith.
[98] BOD pages 144 and 157.
[99] NOE pages 297 – 318.

[112] In terms of the children's fear of their father's anger is concerned, again the children are not the only persons to comment on Mr [Blair]'s anger. The evidence of Mr [Young], Ms [Monk], Mr and Mrs [Malcolm] and Ms Keith is consistent in this regard. They all describe Mr [Blair]'s anger and being scared and/or intimated by him.

[113] Ms Dugdale was clear in her evidence that the fear that these children have of their father is both real and reasonable, and based on their experiences of their father's violent behaviour.[100] Ms Dugdale's evidence was that the children's hostile narrative regarding their father was justified.[101]

[114] Taking account of the findings made by Judge Grace and the evidence that the findings were based on[102], in my assessment the children's allegations against Mr [Blair] are therefore not trivial, false or exaggerated. The children's fear of their father's violence is both proportional and justified.

[115] Further, I am satisfied on the evidence before the court, and particularly based on my observations of the parties, that Mrs [Blair] has not employed any of the tactics or strategies that one would expect to see where parental alienation is found.[103]

Resist/Refuse

[116] I am not satisfied on the evidence that this is a case of resist/refuse for the following reasons.

[117] At the time of making her initial and subsequent assessments of resist/refuse,[104] Ms Dugdale was not in receipt of all relevant information and took into account information that I consider to be irrelevant.

---

[100] NOE pages 18-19, 13 December 2021. Such a conclusion is contrary to the literature in respect of parental alienation.

[101] NOE page 19, 13 December 2021.

[102] As summarised above at paragraphs [80] – [99].

[103] James, L. A., Parental Alienation – A Critique of the Current New Zealand Law and Consideration of the Need for Reform. (2018) 9 NZFLJ 79, page 79; Baker, A. J. L., Burkhard, B., & Albertson-Kelly, J. Differentiating Alienated From Not Alienated Children: A Pilot Study (2012). *Journal of Divorce and Remarriage*, *53*(3), 178-193.

[104] NOE page 34, 13 December 2021. Ms Dugdale confirmed her initial assessment of resist/refuse at the substantive hearing.

[118] For example, Ms Dugdale was not aware that Mr [Blair] had been diagnosed with ADHD.[105] At some stage during the parties' marriage, it is not clear when, Mr [Blair] was diagnosed with ADHD.[106] Mr [Blair] acknowledged that an aspect of his diagnosis of ADHD was being distracted.[107] It is unclear to what extent, if any, Mr [Blair]'s diagnosis of ADHD played a role in respect of the issues that arose in relation to Mr [Blair]'s parenting of the children and in respect of the violence that Mr [Blair] is alleged to have used against Mrs [Blair] and the children. The issue of Mr [Blair]'s diagnosis of ADHD was simply not addressed by him, other than to say that he has done a lot of research and can manage his ADHD very well.[108] Mr [Blair] did not provide any evidence from his GP, a psychiatrist or psychologist regarding the effect of ADHD on his behaviour and/or the management of his ADHD.

[119] Ms Dugdale confirmed under cross-examination that had she known about Mr [Blair]'s diagnosis of ADHD she would have made more inquiries about how it affected Mr [Blair]. Ms Dugdale said she would have wanted to speak to his healthcare provider, would have wanted to know how it manifested itself and would have wanted to know what situations make it more likely for Mr [Blair] to behave impulsively or to fail to pay attention etc.[109]

[120] Ms Dugdale's report was completed prior to the interim hearing on 28 September 2020. This was unfortunate timing as it meant that Ms Dugdale did not have the benefit of having available to her the findings of Judge Grace regarding Mr [Blair]'s violent behaviour and the findings in relation to the impact of Mr [Blair]'s behaviour on Mrs [Blair] and the children. In my assessment this is significant for a number of reasons.

[121] It is clear on reading Ms Dugdale's first report, and after having heard Ms Dugdale's oral evidence, that her definition and understanding of family violence does not align with the statutory definition of family violence.[110] Ms Dugdale

---

105 NOE page 3, lines 18 - 20, 13 December 2021.
106 Mr [Blair] credited Mrs [Blair] with supporting him in his diagnosis of ADHD.
107 NOE page 261, line 13, October.
108 NOE page 262, lines 8 - 12.
109 NOE page 75, lines 27 - 34.
110 NOE pages 15 and 16, 13 December 2021 vs Care of Children Act 2004, s 5(a); Family Violence Act 2018, ss 9(2), 10, and 11.

formulated her original opinion of resist/refuse on the basis of her assessment that the children were in a situation where their parents had a 'conflictual' relationship where there had been situational violence. Ms Dugdale opined that the children were picking up on their mother's lack of trust and fear of Mr [Blair]. Ms Dugdale took into account the fact that Mr [Blair] did not have any other history of violence[111]; commented that from her perspective there was "objectively nothing about Mr [Blair]'s eyes or facial expression that is 'scary'" and commented also that the children were making "trivial" complaints about Mr [Blair].

[122] Inherent in Ms Dugdale's formulation of the resist/refuse dynamic is a conclusion that both parents are contributing to the children resisting contact, that they are both contributing to the "conflict".[112] This is problematic for a number of reasons.

[123] Firstly, in my assessment this is not a situation of "conflict". Mr [Blair] has been violent to Mrs [Blair] and to the children. The use of the word "conflict" mutualises responsibility for the violence. Mrs [Blair] is not responsible for Mr [Blair]'s violence.

[124] Secondly, this is not a case of situational violence.[113] Judge Grace found that there was a pattern of Mr [Blair] being violent over a number of years.

[125] Thirdly, the fact that Mr [Blair] does not have any other history of violence outside of the violence to Mrs [Blair] and the children is in my assessment irrelevant.

[126] Finally, based on the foregoing, and as determined already, the children's complaints regarding their father's anger and eyes were not trivial, false or exaggerated.

---

[111] NOE page 16, 13 December 2021

[112] A key aspect of all of the academic literature provided by counsel around resist/refuse is the presence of 'conflict'. Conflict is an inherent part of the resist/refuse dynamic.

[113] NOE pages 15 and 16, 13 December 2021. Ms Dugdale's explanation of 'situational violence' is not the usual application of the term 'situational violence'. The term situational violence has ordinarily been used in a context whereby there is no history of family violence but on separation there is an incident which may be unlikely to be repeated once the separation has occurred.

[127] The consequences for the children of a misunderstanding of what constitutes family violence have been serious. Ms Dugdale assessed that the children would be safe in the unsupervised care of their father because the children showed a lack of fear when they were observed with Mr [Blair],[114] and formulated that the requirement for contact to be supervised "may imply to the children that their father cannot be trusted to look after them for part of an afternoon".[115] Accordingly, unsupervised contact was ordered. The children's voices were not heard[116], and their experiences of their father's violence was not validated. A therapeutic pathway was recommended without the benefit of all relevant information, based on an incorrect assessment of 'conflict' rather than violence, which ultimately resulted in the children suffering further significant harm by being exposed to the violence from Mr [Blair] at the incident on 14 November 2020.

[128] Ultimately, the children's safety was not prioritised as required by the law.[117]

[129] When completing her second assessment, Ms Dugdale was not aware that Mr [Blair] had been attending counselling with Mr Cagney to address his behaviour for the previous 12 months. Further, Ms Dugdale still did not have any information regarding Mr [Blair]'s diagnosis of ADHD as he had still failed to provide any evidence in respect of the same.

[130] Ms Dugdale's oral evidence at the substantive hearing was that the "hostile narrative" of these children and their fear of their father was justified based on their exposure to his violent behaviour. Ms Dugdale agreed that the children's fear of their father was real and reasonable.[118] This position was taken as a consequence of the children's experience of their father's violence on 14 November 2020.[119]

---

[114] BOD page 634.
[115] This approach is consistent with the academic literature.
[116] BOD page 685. Limited weight was placed on the views of the children on the basis of the comments made by Ms Dugdale in her first report.
[117] Care of Children Act 2004, s 5(a); *Kacem v Bashir* [2010] NZSC 112 at [22]; *Lowe v Way* [2015] NZHC 93.
[118] NOE pages 8 – 20, 13 December 2021.
[119] NOE page 8, 13 December 2021.

[131] I have already found no evidence of any tactics or strategies used by Mrs [Blair] that are targeted at undermining the relationship between the children and Mr [Blair].

Is this a Case of Justified Estrangement?

[132] It is tempting to make an assessment that this is a case of justified estrangement. It appears to fit within the assessment guidelines set out at paragraph [56] above.[120] The evidence is that the relationship between Mr [Blair] and the children prior to separation was not positive, normal or safe; there are substantiated findings that Mr [Blair]'s parenting was inadequate and that he has been violent to Mrs [Blair] and to the children pre and post separation and there is no evidence that Mrs [Blair] has employed parental alienation strategies. I am satisfied that the children's fear of their father is both real and reasonable based on their experiences of their father's violent behaviour, that the children's hostile narrative regarding their father is justified, and that their responses are both proportional and justified.

[133] However, it is not appropriate in my assessment to conclude that this is a case of justified estrangement. The reason being, as identified above, that the court is not currently in receipt of all relevant information necessary to make any kind of 'diagnosis'. This includes the role that Mrs [Blair] has and will play in the future in relation to supporting the children's future relationship with their father. While I have found that Mrs [Blair] has not used the tactics or strategies one would expect to see with parental alienation or resist/refuse I am satisfied on the evidence that Mrs [Blair] has struggled to support the children's relationship with their father. However, it is critical from my perspective that this struggle is seen and understood within a context of family violence.

[134] A further misdiagnosis puts the children at risk of further inappropriate intervention which then may put their physical and psychological safety at risk.[121]

---

[120] NOE page 19, 13 December 2021. Ms Dugdale accepted under cross examination that Mr [Blair]'s behaviour could be viewed within a context of justified estrangement.

[121] NOE pages 1 – 106, 13 December 2021. The issues associated with not having an appropriately targeted and coordinated approach to any therapeutic interventions are discussed in detail throughout the oral evidence of Ms Dugdale

[135] This is particularly the case insofar as [Martina] is concerned. There have been a variety of "diagnoses" or possible assessments made in respect of [Martina] and the reasons for her reactions to contact with Mr [Blair] particularly on 14 November 2020. A range of explanations have been proffered including an apparent inability to self-soothe as a baby, colic, post-traumatic stress disorder.[122] It was proposed that [Martina] be referred for further therapy.[123]

[136] While Mr [Blair]'s failure to control his reactivity at equine therapy may have been useful to help the professionals involved understand the children's experience of Mr [Blair] and how suddenly and unexpectedly he can flare up,[124] it came at a significant cost to the children.

[137] Moving forward it will be of critical importance that any therapeutic intervention involving Mr and Mrs [Blair] and the children is formulated on the basis of all relevant information and developed specifically within a context of family violence.

What is in the Welfare and Best Interests of these Children – Application of the Section 5 Principles

Section 5(a) - Safety – Unacceptable Risk

[138] I am not satisfied that the children will be safe in the care of Mr [Blair], regardless of whether his care of the children is supervised or unsupervised. In my assessment any contact between the children and their father at the current time exposes the children to an unacceptable risk that they will be exposed to family violence. Exposing the children to such an unacceptable risk is in my assessment irresponsible[125] and will not promote their welfare and best interests. My reasons are set out below.

[139] The circumstances for these children are that their relationship with their father prior to separation was not normal, positive, or safe. Mr [Blair]'s parenting of the

---

[122] NOE pages 178, 179, 313. BOD page 262.
[123] Admitted into evidence on 5 October 2020 as exhibit A.
[124] BOD page 634.
[125] *Y* v *M* [1994] 1 NZLR 527.

children prior to separation was inadequate. Mr [Blair] had been violent to the children directly, and indirectly by way of being exposed to Mr [Blair]'s physical and psychological violence to Mrs [Blair]. Mr [Blair]'s violence impacted seriously on Mrs [Blair] and on the children.

[140] The separation between the parents occurred within a context of further family violence to which the children were again exposed.

[141] From the beginning of these proceedings the children have consistently expressed a view that they are scared of their father and do not wish to have contact with him. I have found that their fears of their father are real and reasonable, based on their experiences of their father's violent behaviour, that their hostile narrative is justified, and their responses both proportional and justified.

[142] From the commencement of the proceedings the children have resisted having contact with their father, at time screaming and crying, having to have their hands pried off doorways. The children have been reported as becoming distressed and simply refusing to go to visits. The children have had to be actively encouraged and/or forced to attend visits. I acknowledge that at times when the children did attend supervised visits the reports overall recorded that the visits were positive. I do not consider that this however mitigates any of the risks to the children given all of the evidence before the court and the findings that I have made.

[143] Following the hearing on 28 September 2020, notwithstanding the findings that Mr [Blair] had been violent, Judge Grace found that the children were not at risk in the care of Mr [Blair]. As I read the decision by Judge Grace, essentially the decision that unsupervised contact was safe was premised on the basis that Mr [Blair] would take on board the findings made; would understand and accept that his behaviour was unacceptable; take steps to address his behaviour and make the necessary changes; and, that if his unacceptable behaviour continued then given the ages of [Melissa] and [Martina], they would let people know that Mr [Blair]'s behaviour was unacceptable and the outcome would be that his relationship with his children would be compromised.[126]

---

[126] BOD page 689, decision of Judge Grace dated 28 September 2020.

[144] The behaviour referred to by Judge Grace was Mr [Blair]'s violence towards Mrs [Blair] and the children,[127] Mr [Blair]'s lack of understanding around the impact of his behaviour on Mrs [Blair] and the children, and his expectations at the hearing from which Judge Grace concluded that Mr [Blair]'s direct and military style of parenting had not changed.[128]

[145] Following the hearing it was agreed that the implementation of the orders made would be deferred to enable the recommended therapy to take place. This was the opportunity for Mr [Blair] to demonstrate that he was taking on board the findings made by Judge Grace and taking the necessary steps to address his behaviour and make the required changes in order to strengthen and maintain his relationship with his daughters.

[146] Unfortunately, the evidence before the court demonstrates that Mr [Blair] did not, and has not, taken on board the findings made and has not made the necessary changes to his behaviour. I am satisfied on the evidence before me that Mr [Blair]'s unacceptable behaviour has continued. [Melissa] and [Martina] have, as anticipated by Judge Grace, articulated their concerns about their father's behaviour to their mother, the court appointed psychologist and to their lawyer.

[147] Mr [Blair] displayed throughout his oral evidence an almost total lack of insight into his behaviour. Of particular concern from my perspective is the fact that despite attending a nonviolence programme in 2019, attending multiple counselling sessions with Mr Cagney regarding violence, and despite the findings made by Judge Grace about Mr [Blair]'s violence to Mrs [Blair] and the children and the impact of Mr [Blair]'s violence on Mrs [Blair] and the children, overwhelming the thrust of Mr [Blair]'s oral evidence was either to deny that he had been violent; to minimise the violence by explaining it as "situational" or "poor dispute management/conflict resolution"; and to minimise the impact of his violence on Mrs [Blair] and the children. Mr [Blair] in my assessment throughout his oral evidence endeavoured to mutualise

---

127 Based on the evidence before the court as at that date as summarised above at paragraphs [81] – [98].

128 BOD pages 686 – 689, decision of Judge Grace dated 28 September 2020.

or share responsibility for his violence with Mrs [Blair] by describing the relationship with Mrs [Blair] as toxic.[129]

[148] Further, despite taking multiple steps targeted at improving his parenting and assisting him to manage the "dynamics", [130] Mr [Blair] still under cross examination insisted that locking a screaming child in a toilet as time out was an effective parenting technique[131] and that his loss of control and anger in front of the children on 14 November 2020 was a "mistake".[132]

[149] Insofar as the incident on 14 November 2020 is concerned, I have already determined that Mr [Blair]'s behaviour was violence. The violence was not a mistake. It was a total loss of control on the part of Mr [Blair].

[150] As discussed already, in my assessment the oral evidence related to the incident on 14 November 2020 was inherently unsatisfactory. Ms Keith's recall of the events was unreliable, and, on my assessment, she endeavoured to downplay Mr [Blair]'s behaviour. Under cross-examination however Ms Keith was required to concede that Mr [Blair] was reactive. Ms Keith said that she hadn't seen him in that aroused state before. Ms Keith described Mr [Blair] as very large and moving very fast and the girls becoming very still, that everyone was in shock, everyone 'stopped in their tracks'. Ms Keith conceded that Mr [Blair] was up close to her, in her personal space and that the experience was very frightening.[133]

[151] Mr [Blair] downplayed his behaviour and attempted to minimise the impact on the children. Mr [Blair] accepted that that he reacted to [Melissa] wearing the watch and accepted that [Melissa] would have been aware of that. However, he insisted that he did not react to [Melissa] about the watch, instead Mr [Blair]'s evidence was that he "*asked questions in a calm, relaxing manner and then because I felt the session had been violated, I went to Geraldine Keith to express myself.*"[134]

---

129 NOE page 219.
130 BOD pages 259, 644 and 645.
131 NOE page 222.
132 NOE pages 182, 183 and 222.
133 NOE pages 297 – 330.
134 NOE page 182, lines 6 – 10.

[152] From Mr [Blair]'s perspective the children were not impacted by his behaviour. His evidence was that post the incident the children went to his house as planned and all went well. Despite the recommendation that [Martina] attend therapy due to the "complete collapse of her coping mechanism" as already discussed, Mr [Blair] maintained that that the reason for the collapse was because [Martina] had reflux as a baby.[135]

[153] The evidence of Mrs [Blair] provides a completely different perspective, which I am satisfied provides the true picture of the impact on the children, which was severe. Mrs [Blair]'s evidence was that following the return of the children to her care on 14 November 2020, they fell apart, describing how scared they were, how they were physically hurt and did not like being handled by their father.[136] [Martina] missed most of the school term in term 4, displayed anxious, aggressive behaviours, had difficulty sleeping and her toileting problems returned. [Carol] was described as being clingy, anxious and waking in the night.

[154] As discussed previously, Mr [Blair]'s direct contact with the children was suspended by Judge Grace on 8 April 2021 and in accordance with the recommendations in Ms Dugdale's report dated 1 June 2021, Mr [Blair] commenced writing letters to the children from 6 June 2021 onwards. Copies of the letters have been filed in court.[137] There was much energy put into cross-examining the parties, Mrs [Malcolm], Ms Keith and Ms Dugdale about the letters, for example, how the letters were delivered to the children, who was present, how the children responded to the letters, who kept the letters, who was responsible for helping Mr [Blair] draft the letters.

[155] Of particular relevance from my perspective was that despite the clear guidelines around how contact in this way would best work for the children,[138] nearly every letter that was sent to the children invited a response from the children in answer to a question or by way of "I look forward to hearing from you soon" and included

---

[135] NOE pages 178 – 179.
[136] BOD page 116.
[137] BOD pages 731 – 818 and attached as exhibits A and B to the report of Lawyer for Child dated 29 September 2021 and attached to report of Lawyer for Child dated 6 December 2021.
[138] BOD pages 633 and 638 – 639; in particular the reference to the letters being non-intrusive and avoiding making any comments like "I miss you".

comments that implicitly said how much Mr [Blair] was missing the children, directly contrary to professional advice.[139]

[156] Mr [Blair] has been relentless in his approach both directly and indirectly,[140] as a consequence of which there has been almost relentless pressure and intervention imposed on the children. This is the same sort of behaviour that was of concern to Judge Grace that contributed to Judge Grace's findings that Mr [Blair]'s behaviour could be classified as violence and had worn Mrs [Blair] down and negatively impacted on the children.[141]

[157] The only response from the children to the letters sent by Mr [Blair] was a very angry letter that [Melissa] sent to her father.[142] When cross-examined about this letter in court, Mr [Blair] was understandably very distressed. Mr [Blair]'s letter in reply to [Melissa] and his insistence under cross examination that his letter in reply was appropriate[143] only highlighted the fundamental lack of insight that Mr [Blair] has into, and his complete inability to take responsibility for, his behaviour and how it has affected the children.[144] This was a golden opportunity for Mr [Blair] to validate [Melissa]'s experience of the events of 14 November 2020 and simply apologise to [Melissa] for his behaviour.[145]

[158] Ms Dugdale's oral evidence regarding the letter from Mr [Blair] to [Melissa] was that that the letter was not an apology and would serve only to invalidate what [Melissa] was saying, the implication for [Melissa] being that "she had misinterpreted his behaviour and so her reaction was wrong,"[146] effectively "gaslighting" [Melissa].[147]

---

139 NOE pages 68 - 69, 13 December 2021.
140 Through the letters, through his sister obtaining advice regarding advancing an application for contact, through attending Mrs [Blair]'s home in breach of his undertaking on either 27 or 28 December 2020, through his parents attending Mrs [Blair]'s home without invitation, and using friends and couriers to deliver presents to the children against professional advice.
141 Affidavit of Mrs [Blair] sworn 3 September 2021, BOD pages 111 – 113, page 2 paragraph 13 of the opening submissions of counsel for Mrs [Blair] dated 1 October 2021. Affidavit of Mr [Blair] sworn 21 September 2021, BOD pages 254 – 258.
142 BOD pages 319 – 320.
143 NOE pages 185 – 186.
144 BOD page 307.
145 The letter from Mr [Blair] was not given to [Melissa].
146 NOE page 26, 13 December 2021.
147 NOE page 67, 13 December 2021.

[159] In Ms Dugdale's opinion[148] the continued attempts to get the children to go to contact had negatively affected their developmental needs being met and therefore was not in their best interests. Ms Dugdale was clear that the children needed a break.

[160] Under cross examination Ms Dugdale's evidence remained consistent and clear with her recommendation in her report. Ms Dugdale's evidence was that the continued attempts to force these children to attend contact was impacting on their ability to trust their mother which was fundamental to their wellbeing. The loss of this risked striking at their core sense of self and their sense of security and belonging. Ms Dugdale stated a further incident of violence risked entrenching a trauma response in the children; that forcing reunification, particularly if the situation was unsafe, would risk further trauma, resulting in increased levels of anxiety and distress and may impact on the children's ability to engage in normal childhood activities and impact on their learning and development; and, potentially risk development of a more long-standing psychological response i.e. post-traumatic stress disorder.

[161] Ms Dugdale was also clear that the risk of the children suffering long term harm through forced reunification, particularly where it was unsafe, was greater than the risk of harm that would be suffered by the children through a short term loss of their relationship with their father.[149]

[162] Ms Dugdale was also clear that while Mrs [Blair] would have a role to play in learning how to support the children's relationship with their father, ultimately the responsibility sat with Mr [Blair] to change his behaviour. Ms Dugdale confirmed under cross examination her concerns which were recorded in her second report regarding Mr [Blair]'s failure to make the necessary changes and concerns around whether Mr [Blair] indeed had the ability to change. In particular I note the following comment:

> Where there is denial or minimisation of behaviour and its effects on others, behavioural change is unlikely to occur. I am also mindful that Mr [Blair] has undertaken courses in the past to address his violent behaviour and his parenting, but his emotionally reactive behaviour has continued. Mr [Blair]

---

[148] BOD page 633.
[149] NOE page 80, 13 December 2021

> also appears to show a sense of entitlement and a failure to consider Ms [Blair]'s perspective in suggesting contact could take place at the home.[150]

[163] Ms Dugdale then went on to comment that Mr [Blair] had engaged with Mr Cagney, who she noted was "particularly skilled in helping men who have been violent (whether psychologically or physically) to change and so there is some hope – but there appears to be a long way to go". At the hearing Ms Dugdale confirmed that when she wrote her second report, she was not aware that Mr [Blair] had in fact already been attending counselling with Mr Cagney for over 12 months.[151]

[164] The children's safety must be protected. The children must be protected from all forms of violence. [152] I am not satisfied based on the foregoing that these children in their circumstances will be safe in the care of Mr [Blair] regardless of whether his care of the children is supervised or unsupervised. In my assessment any form of contact between Mr [Blair] and the children puts the safety of the children at risk, in particular their psychological safety. In my assessment the risk is an unacceptable one. Exposing the children to such an unacceptable risk would be in my assessment irresponsible[153].

[165] This then results in an outcome whereby in my assessment it is not in the children's welfare and best interests that they have any form of contact with their father.

Section 5(b), (c), (d) and (e)

[166] Ordinarily it is in the best interests and welfare of children that their care development, and upbringing is the responsibility of both of their parents and guardians; that their care, development and upbringing is facilitated by ongoing consultation between their parents and guardians; that there is continuity in their care, development and upbringing; and, that they continue to have a relationship with both of their parents and that their relationships with their wider families are preserved and strengthened.

---

150 BOD page 632.
151 NOE page 28, 13 December 2021.
152 Care of Children Act 2004, s 5(a)
153 *Y* v *M* [1994] 1 NZLR 527.

[167] The outcome of these proceedings will ensure that the children have continuity in their care in that they will continue to remain in the care of their mother. There has not been any direct contact between the children and their father now since 14 November 2020, and so such an outcome continues that situation as well.

[168] Such an outcome does however on the face of it run counter to the principles set out in s 5(b), (c) and (e).

[169] However, the law requires that the children's safety must come first. The safety of the children must take priority over all other principles.

[170] As noted already, for these particular children in their particular circumstances, I am satisfied that the cessation of all forms of contact, direct or indirect, between the children and their father for the foreseeable future is in their welfare and best interests.

The Children's Views

[171] As discussed already, the children have since the commencement of these proceedings, expressed fear of their father and a resistance to having contact with him. Ms Dugdale's evidence was clear that for these particular children, to continue to insist on a reunification between Mr [Blair] and the children against the children's expressed views put the children in harm's way. It risks undermining the children[154] and invalidating the children's real experience of their father's behaviour. It risks undermining the children's relationship with their mother.[155] This creates an unacceptable risk in my assessment to their psychological safety and long-term development.[156]

[172] I have found that this is not a case of alienation or resist/refuse. The children's views are based on their real experiences of their father's behaviour. For these children in their context, taking account of all of the evidence now before the court, I am

[154] NOE page 71, 13 December 2021. Particularly in a context where their actual fears of their father have been validated by their experience on 14 November 2020.
[155] NOE page 79, 13 December 2021.
[156] NOE pages 79 – 80, 13 December 2021.

satisfied that significant weight should be given to the views of the children, in particular [Melissa] and [Martina].

[173] These children need to know that their voices have been heard and their experiences validated.

Cessation of Proceedings

[174] Taking account of the foregoing, in my assessment it is in the welfare and best interests of these children that the proceedings are brought to an end.

Final Comments

[175] I am acutely aware that such an outcome will cause significant distress to Mr [Blair]. I have no doubt whatsoever that he loves his children.

[176] The goal is to work towards a reunification so that the children can have a safe and meaningful relationship with their father. Currently, based on the findings made on the evidence before the court, that is not achievable for the children.

[177] At the risk of oversimplifying the situation, the first step must be for Mr [Blair] to genuinely accept and acknowledge that he has been violent and that his violence has seriously impacted his children, to be able to evidence intrinsic change and to apologise to the children.[157]

[178] I acknowledge how painful it will have been for Mr [Blair] to receive the angry letter that [Melissa] wrote. However, in my assessment, the letter is an expression of a child who has been hurt by her father, who has been scared by her father and who is angry and feels that her voice has not been heard. I would have thought that the start point would be a genuine and simple apology by Mr [Blair] acknowledging that his behaviour has been unacceptable and that there is no excuse or reason for it whatsoever. Simply that it was wrong, that he hurt and scared the children and that Mr [Blair] is trying to change to be a safe father.

---

[157] NOE page 65, 13 December 2021.

[179] At the conclusion of the hearing on 13 December 2021, following my questioning of Ms Dugdale there was a broad discussion with counsel. I have recently asked to have those notes transcribed back because it was my recollection that Mr [Blair] was trying to indicate to me very clearly that he understood the nature of my questioning and was trying to get my attention to demonstrate that he would take whatever steps were necessary to address his behaviour. The transcribed notes of the discussion do confirm what I recalled.

[180] I will work on the basis that Mr [Blair] was genuine in trying to express that he would do what it takes to take on board the findings that Judge Grace made and that I have now made.

[181] The responsibility now rests with Mr [Blair] to take whatever steps he needs to, to make the requisite changes and to produce tangible evidence to the court that he has changed and that it would be safe for the reunification process to commence. The evidence from Mr [Blair] will also need to address his diagnosis of ADHD. Any evidence would need to provide a holistic assessment of risk taking into account the psychological reports that have already been completed, the findings made by Judge Grace and now by me, and all relevant information regarding Mr [Blair]'s diagnosis of ADHD.

[182] That evidence will all need to be before the court before the reunification process could commence. The reunification process will need to be a carefully managed one and must avoid any possibility that it is designed in such a way to teach the children to learn to tolerate violence.[158] Any therapeutic intervention that forms part of the reunification process involving Mr and Mrs [Blair] and the children must be formulated on the basis of all relevant information and developed specifically within a context of family violence.

---

[158] NOE page 79, 13 December 2021.

[183] It will be important also that the court proceedings from their inception are carefully managed by one judge.

Decision/Orders/Directions

[184] For all of the reasons set out above the following orders and directions are now made:

(a) The application by Mrs [Blair] to introduce new evidence is declined.

(b) All earlier parenting orders and any variations of the same, are to be discharged and replaced with a final order granting the day to day care of the children to Mrs [Blair].

(c) The order is to preclude any form of direct or indirect contact between Mr [Blair] and the children.

(d) Ms More is to report the outcome of these proceedings to the children, following which her appointment is to be concluded with the thanks of the court.

(e) Given the circumstances, there will be no cost contribution order made against either party.

(f) Ms McMillan's appointment is concluded with the thanks of the court.

(g) Section 139A now applies and the court file is to be closed.

(h) If further proceedings are commenced by either party within the next two years, then they are to be case managed from one judge from the date of commencement.

(i) Mr [Blair] is however able to seek directions in the meantime seeking the release of the reports completed by Ms Dugdale, this decision and the decision of Judge Grace for the purposes of any therapeutic

intervention/treatment. Any memorandum filed by Mr [Blair] seeking directions accordingly is to be referred immediately to me for direction.

____

Judge AR McLeod
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 05/05/2022